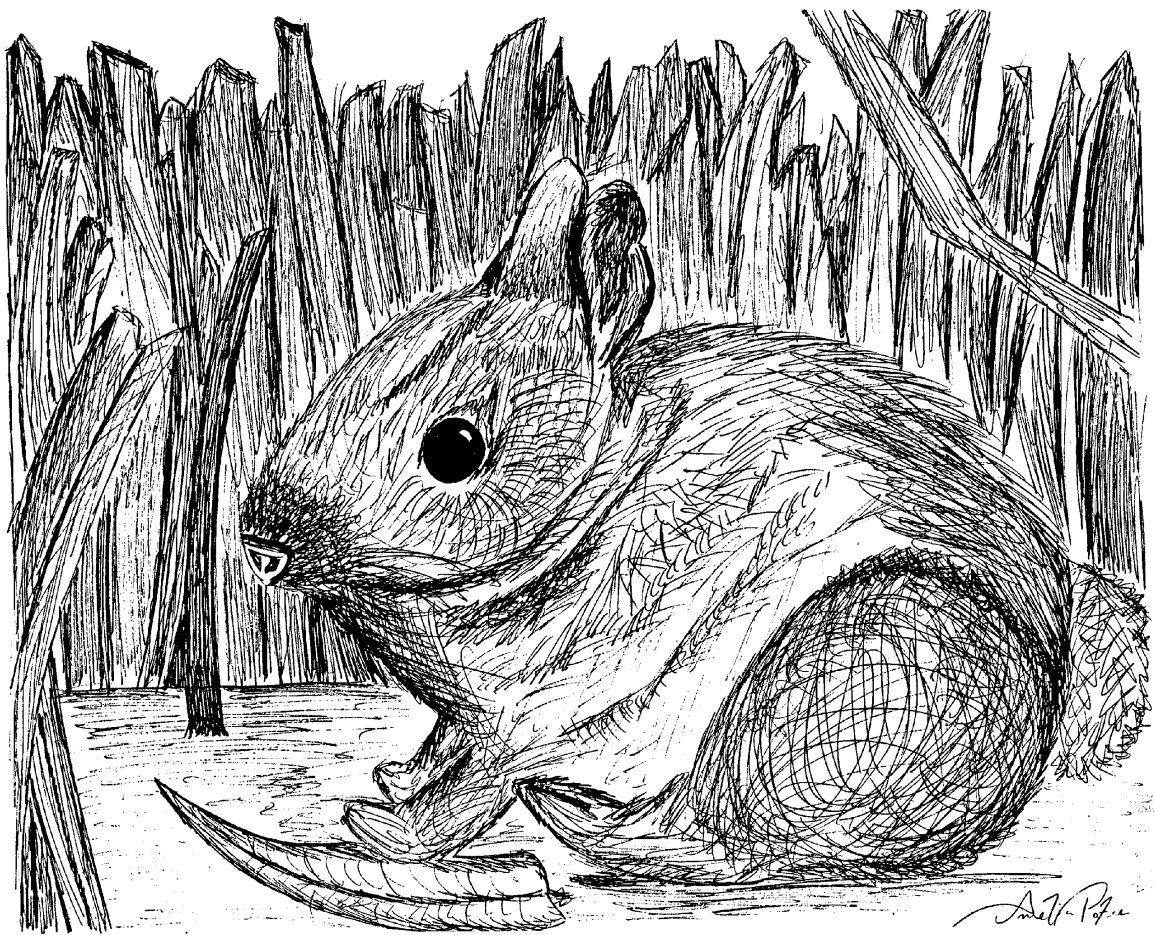


# TEXAS REGISTER

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*Artist: Amelia Potee  
12<sup>th</sup> grade  
Rockwall High School*

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# 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.

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Opinions

**Opinion No. JC-0357**

The Honorable Kip Averitt Chair, Committee on Financial Institutions, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910

Re: Whether section 62.003 of the Property Code, which converts a personal property lien on a manufactured home to a purchase money lien on real property, creates a valid purchase money lien against homestead property under article XVI, section 50 of the Texas Constitution (RQ-0293-JC)

**S U M M A R Y**

Section 62.003 of the Property Code, which converts a personal property lien on a manufactured home to a purchase money lien on real property when the manufactured home is converted to real property, does not create a valid purchase money lien on homestead property under article XVI, section 50 of the Texas Constitution.

**Opinion No. JC-0358**

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

Re: Definition of "presiding magistrate" for probable cause hearing pursuant to section 574.025, Texas Health and Safety Code (RQ 0296-JC)

**S U M M A R Y**

The "presiding judge" who may appoint a master in a probable cause hearing under section 574.025(c) of the Texas Health and Safety Code is the judge of the court in which an application for court-ordered mental health services is pending.

**Opinion No. JC-0359**

The Honorable Ben W. "Bud" Childers, Fort Bend County Attorney, 301 Jackson, Suite 621, Richmond, Texas 77469-3108

Re: Whether, under section 2256.016 of the Government Code, the Texas Local Government Investment Pool may calculate the "maximum average dollar-weighted maturity" of the pool using the reset date of floating rate securities as opposed to their stated maturity date (RQ-0305-JC)

**S U M M A R Y**

Section 2256.016(b)(2) of the Government Code requires TexPool to calculate the "maximum average dollar-weighted maturity" of the pool's portfolio using floating rate securities' stated maturity dates. TexPool's practice of disclosing two sets of weighted average maturity data, one using floating rate securities' reset dates and the other using their stated maturity dates, is consistent with section 2256.016.

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

TRD-200101910

Susan D. Gusky

Assistant Attorney General

Office of the Attorney General

Filed: April 3, 2001



Request for Opinions

**RQ-0364-JC.**

The Honorable Rene O. Oliveira, Chair, Ways and Means Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, regarding authority of the Texas Department of Public Safety to regulate training courses for off-road dirt biking (Request No. 0364-JC).

**Briefs requested by April 29, 2001**

**RQ-0365-JC.**

The Honorable Bill G. Carter, Chair, Urban Affairs Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, regarding expenditure of funds by a 9-1-1 emergency communications district (Request No. 0365-JC).

**Briefs requested by April 30, 2001**

**RQ-0366-JC.**

The Honorable Juan J. Hinojosa, Chair, Criminal Jurisprudence Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, regarding whether a member of a city council automatically resigns his position when he announces his candidacy for school trustee, and related questions (Request No. 0366-JC).

**Briefs requested by April 30, 2001**



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

TRD-200101954

Susan D. Gusky

Assistant Attorney General

Office of the Attorney General

Filed: April 4, 2001

# EMERGENCY RULES

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

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

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## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 19. QUARANTINES

##### SUBCHAPTER P. SUGARCANE ROOTSTOCK BORER WEEVIL QUARANTINE

###### 4 TAC §19.163

The Texas Department of Agriculture (the department) adopts on an emergency basis, amendments to §19.163, concerning restrictions under the sugarcane rootstock borer weevil quarantine. The sugarcane rootstock borer weevil quarantine, §§19.160-19.164, was adopted on an emergency basis effective on March 16, 2001, (TRD No. 200101562) published in the March 30, 2001 issue of the *Texas Register*. The emergency amendment to §19.163 (b)(7) provides an exemption from regulations for aquatic plants. The new language is added because aquatic plants do not present a risk of transporting the quarantined pest. The department has determined that without the exemption, an unintended hardship would result for growers of aquatic plants used in the aquarium industry which would result in losses of markets of those producers and may reduce available supplies in demand by Texas residents. The amendment to §19.163 (c)(1) provides for a compliance agreement to be established between the state of origin and nurseries to serve in the place of the issuance of a phytosanitary certificate. The current rule allows for admission of quarantined articles from a quarantined area outside Texas only if accompanied by a phytosanitary certificate and the articles have been treated and found to be free of the pest, or the articles have originated in an area free of the quarantined pest. The department has been advised by out of state officials in quarantined areas that, due to limited state resources, primarily in regard to inspectors, it will be very difficult, if not impossible, for all growers of quarantined articles to obtain the phytosanitary certificates currently required. The unintended result will be that nurseries in the quarantined area will be prohibited from providing stock to nurseries in Texas. The emergency amendment to §19.163(c)(1) will provide other state departments of agriculture with an option for the use of compliance agreements which will ensure greater compliance of treatment requirements, which furthers the goal of the quarantine to prevent the spread of the quarantined pest to citrus and nursery growing areas of Texas, and will allow nurseries in Texas to purchase nursery stock in demand by

Texas residents. Without these amendments, the availability of nursery stock obtained by Texas growers will be significantly impacted, thereby reducing available supplies. Texas nurseries will undergo significant losses and may experience a serious loss of markets.

The department believes that it is necessary to take this immediate action to maintain established markets and minimize losses to the Texas nursery industry, while preventing the spread of the quarantined pest. Without this change, commerce between states will be detrimentally affected and may result in continuing economic loss to many Texas nurseries. The department may propose adoption of this rule on a permanent basis in a separate submission.

The emergency amendments to §19.163 add certain aquatic plants to the list of articles exempt from the sugarcane rootstock borer weevil quarantine and provide for admission of quarantined articles from outside Texas if a prescribed compliance agreement is in effect with the state department of agriculture from which the quarantined article originates and the articles meet other requirements.

The amendments to §19.163 are adopted on an emergency basis under the Texas Agriculture Code, §71.004, which provides the Texas Department of Agriculture with the authority to establish emergency quarantines; §71.007 which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; and the Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

###### §19.163. *Restrictions.*

(a) (No change.)

(b) Exemptions. The following articles are exempt from the provision of this subchapter:

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

(5) Defoliated bare-rooted nursery stock; ~~and~~

(6) privately-owned indoor decorative houseplants ; and [-]

(7) aquatic plants without soil, and those in containers with growing media if removed from water and shipped immediately.

(c) Exceptions.

(1) All quarantined articles from outside Texas are admissible into Texas from a quarantined area if:

(A) accompanied by a phytosanitary certificate issued by an authorized inspector of the state of origin and have been treated for the quarantined pest as prescribed by the department and is free of the quarantined pest, or has originated in an area free of the quarantined pest ; or [-]

(B) originated from a location that has a signed compliance agreement in effect with the origin state department of agriculture requiring treatment of all nursery stock as prescribed by the department and is free of the quarantined pest and verified by a stamp of the origin state department of agriculture on the bill of lading as such.

(2) (No change.)

Filed with the Office of the Secretary of State, on March 27, 2001.

TRD-200101787

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: March 27, 2001

Expiration date: July 14, 2001

For further information, please call: (512) 463-4075



# 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.

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**TITLE 1. ADMINISTRATION**  
**PART 5. GENERAL SERVICES**  
**COMMISSION**

**CHAPTER 113. CENTRAL PURCHASING**  
**DIVISION**

The Commission proposes the repeal of Title 1, T.A.C., Chapter 113, Subchapter A, §113.14 concerning the purchases for school districts; and Subchapter B, §113.23 concerning the purchase of school buses equipped with alternative fuel. The repeals are proposed in accordance with Chapter 382 (Clean Air Act), Subchapter F (Alternative Fuels Program) of the Health and Safety Code.

Paul E. Schlimper, Director of Central Procurement Services, has determined that for the first five-year period these rules are in effect there will be no fiscal implications for state or local government as a result of enforcing these repeals.

Paul E. Schlimper, further determines that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of this change will delete obsolete rules concerning the purchase of school buses by school districts; and delete the requirement for school districts to use alternative fuel buses. There will be no effect on large, small or micro-businesses; and/or persons who are required to comply with these rules; and there is no impact on local employment.

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

**SUBCHAPTER A. PURCHASING**

**1 TAC §113.14**

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

The repeal is proposed under the authority of Chapter 382 (Clean Air Act), Subchapter F (Alternative Fuels Program) of the Health and Safety Code and Texas Government Code, §2152.003.

The following code is affected by this rule: Chapter 382 (Clean Air Act), Subchapter F (Alternative Fuels Program) of the Health and Safety Code and Texas Government Code, §2152.003.

§113.14. *Purchases for School Districts.*

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 30, 2001.

TRD-200101888

Cynthia J. Hill

Acting General Counsel

General Services Commission

Earliest possible date of adoption: May 13, 2001

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



**SUBCHAPTER B. PURCHASE OF**  
**ALTERNATIVE FUEL VEHICLES**

**1 TAC §113.23**

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

The repeal is proposed under the authority of Chapter 382 (Clean Air Act), Subchapter F (Alternative Fuels Program) of the Health and Safety Code, and Texas Government Code, §2152.003.

The following code is affected by this rule: Chapter 382 (Clean Air Act), Subchapter F (Alternative Fuels Program) of the Health and Safety Code, and Texas Government Code, §2152.003.

§113.23. *Purchase of School Buses.*

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 30, 2001.

TRD-200101889

Cynthia J. Hill

Acting General Counsel

General Services Commission

Earliest possible date of adoption: May 13, 2001

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



## CHAPTER 113. CENTRAL PURCHASING DIVISION

The Commission proposes amendments to Title 1, TAC, Chapter 113, Subchapter C, §113.33 concerning school bus specifications; and Subchapter H, §113.137 concerning first choice product justification. The proposed amendments will delete obsolete language, clarify the statutory intent of the Texas Education Code, §34.002 (relating to safety standards), meet the requirement of the Texas Transportation Code, §547.7015 (relating to rules for school buses), and will establish a justification limit for purchases of items designated in Title 1, TAC, §113.137 (relating to Identifying Recycled, Remanufactured or Environmentally Sensitive Commodities or Services for Procurements by State Agencies.)

Paul E. Schlimper, Director of Central Procurement Services, has determined that for the first five-year period these rules are in effect there will be no fiscal implications for state or local government as a result of enforcing these amendments.

Paul E. Schlimper, further determines that for each year of the first five-year period the amendments are in effect, the public benefit anticipated as a result of these changes will provide clarification of Texas Education Code, §34.002, meet the requirement of the Texas Transportation Code, Section 547.7015; and establish a justification limit for purchases of items designated as First Choice Products. There will be no effect on large, small or micro-businesses and/or persons, who are required to comply with these rules, and there is no impact on local employment.

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

### SUBCHAPTER C. SPECIFICATION

#### 1 TAC §113.33

The amendments are proposed pursuant to the Texas Government Code, §2152.003, Texas Education Code, §34.002 and the Texas Transportation Code, §547.7015.

The following codes are affected by these rules: Texas Government Code, §2152.003, Texas Education Code, §34.002 and the Texas Transportation Code, §547.7015.

§113.33. *Selection of Items for Development of Texas Uniform Standards and Specifications.*

Items are selected for specification development by or through one or more of the following methods.

(1) Required by statute.

(A) School buses. Pursuant to the Texas Education Code, §34.002, the Texas Department of Public Safety, with advice from the commission and the Texas Education Agency, establishes safety standards for school buses used to transport students. Pursuant to the Transportation Code, §547.7015, the commission hereby delegates to the Director of the Central Procurement Division the authority to develop specifications governing the design, color, lighting and other equipment, construction, and operation of school buses. The specifications shall be posted on the commission's website. [Subtitle F, Chapter 34, the Central Procurement Division has the responsibility to "coordinate and correlate all specification data, finalize and issue the uniform standards and specifications so adopted."]

(B) Prison-made products and raw materials. Pursuant to Texas Government Code, Subtitle G, Subchapter B, §497.027, an article or product produced under Subchapter B must meet specifications established by the commission that are in effect when the article or product is produced.

(2) Requests from using agencies. If a using agency finds that it is having difficulty in obtaining a certain item to meet a particular requirement, then the agency can communicate this need to the standards and specifications section of the Central Procurement Division.

(3) Requests from purchasers. If a state purchaser is having difficulty in securing bids on a particular item in the absence of adequate uniform standards and specifications, he may request the standards and specification section to investigate the feasibility of developing a uniform standard and specification to cover the purchase of this item.

(4) Requests from vendors and/or bidders. Bidders may petition the standards and specification section to ascertain the feasibility of developing a specification on an article bid by agencies.

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

Filed with the Office of the Secretary of State, on March 30, 2001.

TRD-200101890

Cynthia J. Hill

Acting General Counsel

General Services Commission

Earliest possible date of adoption: May 13, 2001

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



## SUBCHAPTER H. RECYCLING MARKET DEVELOPMENT BOARD

#### 1 TAC §113.137

The amendments are proposed pursuant to Texas Government Code, §2155.448.

The following codes are affected by these rules: Texas Government Code, §2155.448.

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

(a) Each state fiscal year, the commission, in coordination with the Recycling Market Development Board (RMDB), may designate as



"first choice" certain recycled, remanufactured or environmentally sensitive commodities or services, as those terms are defined in §113.136 of this title (relating to Definitions).

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

(1) Re-refined oils and lubricants.

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

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

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

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

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

(f) A state agency that intends to purchase a commodity or service that accomplishes the same purpose as a commodity or service as those listed in subsection (b) of this section, that does not meet the definition of a recycled product or that is not remanufactured or environmentally sensitive, shall include with the procurement file a written justification signed by the executive head of the agency stating the reasons for the determination that the commodity or service identified by the commission will not meet the requirements of the agency. Agencies are not required to submit a first choice justification letter when the combined total purchase on a single purchase order is equal to or less than \$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.

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Cynthia J. Hill

Acting General Counsel

General Services Commission

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



## CHAPTER 114. PAYMENT FOR GOODS AND SERVICES

### 1 TAC §114.10

The General Services Commission proposes new Title 1, T.A.C., Chapter 114, §114.10, concerning Collection of Debts. Pursuant to the Texas Government Code, §2107.002, all state agencies are required to report uncollected and delinquent obligations to the Office of the Attorney General for collection efforts after a state agency has determined that normal agency collection procedures have failed. Further, each state agency that collects delinquent obligations owed to the agency must adopt rules to establish procedures for the collection of delinquent obligations, or the attorney general by rule may establish collection procedures for state agencies. The proposed new §114.10 will adopt

by reference rules and guidelines adopted by the Office of the Attorney General under Title 1, T.A.C., Chapter 59.

Ms. Juliet King, Legal Counsel, has determined for the first five year period the rule is in effect, there will be no fiscal implication for the state or local governments as a result of enforcing or administering the new section.

Ms. Juliet King, Legal Counsel, further determines that for each year of the first five-year period the new rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the establishment of rules that are compliant with the Texas Government Code, Chapter 2107 and Title 1, T.A.C., Chapter 59 concerning the collection of delinquent obligations to the state. There will be no effect on large, small or micro-businesses. There is no anticipated economic costs to persons who are required to comply with the rule and there is no impact on local employment. Any costs to persons and large, small or micro-businesses are a result of debts owed to the state and not as a result of this proposed new rule.

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

The new section is proposed under the authority of the Texas Government Code, Title 10, Subtitle D, §2152.003 and Texas Government Code, §2107.002 that provides the General Services Commission with the authority to promulgate rules necessary to implement the section.

The following code is affected by this rule: Texas Government Code, §2107.002.

#### §114.10. Collection of Debts.

(a) The commission adopts by reference the rule of the Office of the Attorney General in Title 1, Part 3, Texas Administrative Code, Chapter 59 relating to Collections. The Office of the Attorney General rules are located at the Office of the Secretary of State's internet website: [www.sos.state.tx.us/tac/index.html](http://www.sos.state.tx.us/tac/index.html).

(b) The rules set forth a process for collection of delinquent obligations owed to the commission.

(c) The adoption of this rule is required by the Texas Government Code, Chapter 2107, §2107.002.

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 30, 2001.

TRD-200101887

Cynthia J. Hill

Acting General Counsel

General Services Commission

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



## TITLE 16. ECONOMIC REGULATION

### PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

## CHAPTER 60. TEXAS COMMISSION OF LICENSING AND REGULATION

### SUBCHAPTER B. ORGANIZATION

#### 16 TAC §60.64

The Texas Department of Licensing and Regulation proposes amendments to §60.64 concerning duration of advisory committee/boards/councils governed by the Texas Commission of Licensing and Regulation.

The amendments to §60.64 proposes to amend the rule to indicate that the Auctioneer Education Advisory Board and the Property Tax Consultants Advisory Council is in effect until September 1, 2004.

The Texas Government Code §2110.008(a) states that a state agency that is advised by an advisory committee shall establish by rule a date on which the committee will automatically be abolished. The advisory committee may continue in existence after that date only if the governing body of the agency affirmatively votes to continue the committee in existence. The Auctioneer Education Advisory Board plays a significant role by advising the Commissioner on what institutions should receive education grants and the Property Tax Consultants Advisory Council's input and advice is integral to the operations of this program. At their May 22, 2000 meeting the Texas Commission of Licensing and Regulation voted unanimously to continue the Auctioneer Education Advisory Board and the Property Tax Consultants Advisory Council until September 1, 2004. The proposed amendments reflect these changes.

William H. Kuntz, Executive Director, Texas Department of Licensing and Regulation, has determined that for the first five-year period this section is in effect there will be no fiscal implications for any municipality as a result of enforcing or administering the proposed rule.

Mr. Kuntz also has determined that for each year of the first five years this section is in effect the public benefit anticipated as a result of enforcing this section will be an opportunity to advise the Commissioner on the public impact of matters relating to auctioneers and property tax consultants.

There is no economic cost anticipated for licensee's relating to the duration of the Auctioneer Education Advisory Board or the Property Tax Consultants Advisory Council as proposed. There will be no additional cost to small businesses or to persons who may be required to comply with this section as proposed.

Comments on the proposal may be submitted to Carlos Celestino, General Counsel, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, facsimile 512/475-2872, or electronically: carlos.celestino@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under the Texas Occupations Code, Chapter 51, which authorizes the Commissioner to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the department.

The Code affected by the proposed amendments is the Texas Occupations Code, Chapter 51.

§60.64. *Duration of Advisory Committee/Boards/Councils.*

In accordance with Texas Government Code Annotated, §2110.008 the Commission establishes the following automatic abolishment dates for

the committees/boards/councils as indicated unless the Commission subsequently establishes a different date:

- (1) Architectural Barriers Advisory Committee - 09/01/2001;
- (2) Air Conditioning & Refrigeration Advisory Council - 09/01/2001;
- (3) Auctioneer Education Advisory Board - 09/01/2004 [09/01/2000];
- (4) Board of Boiler Rules - 09/01/2002;
- (5) Elevator Advisory Board - 09/01/2001;
- (6) Property Tax Consultants Advisory Council - 09/01/2004 [09/01/2000]; and
- (7) Water Well Driller Advisory Council - 09/01/2001.

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 28, 2001.

TRD-200101800

William H. Kuntz

Executive Director

Texas Department of Licensing and Regulation

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



## CHAPTER 70. INDUSTRIALIZED HOUSING AND BUILDINGS

#### 16 TAC §§70.20, 70.22, 70.50 ,70.73

The Texas Department of Licensing and Regulation proposes amendments to §§70.20, 70.22, 70.50, and 70.73 concerning industrialized housing and buildings.

The changes to §70.20 add the requirement that the industrialized builder certify, at the time of registration, that the installations performed under this registration shall be in accordance with the mandatory codes, engineered plans, and department rules and shall be inspected in accordance with the site inspection procedures established by the Texas Industrialized Building Code Council. This certification at time of registration is being substituted for the certification now required on the builder's monthly reports, which are being eliminated. The changes to this section also clarify the differences between registration as an industrialized builder and installation permits.

The changes to §70.22 add the requirement for an accessibility reviewer to the criteria for approval of design review agencies. This will ensure better compliance with the accessibility requirements in the plans reviewed and approved by design review agencies.

The changes to §70.50(a) clarify the reporting requirements of manufacturers. The changes to §70.50(b) eliminate monthly reports of industrialized builders, adds the record keeping requirements of industrialized builders, and provides for yearly audits of the builder's records. This will eliminate time spent by the department on administrative cases of builders failing to report or reporting late. The yearly audits will allow the department to assure that the builders are in compliance with the installation

requirements of the law and rules governing industrialized housing and buildings. Section 70.50(d) was deleted and the requirements of this section integrated into §70.50(a).

The changes to §70.73 clarify that the requirements for building site inspections are applicable to installation permit holders as well as industrialized builders. Section 70.73(b) adds the minimum requirements for information that must be included in a site inspection report prepared by third party inspectors. This clarifies the record keeping requirements of industrialized builders as outlined in the changes to §70.50(b).

Jimmy Martin, Director of the Enforcement Division of the Texas Department of Licensing and Regulation, has determined that for the first five-year period that these sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed changes.

Mr. Martin also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clearer implementation of the statute and a higher level of industrialized housing and building safety, quality, and compliance with the mandatory state building codes.

The anticipated economic effect of small businesses and persons who are required to comply with the sections as proposed will be minimal.

The cost of compliance will be minimal.

Comments on the proposal may be submitted to Jimmy Martin, Director of the Enforcement Division, Texas Department of Licensing and Regulation, PO Box 12157, Austin, Texas 78711, facsimile (512) 475-2872, or by email: jimmy.martin@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Revised Civil Statutes, Article 5221f-1, which authorizes the Commissioner of the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the article.

The Article and Code affected by the amendments is Texas Revised Civil Statutes, Article 5221f-1 and Texas Occupations Code, Chapter 51.

#### §70.20. *Registration of Manufacturers and Industrialized Builders.*

Manufacturers and industrialized builders shall not engage in any business activity relating to the construction or location of industrialized housing or buildings without being registered with the department.

(1) An application for registration shall be submitted on a form supplied by the department, and shall contain such information as may be required by the department. The application must be verified under oath by the owner of a sole proprietorship, the managing partner of a partnership, or the [chief executive or chief operating] officer of a corporation. The application must be accompanied by the fee set forth in §70.70 of this title (relating to Commission Fees).

(2) The industrialized builder shall verify under oath at the time of registration that the foundation and installation of all units installed under this registration shall be constructed in accordance with the mandatory state code, the engineered plans, and department rules, and shall be inspected in accordance with the site inspection procedures established by the Texas Industrialized Building Code Council.

(3) [(2)] A person who does not purchase industrialized housing or buildings from a manufacturer for sale or lease to the public

may file for an installation permit in lieu of registering as an industrialized builder. A person [who is not registered as an industrialized builder and] who buys or leases industrialized housing or buildings from an industrialized builder and assumes responsibility for the installation of the unit or units, but who is not purchasing these units for sale or lease to the public, may [shall] apply for an installation permit in lieu of registering as an industrialized builder. The application shall be submitted on a form supplied by the department and shall contain such information as may be required by the Department. A separate application must be submitted for each building containing industrialized housing and buildings modules or modular components. The application must be accompanied by the fee set forth in §70.80 of this title (relating to Commission Fees).

(4) [(3)] The registration shall be valid for 12 months and must be renewed annually. Every corporate entity must be separately registered. Each separate manufacturing facility must be registered; a manufacturing facility is separate if it is not on property that [which] is contiguous to a registered manufacturing facility. An industrialized builder must register each separate sales office but is not required to register each job location.

(5) [(4)] A registered manufacturer or industrialized builder shall notify the department in writing within 10 days if:

- (A) the corporate or firm name is changed;
- (B) the main address of the registrant is changed;
- (C) there is a change in 25% or more of the ownership interest of the company within a 12-month period;
- (D) the location of any manufacturing facility is changed;
- (E) a new manufacturing facility is established; or
- (F) there are changes in principal officers of the firm.

(6) [(5)] A manufacturer certified pursuant to §70.61 of this title (relating to Responsibilities of the Department - Plant Certification), whose registration expires shall have his certification revoked if the registration is not renewed within 30 day of the expiration date. A manufacturer whose certification has been revoked must undergo another certification inspection to reinstate the certification.

(7) [(6)] An application for original registration or renewal may be rejected if any information contained on, or submitted with, the application is incorrect. The certificate of registration may be revoked or suspended or a penalty or fine may be imposed for any violation of the Act, violation of the rules and regulations in this chapter or administrative orders of the department, or violations of the instructions and determinations of the council in accordance with §70.90 of this title (relating to Sanctions - Administrative Sanctions/Penalties), and §70.91 of this title (relating to Revocation or Suspension because of a Criminal Conviction).

#### §70.22. *Criteria for Approval of Design Review Agencies.*

An agency seeking council approval as a design review agency (DRA) shall submit a written application to the commissioner. The application will indicate the agency's name, address, and the telephone number of each office in which design review services are to be performed. The application will include the following information:

(1) An organizational chart indicating the names of the managerial or technical personnel responsible for design review functions within the agency. The chart must indicate the area or areas of review for which the technical personnel are responsible;

(2) A resume for each person listed in the organizational chart indicating academic and professional qualifications, experience

in related areas, and specific duties within the agency. The minimum personnel requirements and qualifications shall be as follows.

(A) The manager or chief executive officer shall have a minimum of four years of plans examination, design, construction, or manufacturing experience in the building industry, or any combination thereof, and registration as a professional engineer or architect in the State of Texas (NOTE: The applicant's registration number must be included on the resume).

(B) Technical staff members may qualify for more than one discipline. Therefore, the agency need not have an individual staff member for each discipline. Required certifications need not be from the same code agency for the different disciplines. For example, a DRA may have a structural reviewer, a mechanical reviewer, and an electrical reviewer with the required certifications through ICBO while the plumbing reviewer, building planning reviewer, and fire safety reviewer have the required certifications through SBCCI. The DRA is not limited to one code group when filling positions in the different disciplines. The technical staff shall consist of the following positions.

(i) The structural reviewer shall have a bachelor's degree with specialized course work in structures in civil, structural, or architectural engineering or service equivalent in accordance with subparagraph (C) of this paragraph; a minimum of one year structural engineering experience related to buildings; and certification as either a building plan examiner as granted by SBCCI, as a plans examiner as granted by ICBO, or as a building plans examiner as granted by BOCA. Any certification expiration dates must also be submitted.

(ii) The mechanical reviewer shall have a bachelor's degree in engineering with specialized course work in HVAC Systems or service equivalent in accordance with subparagraph (C) of this paragraph; a minimum of one year mechanical engineering experience related to buildings; and certification as a mechanical inspector as granted by either SBCCI, ICBO, or BOCA. Any certification expiration dates must also be submitted.

(iii) The electrical reviewer shall have a bachelor's degree in engineering with specialized course work in electrical engineering or service equivalent in accordance with subparagraph (C) of this paragraph; a minimum of one year electrical engineering experience related to buildings; and certification as either a commercial electrical inspector as granted by SBCCI or as an electrical inspector as granted by either ICBO or BOCA. Any certification expiration dates must also be submitted.

(iv) The plumbing reviewer shall have a bachelor's degree in engineering with specialized course work in hydraulics or service equivalent in accordance with subparagraph (C) of this paragraph; a minimum of one year plumbing experience related to buildings; and certification as a plumbing inspector as granted by either SBCCI, ICBO, or BOCA. Any certification expiration dates must also be submitted.

(v) The building planning reviewer shall have a bachelor's degree in engineering or architecture or service equivalent in accordance with subparagraph (C) of this paragraph; a minimum of one year experience related to building planning; and certification as either a building plan examiner as granted by SBCCI, as a plans examiner as granted by ICBO, or as a building plans examiner as granted by BOCA. Any certification expiration dates must also be submitted.

(vi) The fire safety reviewer shall have a bachelor's degree in engineering or architecture or service equivalent in accordance with subparagraph (C) of this paragraph; a minimum of one year

experience in fire protection engineering related to buildings; and certification either as a building plan examiner as granted by SBCCI, as a plans examiner as granted by ICBO, or as a building plans examiner as granted by BOCA. Any certification expiration dates must also be submitted.

(vii) The accessibility reviewer shall have a bachelor's degree in engineering or architecture or service equivalent in accordance with subparagraph (C) of this paragraph; a minimum of one year experience in accessibility reviews related to buildings; and satisfactory completion of the Texas Accessibility Academy with a test score of 80% or higher.

(C) A minimum of eight years of creditable experience in engineering or architectural practice indicative of growth in engineering or architectural competency and responsibility is an acceptable service equivalent for academic requirements. This experience may be counted concurrently for those wishing to show service equivalency in more than one field. To be considered creditable, experience must satisfy the requirements outlined in the Texas State Board of Registration for Professional Engineers Board Rules of Practice and Procedure or the Texas Board of Architectural Examiner Rules and Regulations of the Board Regulating the Practice of Architecture.

(D) In lieu of a registration number issued by the Texas State Board of Registration for Professional Engineers, an applicant currently registered in some other state and applying for registration in Texas under the provisions of the Texas Engineering Practice Act, §20(a) and (b), may satisfy the requirement by providing a copy of an application for registration and a letter from the Board acknowledging receipt and authorizing interim practice;

(3) complete documentation, including examples of data sheets or other forms used to analyze construction and equipment; preliminary and final reports; and an agency compliance assurance manual to substantiate the agency's ability to evaluate building systems and compliance control manuals for compliance with standards. Evidence must be presented in the areas of structural, mechanical, electrical, plumbing, building planning, and fire safety. The documentation should include an example of a building system or compliance control manual which the agency has evaluated for compliance with a code or set of standards;

(4) a properly notarized statement of certification signed by the agency manager or chief executive officer that:

(A) its board of directors, as a body, and its managerial and technical personnel, as individuals, are free to exercise independence of judgment in the performance of their duties within the agency;

(B) its activities pursuant to the discharge of responsibility as a design review agency will not result in financial benefit to the agency via stock ownership or other financial interest in any producer, supplier, or vendor of products involved, other than through standard fees for services rendered;

(C) the agency will consistently and uniformly implement the policies and determinations of the council with regard to interpretations of the standards and rules;

(D) the agency will not provide design services or prepare compliance control manuals for manufacturers for whom it acts as a design review agency;

(E) all information contained in the application for approval as a design review agency is true, timely, and correct; and

(F) all future changes will be immediately communicated to the department;

(5) A list of states in which the agency is currently approved to provide similar services.

*§70.50. Manufacturer's and Builder's Monthly Reports.*

(a) The manufacturer shall submit a monthly report to the department, of all industrialized housing, buildings, modules, and modular components that ~~that [which]~~ were constructed and to which decals and insignia were applied during the month. The manufacturer shall keep a copy of the monthly report on file for a minimum of five years. Any corrections to reports previously filed shall clearly indicate the corrections to be made and the month and date of the report that is being corrected. [The report must state the name and address of the industrialized builder to whom the structures, modules, or modular components were sold, consigned, or shipped. If any such units were produced and stored, the report must state the storage location.] The report shall ~~also~~ contain:

- (1) the serial or identification number of the units;
- (2) the decal or insignia number assigned to each identified unit;
- (3) the name and registration number of the industrialized builder (as assigned by the department) ~~, or the installation permit number (as assigned by the department) of the person, to whom the units were sold, consigned, and shipped .~~ The requirements contained in §70.20(2) (relating to Registration of Manufacturers and Industrialized Builders) shall apply when an installation permit is reported in lieu of the registration number of an industrialized builder ~~[or the installation permit number issued by the Department];~~
- (4) the address to which the units were shipped;
- (5) an identification of the type of structure for which the units are to be used, e.g., single family residence, duplex, restaurant, equipment shelter, bank building, hazardous storage building, etc.;
- (6) any other information the department may require; and
- (7) an indication of zero units if there was not activity for the reporting month.

(b) Each industrialized builder shall keep records of all industrialized housing, buildings, modules, and modular components that were sold, leased, or installed. These records shall be kept for a minimum of five years from the date of sale, lease, or installation and shall be made available to the department for review upon request. An annual audit of units sold, leased, or installed by the builder shall be conducted by the Department. The audit will identify the modules or modular components by the name and Texas registration number of the manufacturer of each unit and the assigned Texas decal or insignia numbers and the corresponding identification, or serial, numbers as assigned by the manufacturer. The builder shall report or provide the following information to the Department for each unit identified in the audit within the timeframe set by the audit: [Each industrialized builder shall submit a monthly report to the department of all industrialized housing, buildings, modules, and modular components that were installed during the month. A copy of the report shall be kept on file by the industrialized builder for a minimum of five years. The report shall contain:]

(1) evidence of compliance with §70.75 of this title (relating to Responsibilities of Registrants - Permit/Owner Information);

~~[(1) the specific address of each building site on which the industrialized builder has performed any on-site construction work during the month;]~~

(2) the address where each unit was installed. If the builder is not responsible for the installation, then the address to where each unit was delivered;

(3) the occupancy use of each building containing modules or modular components, i.e., classroom, restaurant, bank, equipment shelter, etc; and

(4) ~~[(2)]~~ identification of the type of foundation system, either permanent or temporary, on which each [the] unit was installed, in accordance with the following  ~~. [:]~~

(A) If [if] the builder is responsible for the installation and site work, then the builder : [shall provide a notarized statement certifying that the unit was installed and inspected in compliance with the engineered plans, applicable codes, department rules, and site inspection procedures for industrialized housing and buildings; or]

(i) shall, for units installed outside the jurisdiction of a municipality, keep a copy of the foundation plans and, for units installed on a permanent foundation, keep a copy of the site inspection report in accordance with §70.73 of this title (relating to Responsibilities of the Registrants - Building Site Inspections). A copy of these documents shall be made available to the department upon request; or

(ii) shall, if installed within the jurisdiction of a municipality, provide the name of the city responsible for the site inspection.

(B) If [if] the builder is not responsible for the installation and site work, then the builder shall provide identification of the installation permit number, assigned [issued] by the Department, or builder registration number, assigned by the Department, of the person responsible.

~~[(3) the decal and insignia numbers and unit identification numbers of all modules or modular components assembled or installed at a building site during the month;]~~

~~[(4) any other information the department may require on the form or by separate instruction letter; and]~~

~~[(5) an indication of zero units if there was no activity for the reporting month.]~~

(c) The manufacturer's and industrialized builder's monthly reports must be filed with the department no later than the 10th day of the following month.

~~[(d) Any change in destination (from that reported on the manufacturer's or builder's monthly report) of a module or modular component prior to installation of the module or modular component must be reported to the Department by the manufacturer or builder responsible for the change. The change shall be reported on the manufacturer's or builder's monthly report and shall clearly indicate that this is a change in destination for a previously reported module or modular component. The report shall include the serial or identification number of the unit, the decal or insignia number, the site to which the unit was originally shipped, the new destination information, and the registration number of the industrialized builder responsible for the installation if the unit was transferred or sold to another industrialized builder.]~~

*§70.73. Responsibilities of the Registrants - Building Site Inspections.*

(a) When the building site is within a municipality ~~that [which]~~ has a building inspection agency or department, the local building official will inspect all on-site construction done at the site and the attachment of the structure to the permanent foundation to assure completion and attachment in accordance with the design package, the on-site construction documentation, and any unique foundation system or on-site detailed drawings.

(b) When the building site is outside a municipality, or within a municipality ~~that [which]~~ has no building department or agency, a

third party inspector will perform the required inspections. The on-site inspection is normally accomplished in three phases: site preparation, set inspection, and final inspection. The builder, or installation permit holder, is responsible for scheduling each phase of the inspection with the third party inspector [inspecting agency]. Additional inspections will be scheduled as required for larger structures and to correct discrepancies. [If a council approved third party inspector is approved by the department and completes the inspection, fees may be paid directly to the third party inspector. The third party inspector must notify the department of the time, date, and location of the inspection, at least three working days prior to the inspection.] The industrialized builder, or installation permit holder, may utilize a different third party inspector [inspection agencies] for different projects, but may not change the inspector [inspection agency] for a project once started without the written approval of the department. The inspector shall provide the builder or permit holder a copy of the site inspection report and shall keep a copy for a minimum of five years. The report may be in whatever format the inspector desires as long as the following information is included on the inspection report:

- (1) dates of all inspections;
- (2) the name, Texas registration number or license number, and signature of the inspector who performed the inspection;
- (3) the name and Texas industrialized builder registration number, or the installation permit number, of the person responsible for the foundation and installation. Installation permit numbers are assigned by the Department in accordance with §70.20 of this title (relating to Registration of Manufacturers and Industrialized Builders);
- (4) the name and Texas registration number of the manufacturer of the modules or modular components inspected;
- (5) the name and address of the owner of the building or buildings inspected;
- (6) the complete site address of the modules or modular components inspected;
- (7) the Texas decal or insignia numbers and manufacturer's identification or serial numbers of the modules or modular components inspected;
- (8) the building codes the modules or modular components were designed to meet in accordance with the data plate on the building;
- (9) the occupancy group and the building construction type of the building in accordance with the data plate on the building;
- (10) a record of all system testing observed; and
- (11) the date and description of any deviations to the approved plans, unique site completion documentation, or mandatory codes and the corrective action, including the date of the corrective action, taken by the industrialized builder, or installation permit holder. If no deviations were observed, then this shall be noted on the report. The inspector shall notify the department of any deviations that cannot be corrected or that the builder, or installation permit holder, refuses to correct.

(c) Destructive disassembly shall not be performed at the site in order to conduct tests or inspections, nor shall there be imposed standards or test criteria different from those required by the approved installation instructions, on-site construction documentation, and the applicable mandatory code. Nondestructive disassembly may be performed only to the extent of opening access panels and cover plates.

(d) If an inspector finds a structure, or any part thereof, at the building site to be in violation of the approved design package and/or

the unique on-site plans and specifications, the inspector shall immediately post a deviation notice and notify the industrialized builder or installation permit holder. The industrialized builder, or installation permit holder, is responsible for assuring that all deviations are corrected and inspected prior to occupation of the building.

(e) The industrialized builder, or installation permit holder, shall not permit occupancy of a structure until a successful final inspection has been completed and a certificate of occupancy issued by the local authorities. The industrialized builder, or installation permit holder, shall keep a copy of the inspection report for the site inspection in the files for a minimum of five years.

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

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TRD-200101801

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: May 13, 2001

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



#### **16 TAC §70.100, §70.101**

The Texas Department of Licensing and Regulation proposes amendments to §§70.100 and 70.101 concerning industrialized housing and buildings.

The amendments to §§70.100 and 70.101 adopt the latest editions of the applicable building codes. The justification for the changes is that the Texas Industrialized Building Code Council has determined that the revisions are in the public interest in accordance with Texas Revised Civil Statutes, Article 5221f-1, §2(c).

Jimmy Martin, Director of the Enforcement Division of the Texas Department of Licensing and Regulation, has determined that for the first five-year period that these sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed changes.

Mr. Martin also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clearer implementation of the statute and a higher level of building safety, quality, and compliance with the mandatory state building codes.

The anticipated economic effect of small businesses and persons who are required to comply with the sections as proposed will be minimal.

The cost of compliance will be minimal.

Comments on the proposal may be submitted to Jimmy Martin, Director of the Enforcement Division, Texas Department of Licensing and Regulation, PO Box 12157, Austin, Texas 78711, facsimile (512) 475-2872, or by email: jimmy.martin@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Revised Civil Statutes, Article 5221f-1, which authorizes the Commissioner of

the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the article.

The Article and Code affected by the amendments is Texas Revised Civil Statutes, Article 5221f-1 and Texas Occupations Code, Chapter 51.

*§70.100. Mandatory State Codes.*

All industrialized housing and buildings, modules, and modular components, shall be constructed in accordance with the following codes: ~~[and their appendices:]~~

(1) National Fire Protection Association - National Electrical Code, 1999 Edition, ~~including appendices;~~

(2) ~~The International Building Code, 2000 edition, including appendices C and F, published by the International Code Council, the Building Officials and Code Administrators International, the International Conference of Building Officials, and the Southern Building Code Congress International;~~

(3) ~~the International Fuel Gas Code, 2000 edition, published by the International Code Council, the Building Officials and Code Administrators International, the International Conference of Building Officials, and the Southern Building Code Congress International;~~

(4) ~~the International Plumbing Code, 2000 edition, including appendices B, C, D, E, F, and G, published by the International Code Council, the Building Officials and Code Administrators International, the International Conference of Building Officials, and the Southern Building Code Congress International;~~

(5) ~~the International Mechanical Code, 2000 edition, published by the International Code Council, the Building Officials and Code Administrators International, the International Conference of Building Officials, and the Southern Building Code Congress International; and~~

(6) ~~the International Residential Code, 2000 edition, including appendix K, published by the International Code Council, the Building Officials and Code Administrators International, the International Conference of Building Officials, and the Southern Building Code Congress International.~~

~~{(2) either:}~~

~~{(A) the Uniform Building Code, 1997 Edition, published by the International Conference of Building Officials; or}~~

~~{(B) the Standard Building Code, 1997 Edition, published by the Southern Building Code Congress International; and}~~

~~{(3) the International Fuel Gas Code, 1997 Edition, published by the International Code Council, the Building Officials and Code Administrators International, the International Conference of Building Officials, and the Southern Building Code Congress International; the International Plumbing Code, 1997 Edition, published by the International Code Council, the Building Officials and Code Administrators International, the International Conference of Building Officials, and the Southern Building Code Congress International; and the International Mechanical Code, 1998 Edition, published by the International Code Council, the Building Officials and Code Administrators International, the International Conference of Building Officials, and the Southern Building Code Congress International.}~~

*§70.101. Amendments to Mandatory State Codes.*

(a) The council shall consider and review all amendments to these codes which are approved and recommended by ICBO or SBCCI,

and if they are determined to be in the public interest, the amendments shall be effective 180 days following the date of the council's determination or at a later date as set by the council.

(b) Any amendment proposed by a local building official, and determined by the council following a public hearing to be essential to the health and safety of the public on a statewide basis, shall become effective 180 days following the date of the council's determination or at such later date as set by the council.

(c) The 1999 Edition of the National Electrical Code shall be amended as follows.

(1) Add to Article 310-1 the following statement: "Aluminum and copper-clad aluminum shall not be used for branch circuits in buildings classified as a residential occupancy; aluminum and copper-clad aluminum conductors, of size number 4 AWG or larger, may be used in branch circuits in buildings classified as occupancies other than residential."

(2) Add to Article 110-14 the following statement: "Aluminum and copper-clad aluminum conductors shall be terminated using approved compression-type crimp lugs with approved inhibitors."

(d) The International Building Code shall be amended as follows.

(1) Revise §101.1 to read "These regulations shall be known as the *Building Code* of the Texas Industrialized Housing and Buildings program, hereinafter referred to as 'this code.'"

(2) Delete chapter 11 and replace with the Texas Accessibility Standards (TAS) of the Architectural Barriers Act, Article 9102, Texas Civil Statutes, dated April 1, 1994. Buildings subject to the requirements of the Texas Accessibility Standards are described in Administrative Rules of the Texas Department of Licensing and Regulation, 16 Texas Administrative Code, Chapter 68, §68.21(a) and (c) (relating to Registration - Subject Buildings and Facilities).

(3) Revise Chapter 35, Referenced Standards, as follows.

(A) Delete ICC A 117.1-98, Accessible and Usable Buildings and Facilities.

(B) Add Texas Accessibility Standards (TAS) dated April 1, 1994.

(4) Wherever reference elsewhere in the code is made to ICC/ANSI A117.1, the Texas Accessibility Standards (TAS) shall be substituted.

(e) Revise §101.1 of the International Fuel Gas Code to read "These regulations shall be known as the *Fuel Gas Code* of the Texas Industrialized Housing and Buildings program, hereinafter referred to as 'this code.'"

(f) The International Plumbing Code shall be amended as follows.

(1) Revise §101.1 of the International Plumbing Code to read "These regulations shall be known as the *Plumbing Code* of the Texas Industrialized Housing and Buildings program, hereinafter referred to as 'this code.'"

(2) Revise Chapter 13, Referenced Standards, as follows.

(A) Delete ICC/ANSI A117.1-98, Accessible and Usable Buildings and Facilities.

(B) Add Texas Accessibility Standards (TAS) dated April 1, 1994.

(3) Wherever reference elsewhere in the code is made to ICC/ANSI A117.1, the Texas Accessibility Standards (TAS) shall be substituted.

(g) Revise §101.1 of the International Mechanical Code to read "These regulations shall be known as the *Mechanical Code* of the Texas Industrialized Housing and Buildings program, hereinafter referred to as 'this code.'"

(h) Revise §R101.1 of the International Residential Code to read "These provisions shall be known as the *Residential Code for One- and Two-Family Dwellings* of the Texas Industrialized Housing and Buildings program, and shall be cited as such and will be referred to herein as 'this code.'"

{(d) The 1997 Edition of the Uniform Building code shall be amended as follows:}

{(1) Amend Appendix Chapter 13, §1302.2 to read: "To comply with the purpose of this appendix, buildings shall be designed to comply with the requirements of the International Energy Conservation Code promulgated by the International Code Council, dated 1998."}

{(2) Accessibility requirements for the physically handicapped shall be amended as follows:}

{(A) Delete Chapter 11 and Appendix Chapter 11 and replace with the Texas Accessibility Standards (TAS) of the Architectural Barriers Act, Article 9102, Texas Civil Statutes, dated April 1, 1994. Buildings subject to the requirements of the Texas Accessibility Standards are described in Administrative Rules of the Texas Department of Licensing and Regulation, 16 Texas Administrative Code, Chapter 68, §68.21(a) and (e) relating to Registration - Subject Buildings and Facilities, dated June 1, 1994.}

{(B) Wherever reference elsewhere in the code is made to the Council of American Building Officials (CABO)/American National Standards Institute (ANSI) A117.1 (CABO/ANSI A117.1), The Texas Accessibility Standards (TAS) shall be substituted.}

{(3) Amend Appendix Chapter 3, Division III, Section 332 to read: "Buildings regulated by this division shall be designed and constructed to comply with the requirements of the International One and Two Family Dwelling code, 1998 Edition (as it applies to detached one and two family dwellings); as promulgated by the International Code Council."}

{(e) The 1997 Edition of the Standard Building Code shall be amended as follows:}

{(1) Amend Appendix E as follows:}

{(A) Amend Section E101.2 as follows: "All buildings, except those listed below, shall be designed in accordance with the International Energy Conservation Code."}

{(B) Delete Section E102.}

{(2) Accessibility requirements for the physically handicapped shall be amended as follows:}

{(A) Delete Chapter 11 and replace with the Texas Accessibility Standards (TAS) of the Architectural Barriers Act, Article 9102, Texas Civil Statutes, dated April 1, 1994. Buildings subject to the requirements of the Texas Accessibility Standards are described in Administrative Rules of the Texas Department of Licensing and Regulation, 16 Texas Administrative Code, Chapter 68, §68.21 (a) and (e) relating to Registration - Subject Buildings and Facilities, dated June 1, 1994.}

{(B) Wherever reference elsewhere in the code is made to the Council of American Building Officials (CABO)/American National Standards Institute (ANSI) A117.1 (CABO/ANSI A117.1), the Texas Accessibility Standards (TAS) shall be substituted.}

{(3) Revise Chapter 35, Reference Standards, Section 3502 as follows:}

{(A) Delete "CABO/ANSI A117.1-92, Accessible and Usable Building, and Facilities, delete CABO One and Two Family Dwelling Code, 1995 edition, and delete CABO Model Energy Code, 1995 edition."}

{(B) Add Texas Accessibility Standards (TAS), dated April 1, 1994, add International One and Two Family Dwelling Code, 1998 edition, and International Energy Conservation Code, 1998 edition.}

{(4) Delete Appendix B, Recommended Schedule of Permit Fees.}

{(5) Amend Appendix C as follows: "All one and two family dwellings not more than three stories in height and their accessory structures shall be designed and constructed in accordance with the International One and Two Family Dwelling Code as promulgated by the International Code Council. All structures constructed in accordance with this appendix shall meet the height and area requirements for Group R3 occupancies in Table 500 of the Standard Building Code.}

{(f) Amend the 1997 edition of the International Plumbing Code by deleting Appendix A, Plumbing Permit Fee Schedule.}

{(g) Amend the 1998 edition of the International Mechanical Code by deleting Appendix B, Recommended Permit Fee Schedule.}

{(h) Revise Chapter 49 of the 1998 edition of the International One and Two Family Dwelling Code; "ASCE 7-1988, Minimum Design Loads for Buildings and Other Structures" to read: "ASCE 7-1995, Minimum Design Loads for Buildings and Other Structures."}

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 28, 2001.

TRD-200101803

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: May 13, 2001

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

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**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**PART 1. GENERAL LAND OFFICE**

**CHAPTER 3. GENERAL PROVISIONS**

The Texas General Land Office (GLO) proposes a new Chapter 3, relating to General Provisions, Subchapter A, relating to Property Accountability, §3.1, relating to Restrictions on Assignment of Vehicles and Subchapter B, relating to Training and Education of Employees, §3.21, relating to Training and Education, §3.22, relating to Employee Obligation, §3.23, relating to Training and Education Materials, and §3.24, relating to No Effect on At-Will Employment Status.



The Texas General Land Office is proposing the new chapter so that it may contain rules that govern the effective administration of the agency. The proposed new Subchapter A relating to Property Accountability with the proposed new section is in response to House Bill 3125, 76th Legislature, 1999, that required the General Services Commission and the Council on Competitive Government to develop a plan for improving the administrations and operation of the state's vehicles. This plan was recently adopted. The bill further requires each state agency to adopt rules, consistent with the plan, relating to the assignment and use of the agency's vehicles. Section 3.1 is necessary to comply with House Bill 3125. The proposed new Subchapter B relating to Training and Education of Employees and the proposed new sections within it is in compliance with the State Employee Training Act, Government Code §§656.041-656.049. This act authorizes state agencies to adopt rules governing the training and education of state administrators and employees that materially aids state administration.

Larry Soward, Chief Clerk, has determined that for the first five-year period the new sections are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the new sections. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no significant impact on local economies or overall employment as a result of enforcing or administering the new sections.

Larry Soward has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing or administering the new sections will be to ensure the efficient use of state resources for solely legitimate business purposes. There will be no effect on small business.

Written comments on the proposed new chapter and sections may be submitted to Melinda Tracy, Texas Register Liaison, General Land Office of Texas P.O. Box 12873, Austin, Texas 78711-2873. All comments must be received within 30 days of publication.

## SUBCHAPTER A. PROPERTY ACCOUNTABILITY

### 31 TAC §3.1

The new section is proposed under Natural Resources Code §31.051 which provides the Commissioner of the General Land Office with the authority to establish rules for the conduct of the work of the General Land Office. The proposed new Subchapter A, relating to Property Accountability with the proposed new section is proposed under Government Code, §2171.1045, which requires the GLO to adopt rules relating to the assignment and use of GLO's vehicles.

No statutes, articles, or codes are affected by the proposed new chapter, subchapters or sections.

#### §3.1. Restrictions on Assignment of Vehicles.

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

(1) GLO--The General Land Office of Texas.

(2) Commissioner--The Commissioner of the General Land Office of Texas or the Commissioner's designee not below the level of division director.

(b) Motor pool. Each GLO vehicle, with the exception of a vehicle assigned to a field employee, will be assigned to the GLO's motor pool and be available for checkout.

(c) Regular vehicle assignment. The GLO may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis only if the Commissioner makes a documented finding that the assignment is critical to the needs and mission of the department.

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

Filed with the Office of the Secretary of State, on March 28, 2001.

TRD-200101813

Larry Soward  
Chief Clerk

General Land Office

Earliest possible date of adoption: May 13, 2001

For further information, please call: (512) 305-9129



## SUBCHAPTER B. TRAINING AND EDUCATION OF EMPLOYEES

### 31 TAC §§3.21 - 3.24

The new sections are proposed under Natural Resources Code §31.051 which provides the Commissioner of the General Land Office with the authority to establish rules for the conduct of the work of the General Land Office. The proposed new Subchapter B, relating to Training and Education of Employees and the proposed new sections is proposed under Government Code, §§656.041-656.049 which requires the GLO to adopt rules relating to the training and education of its employees.

No statutes, articles, or codes are affected by the proposed new chapter, subchapters or sections.

#### §3.21. Training and Education.

The General Land Office shall make available to its employees funds for training and education in accordance with the Employee Training Act, Government Code §§656.041-656.049.

#### §3.22. Employee Obligation.

An employee who completes training and education to obtain a degree or certification for which the General Land Office has provided all or part of the required fees must agree in writing to fully repay the General Land Office any amounts paid for educational assistance if the employee voluntarily terminates employment with the agency within one year after the course or courses are completed.

#### §3.23. Training and Education Materials.

All materials received by employees as part of agency-funded training and education remain the property of the General Land Office.

#### §3.24. No Effect on At-Will Employment Status.

Approval to participate in a training and education program, including an agency-sponsored training, seminar or conference shall not in any way effect an employee's at-will status. The approval of a training and education program is not a guarantee or indication that approval will be granted for subsequent training and education programs. Approval to participate in a training and education program shall in no way constitute a guarantee or indication of continued employment, nor shall it

constitute a guarantee or indication of future employment in a current prospective position.

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

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Larry Soward

Chief Clerk

General Land Office

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For further information, please call: (512) 305-9129



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 3. TEXAS YOUTH COMMISSION**

#### **CHAPTER 81. INTERACTION WITH THE PUBLIC**

##### **37 TAC §81.1**

The Texas Youth Commission (TYC) proposes an amendment to §81.1, concerning Public Information Request. The amendment to the section will include that requests for public information will be accepted by fax and by email. To comply with the statute, TYC staff shall respond to the requests immediately, without delay. The other change allows 10 days for the legal services department to determine if a request requires an opinion from the Attorney General.

Don McCullough, Acting Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will require a prompt response to the public on information requests. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Sherma Cragg, Chief of Policy and Manuals, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Government Code Chapter 552.

The proposed rule affects the Human Resource Code, §61.034.

*§81.1. Public Information Request.*

(a) Purpose. The purpose of this rule to provide information, consistent with the Public Information Act, regarding requests for public information from the agency.

(b) If not excepted, all information collected, assembled, or maintained in connection with the transaction of official business is

public information and shall be available to the public during normal business hours. Forms in which the media containing public information exists includes book, paper, letter, document, printout, photograph, film, tape, microfiche, microfilm, photostat, sound recording, map, and drawing and a voice, data, or video representation held in computer memory [(Government Code)].

(c) All requests should be in writing and should include the name, address and telephone number of the requester. Requests will be accepted by fax and by e-mail.

(d) TYC staff shall respond immediately without delay [~~within ten business days~~] to a request.

(e) If the legal services department determines that the request will require an opinion by the Attorney General as to the releasability of the requested information, the request to the Attorney General must be made within ten business days of the receipt of the request for information. [~~If the request is going to be denied or deferred to the Attorney General's office, a response to the request must be made within ten business days of receipt of the request.~~] Otherwise, the information is open for inspection.

(f) Information requested by a member of the legislature or a member of a legislative body will be provided at no charge. If the requested information is confidential it shall remain so in the hands of the requester. The requester shall complete TYC Affidavit: confidentiality Agreement Relating to Release of Public Information form, LS-032 regarding confidentiality.

(g) Costs for production of requested documents are based on guidelines by the General Services Commission. See (GAP) §81.75 of this title (relating to Copying Costs).

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 30, 2001.

TRD-200101892

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: May 13, 2001

For further information, please call: (512) 424-6301



## **CHAPTER 91. PROGRAM SERVICES**

### **SUBCHAPTER D. HEALTH CARE SERVICES**

#### **37 TAC §91.87**

The Texas Youth Commission (TYC) proposes an amendment to §91.87 concerning Health Insurance. The amendment to the section makes minor grammatical changes to clarify the intent of the rule. The purpose of the rule clarifies that it is a rule to establish procedures for reimbursement of third party payers for medical care. Other minor changes establish whether a court order exists for a parent or guardian to provide insurance for a youth.

Don McCullough, Acting Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section to provide more efficient means of seeking reimbursement for medical care. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Sherma Cragg, Chief of Policy and Manuals, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Family Code, §54.06, which provides the Texas Youth Commission with the authority to collect support payments as ordered by the court.

The proposed rule affects the Human Resource Code, §61.034. §91.87. *Health Insurance.*

(a) Purpose. The purpose of this rule is to establish procedures whereby the Texas Youth Commission (TYC) [TYC] shall pursue reimbursement by third party payers for the medical care of youth committed to the agency.

(b) TYC staff shall pursue information regarding medical insurance coverage of youth, including whether a court order exists for the parent/guardian to provide insurance. The information will be systematically made available to TYC managed health care contractors and residential contract care providers.

(c) TYC managed health care contractors will seek reimbursement for medical care from insurance companies.

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, 2001.

TRD-200101879

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: May 13, 2001

For further information, please call: (512) 424-6301



## CHAPTER 95. YOUTH DISCIPLINE

### SUBCHAPTER A. DISCIPLINARY PRACTICES

#### 37 TAC §95.13

The Texas Youth Commission (TYC) proposes an amendment to the §.95.13 concerning On-Site Disciplinary Consequences. The amendment to the section will clarify the definition of work restitution as a disciplinary consequence. Work restitution is defined as a voluntary consequence of misbehavior and not a dollar for dollar relationship between property damage and the labor performed. The purpose is not to recover actual losses or compensate TYC for property damage. The work the youth performs is not to exceed eighty hours of actual work, is to be proportionate to the damage done, and be in furtherance of the maintenance of the facility.

Don McCullough, Acting Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for

state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be holding youth accountable for their actions and allowing work restitution to be used as a viable consequence. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Sherma Cragg, Chief of Policy and Manuals, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to permit certain liberties under supervision and provide opportunities for rehabilitation methods.

The proposed rule affects the Human Resource Code, §61.034.

§95.13. *On-Site Disciplinary Consequences.*

(a) Purpose. The purpose of this policy is to establish a consistent system for administering less stringent disciplinary consequences to youth in residential programs for violations of one or more Rules of Conduct. Such on-site disciplinary consequences are considered minor consequences.

(b) Applicability.

(1) See (GAP) §95.57 of this title (relating to Level III Hearing Procedure) for proper procedures.

(2) See (GAP) §91.61 of this title (relating to Youth Employment and Work) for additional limitations.

(c) Explanation of Terms Used.

(1) On-site disciplinary consequences - appropriate consequences that may be administered when a youth violates rules, which are not serious enough to warrant disciplinary movement, assignment of minimum length of stay, or referral to criminal court (major consequences). On-site disciplinary consequences include but are not limited to:

- (A) reprimand
- (B) suspension of on and off site privileges
- (C) restriction of personal activity
- (D) facility work restitution
- (E) have personal items taken (contraband)
- (F) lose trust fund privileges

(2) Restrictions - the consequence of limiting a youth's activity or privileges when such restriction is perceived by the youth as a negative consequence and therefore serves to deter repetition of the misbehavior.

(3) Work restitution - is a voluntary[The] consequence, not a dollar for dollar relationship between the actual property damage and labor performed[of performing tasks aimed at redressing the wrong]. Work restitution is intended to assist the youth to develop a sense of equity and a sense of pride and responsibility for personal behavior. The purpose [goal] is not to recover losses [loss] or compensate TYC for property damage that was caused by the youth.

(d) Procedure. An on-site consequence will be imposed in accordance with procedure in (GAP) §95.57 of this title (relating to Level III Hearing Procedure).

(e) Appropriate Consequence. The most appropriate consequence among those available shall be selected within the following guidelines.

(1) The consequence imposed should be the least restrictive necessary to effect learning more appropriate behavior and should be proportionate to the severity and extent of the violation.

(2) The consequence should be imposed for the minimum period of time necessary to be effective in correcting the misbehavior.

(3) When work restitution is the most appropriate consequence, the type, amount and duration of the work assigned should be reasonably proportionate to the value of the property lost or damaged, and shall not exceed more than eighty hours of actual work restitution. The work required must be proportionate to the damage done and be in furtherance of the maintenance of the facility.

(f) Rules for Imposing Restriction.

(1) Restrictions may not interfere with basic rights.

(2) Youth in institutions may be restricted to their rooms or to the dorm (living unit).

(3) Youth in halfway houses may not be restricted to their rooms. They may be restricted to the facility.

~~[(g) Rules for Imposing On-Site Work Restitution. The work required must be proportionate to the damage done and be in furtherance of the maintenance of the facility.]~~

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 30, 2001.

TRD-200101878

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: May 13, 2001

For further information, please call: (512) 424-6301



### 37 TAC §95.17

The Texas Youth Commission (TYC) proposes an amendment to §95.17 concerning Behavior Management Program. The amendment to the section includes minor grammatical changes such as abbreviating individual behavior management plan to IBMP throughout the rule. A change was made to the definition of the special services panel to make it consistent with the other terms in the rule. A clarification was added to the eligibility section to indicate admissions could be counted for security intake or the security program. A section regarding dispositions was deleted as the issue is addressed in another rule and needed to be removed. A change was added to give reference to the rule where the criteria is now listed. A change was also made that youth will be notified in writing of their right to appeal. All program requirements were removed from the rule and were placed in the management section of the policy as they are internal operating procedures for the unit.

Don McCullough, Acting Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section clearer definitions of operating guidelines for the behavior management program in the security unit. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Sherma Cragg, Chief of Policy and Manuals, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to determine appropriate treatment for youth.

The proposed rule affects the Human Resource Code, §61.034.

#### §95.17. Behavior Management Program.

(a) Purpose. The purpose of this rule is to provide for a Texas Youth Commission (TYC) youth, assigned to a TYC operated institution, to be placed in the Behavior Management Program (BMP) and assigned a 90-day disciplinary maximum length of stay as a consequence for behavior that violates rules. Assurance that the youth is sufficiently in control to be returned to general population is affirmed by compliance with the BMP. Disciplinary transfer and segregation with an assigned maximum length of stay is a major consequence.

(b) Applicability. This rule does not apply to:

(1) the use of the same or adjacent space when used specifically as security intake. See (GAP) §97.37 of this title (relating to Security Intake);

(2) the use of the same or adjacent space when used specifically as a security program. See (GAP) §97.40 of this title (relating to Security Program);

(3) the use of the same or adjacent space when used specifically as detention in a TYC institution. See (GAP) §97.43 of this title (relating to Institution Detention Program);

(4) the use of same or adjacent space when used specifically as temporary admission. See (GAP) §85.41 of this title (relating to Temporary Admission Awaiting Transportation);

(5) the aggression management program. See (GAP) §95.21 of this title (relating to Aggression Management Program).

(c) Explanation of Terms Used.

(1) Special Services Panel--a panel comprised of special services members that review [the director of clinical services, a program administrator, and a caseworker, which reviews] the recommendation for admission to BMP made by the youth's caseworker.

(2) Program Review Panel--a three-person panel chaired by the assistant superintendent, which reviews BMP extension requests.

(3) Individual Behavior Management Plan (IBMP)--a plan developed for each youth in the BMP which consists of objectives which address the behavior or cluster of behaviors that prevent the youth from successfully participating in regular programming.

(4) Aggression Management Program (AMP)--a program designed for removing youth from the general population for dangerously aggressive behavior.

(5) Admissions, Review, and Dismissal (ARD) committee--a committee that makes decisions on educational matters of special education students.

(6) Individual Education Plan (IEP)--the prescribed plan by which education will be delivered to a special education student.

(d) Contract Care Program Restriction. TYC contract programs shall not develop a BMP having a specific disciplinary length of stay.

(e) Program Eligibility and Admission.

(1) Eligibility.

(A) Youth eligible for the BMP are youth who knowingly engage in, aid, or abet someone else to engage in one or more of the following behaviors:

(i) willful destruction of property of \$100 or more;

or

(ii) assault resulting in bodily injury; or

(iii) escape or attempted escape as defined in (GAP) §97.29 of this title (relating to Escape/Abscondence and Apprehension); or

(iv) intentionally participating in riotous conduct as defined in (GAP) §97.27 of this title (relating to Riot Control); or

(v) engaging in inappropriate sexual contact, sexual assault, or aggravated sexual assault; or

(vi) possessing any item defined as a weapon in the Penal Code or threatening others with use of an object which could be used as a weapon; or

(vii) threatening bodily injury to others; or

(viii) possessing a controlled substance; or

(ix) engaging in self-harm; or

(x) chronic and substantial disruption of the routine of the facility program with ten or more security admissions or extensions to security intake or security program in a three-month period or five or more security admissions or extensions in a 30-day period, without reduction in the frequency of the disruptive behaviors. Disruptive behavior is behavior, which prevents or significantly interferes with others' ability to participate in scheduled activities and programs.

(B) Referral is made to a Special Services Panel and approved by the assistant superintendent based on a determination that the following criteria have been met:

(i) the youth poses a continuing risk for identified admitting behavior(s); and

(ii) when appropriate, less restrictive methods of documented intervention have failed and are unable to manage the risk; and

(iii) the mental status of the youth is assessed and there are no therapeutic contraindications for admission to the BMP.

(2) Due Process Hearing. If there is a finding of true with no extenuating circumstances in a level II hearing that the youth engaged in one of the behavioral criteria listed in paragraph (1)(A)(I) of this subsection, the youth is admitted to the BMP with an assigned

90-day disciplinary maximum length of stay. See (GAP) §95.51 of this title (relating to Level II Hearing Procedure).

(3) Appeal. The youth shall be notified in writing [informed] of his/her right to appeal to the executive director. See (GAP) §93.53 of this title (relating to Appeal to Executive Director). The pendency of an appeal shall not preclude implementation of the decision.

(4) Dispositions.

[(A)] Pursuant to a level II hearing herein, certain youth who are assessed a disposition under this rule may also be assigned a disciplinary minimum length of stay disposition but only if criteria have been met and if the youth was given notice of the specific disposition request. All policy and program requirements of (GAP) §95.11 of this title (relating to Disciplinary Transfer/Assigned Minimum Length of Stay Consequence) will apply to the assignment of such.

[(B) BMP Placement Pending Assignment to the Aggression Management Program (AMP). If the disposition at the level II hearing held pursuant to this policy also resulted in a placement in an AMP, but bed space is not available in the AMP, the youth may be assigned to a placement in the BMP (at the youth's current placement) pending admission to AMP, but only if criteria for the AMP was proven and the youth was given notice of the specific disposition to AMP. If the youth completes the disciplinary maximum length of stay in the BMP (including the extension) prior to admission to AMP, the youth shall not be admitted to AMP as a result of the conduct determined at the level II hearing that resulted in the placement to BMP.]

(5) A BMP length of stay runs concurrently with a youth's classification minimum length of stay, or any disciplinary assigned minimum length of stay.

(6) Families are notified of youth's admission to the BMP within 24 hours of the hearing.

(f) Program Completion.

(1) An IBMP [Individual Behavior Management Plan] must be developed for each youth. The plan will consist of objectives that address the behavior or cluster of behaviors that prevent the youth from successfully participating in regular programming. The plan will be explained to the youth and he/she will sign the plan in acknowledgment.

(2) A youth shall be released when one of the following occurs:

(A) youth has met specific performance objectives on the IBMP [Individual Behavior Management Plan]; or

(B) youth has completed his/her length of stay; or

(C) youth is transferred to the AMP pursuant (GAP) § 95.21(c)(3) of this title (relating to Aggression Management Program) [to subsection (e)(4) of this section].

(g) Program Extension.

(1) An extension of up to 30 days may be recommended by a Program Review Panel and approved by the superintendent if the following criteria have been met:

(A) youth's behavior does not comply with program; and

(B) an appropriate IBMP [Individual Behavior Management Plan] addressing the non-conforming behaviors of the youth has been developed and implemented; and

(C) the modified IBMP [~~behavior management plan~~] can be completed within 30 days; and

(D) the mental status of the youth was assessed and there are no therapeutic contraindications for continued confinement in the BMP.

(2) Reporting. A Program Review Panel Report must be completed and forwarded to the superintendent within 10 working days following the hearing. The report shall include the panel's findings and explanation of the rationale for the findings. If the decision is appealed, the report should be expedited.

(3) Appeal. The youth shall be notified in writing [~~informed~~] of his/her right to appeal to the executive director. See (GAP) §93.53 of this title (relating to Appeal to Executive Director). The pendency of an appeal shall not preclude implementation of the decision.

~~[(h) Program Requirements.]~~

~~[(1) Individual doors are locked.]~~

~~[(2) All segregation programs will ensure at a minimum the following:]~~

~~[(A) appropriate psychological and medical services;]~~

~~[(B) the same food, including snacks prepared in the same manner as for other youth except for special diets that are prescribed on an individual basis by a physician, dentist or psychiatrist or approved by a chaplain;]~~

~~[(C) one hour of large muscle exercise daily; and]~~

~~[(D) appropriate educational services.]~~

~~[(3) The assistant deputy executive director for juvenile corrections will approve a standardized program and rules for the security unit.]~~

~~[(4) The director of security will post the program schedule and rules of the security unit and ensure the rules are reviewed with and signed by the youth.]~~

~~[(5) Youth will engage in the standardized program and comply with the rules of the security unit, but if programming is not provided, youth may remain on their mattresses during that time.]~~

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 30, 2001.

TRD-200101877

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: May 13, 2001

For further information, please call: (512) 424-6301



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

### CHAPTER 211. ADMINISTRATION

#### 37 TAC §211.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §211.1, concerning definitions. The proposed amendment adds a definition for court-ordered community supervision and amends the definition of the term Texas Peace officer for the purposes of eligibility of reserve officers for the Texas Peace Officers' Memorial. This amendment also proposes a change to the effective date in subsection (b) of this section.

Dr. D.C. Jim Dozier, Executive Director of the Commission, has determined that for the first five-year period that the proposed amended section is in effect there will be no new fiscal implications for state or local government as a result of enforcing or administering the rule.

Dr Dozier has also determined that for each year of the first-five years this section is in effect, there will be no new anticipated public benefit as a result of enforcing this rule. There will be no effect on small or micro businesses. There will be no new anticipated increase in economic cost to individuals who are required to comply with the rule as proposed.

Written comments should be submitted to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas 78723, or by facsimile (512) 936-7714.

This amendment is proposed under Texas Occupations Code Annotated, Chapter 1701, §1701.151 which authorizes the Commission to promulgate rules for the administration of this chapter.

The following statute is affected by this proposed rule: Texas Occupations Code Annotated, Chapter 1701, §1701.151 - General Powers.

#### §211.1. Definitions.

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

(1) Academic provider--A school, recognized by the Southern Association of Colleges and Schools and the Texas Higher Education Coordinating Board, which has been approved by the commission to provide basic licensing courses.

(2) Accredited college or university--An institution of higher education that is accredited or authorized by the Southern Association of Colleges and Schools, the Middle States Association of Colleges and Schools, the New England Association of Schools and Colleges, the North Central Association of Colleges and Schools, the Northwest Association of Schools and Colleges, or the Western Association of Schools and Colleges.

(3) Active--A license issued by the commission that meets the current requirements of licensure, including those legislatively required.

(4) Agency--A law enforcement unit or other entity, whether public or private, authorized by Texas law to appoint a person licensed or certified by the commission.

(5) ALJ or Administrative Law Judge--See "Hearings Examiner" defined below.

(6) Appointed--Elected or commissioned by an agency as a peace officer, reserve or otherwise selected or assigned to a position governed by the Occupations Code, Chapter 1701, without regard to pay or employment status.

(7) Armed public security officer--A person appointed under the provisions of Chapter 758, 70th Legislature, 1987.

(8) Background investigation--may include:

(A) an investigation looking specifically at a person's dependability; integrity; initiative; situational reasoning ability; self-control; writing skills; reading skills; oral communications skills; interpersonal skills; and physical ability; and

(B) a report that documents an investigation into an applicant's suitability for licensing and appointment which includes: biographical data; scholastic data; employment data; criminal history data; interviews with references, supervisors, and other people who have knowledge of the person's abilities, skills, and character; and a summary of the investigator's findings and conclusions regarding the applicant's moral character and suitability.

(9) Basic licensing course--Any current commission developed course that is required before an individual may be licensed by the commission. The courses include: Peace Officer, Reserve Officer, Criminal Justice Transfer Curriculum and County Corrections.

(10) Basic peace officer course--The current commission developed course(s) required for licensing as a peace officer, taught at a licensed law enforcement academy in accordance with commission requirements.

(11) Certified copy--A true and correct copy of a document or record certified by the custodian of records of the submitting entity.

(12) Chief administrator--The head or designee of an agency.

(13) Commission--The Texas Commission on Law Enforcement Officer Standards and Education.

(14) Commissioned--Has been given the legal power to act as a peace officer or reserve, whether elected, employed, or appointed.

(15) Commissioners--The nine commission members appointed by the governor and, where appropriate, the five ex-officio members.

(16) Committee--The Texas Peace Officers' Memorial Advisory Committee, an advisory body authorized under Occupations Code, Chapter 1701, or its successor.

(17) Contract jail--A correctional facility, operated by a county, municipality or private vendor, operating under a contract with a county or municipality, to house inmates convicted of offenses committed against the laws of another state of the United States, as provided by Texas Government Code, §511.092.

(18) Contractual training provider--A law enforcement agency, a law enforcement association, or alternative delivery trainer that conducts specific education and training under a contract with the commission.

(19) Convicted--Has been adjudged guilty of or has had a judgment of guilt entered in a criminal case that has not been set aside on appeal, regardless of whether:

(A) the sentence is subsequently probated and the person is discharged from probation;

(B) the charging instrument is dismissed and the person is released from all penalties and disabilities resulting from the offense;

(C) the cause has been made the subject of an expunction order; or

(D) the person is pardoned, unless the pardon is expressly granted for subsequent proof of innocence.

(20) Court-ordered community supervision--Any court-ordered community supervision or probation resulting from a deferred adjudication or conviction by a court of competent jurisdiction. However, this does not include supervision resulting from a pretrial diversion.

(21) [(20)]Distance education--The enrollment and study with an educational institution which provides lesson materials prepared in a sequential and logical order for study by students on their own.

(22) [(21)]Duty ammunition--Ammunition required or permitted by the agency to be carried on duty.

(23) [(22)]Endorsement of eligibility--An official document stating that an individual has met the minimum training standards appropriate to the type of examination sought.

(24) [(23)]Executive director--The executive director of the commission or any individual authorized to act on behalf of the executive director.

(25) [(24)]Experience--Includes each month, or part thereof, served as a peace officer, reserve, jailer, or telecommunicator. Credit may, at the discretion of the executive director, be awarded for relevant experience from an out-of-state agency.

(26) [(25)]Firearms--Any handgun, shotgun, rifle, or fully automatic weapon that is carried by the individual officer in an official capacity on or off duty.

(27) [(26)]Firearms proficiency--Successful completion of the annual firearms proficiency requirements.

(28) [(27)]Hearings examiner or Judge--An administrative law judge appointed by the chief administrative law judge of the State Office of Administrative Hearings pursuant to the Texas Government Code, Ch. 2003, or a person appointed by the executive director to conduct administrative hearings for the commission.

(29) [(28)]Individual--A human being who has been born and is or was alive.

(30) [(29)]Jailer--A person employed or appointed as a jailer under the provisions of the Local Government Code, §85.005, or Government Code §511.092.

(31) [(30)]Killed in the line of duty--A Texas peace officer killed as a directly attributed result of a personal injury sustained in the line of duty.

(32) [(31)]Law--Including, but not limited to, the constitution or a statute of this state, or the United States; a written opinion of a court of record; a municipal ordinance; an order of a county commissioners' court; or a rule authorized by and lawfully adopted under a statute.

(33) [(32)]Law enforcement academy--A school operated by a governmental entity that has been licensed by the commission, which may provide basic licensing courses and continuing education.

(34) [(33)]Lesson plan--Detailed guides from which an instructor teaches. The plan includes the goals, specific content and subject matter, performance or learning objectives, references, resources, and method of evaluating or testing students.

(35) [(34)]License--[means a] A license, certificate, registration, permit, or other form of authorization required by law or a state

agency rule that must be obtained by an individual to engage in a particular business.

(36) [(35)]Licensee--An individual holding a license issued by the commission.

(37) [(36)]Line of duty--Any lawful and reasonable action which a Texas peace officer is authorized by law, rule, regulation, or written condition of employment or appointment to perform.

(38) [(37)]Officer--A peace officer or reserve.

(39) [(38)]Peace officer--A person elected, employed, or appointed as a peace officer under the Code of Criminal Procedure, Article 2.12, or under other statute.

(40) [(39)]Placed on probation--Has received an adjudicated, unadjudicated or deferred adjudication probation for a criminal offense.

(41) [(40)]POST--State or federal agency with jurisdiction similar to that of the commission, such as a peace officer standards and training agency.

(42) [(41)]Reactivate--To make a license issued by the commission active after at least a two-year break in service.

(43) [(42)]Reinstate--To make a license issued by the commission active after disciplinary action or after expiration of a license due to failure to obtain required continuing education.

(44) [(43)]Renew--Continuation of an active license issued by the commission.

(45) [(44)]Reserve--A person appointed as a reserve law enforcement officer under the provisions of the Local Government Code, §85.004, §86.012 or §341.012

(46) [(45)]Self-assessment--Completion of the commission created process, which gathers information about a training or education program.

(47) [(46)]SOAH--The State Office of Administrative Hearings.

(48) [(47)]Successful completion--A result of:

- (A) 70 percent or better; or
- (B) C or better; or
- (C) pass, if offered as pass/fail.

(49) [(48)]Texas peace officer--For the purposes of eligibility for the Texas Peace Officers' Memorial, an individual who had been elected, employed, or appointed as a peace officer under Texas law; an individual appointed under Texas law as a reserve peace officer [~~who had been officially called to duty~~]; a commissioned deputy game warden, or a corrections officer in a municipal, county or state penal institution, or any other officer authorized by Texas law.

(50) [(49)]Telecommunicator--A dispatcher or other emergency communications specialist appointed under or governed by the provisions of the Occupations Code, Chapter 1701.

(51) [(50)]Training coordinator--An individual, appointed by a commission-recognized training provider, who has the knowledge and skills to oversee the training activity conducted by that provider.

(52) [(51)]Training hours--Actual classroom or distance education hours. One college semester hour equates to 20 training hours.

(53) [(52)]Verification (verified)--The confirmation of the correctness, truth, or authenticity of a document, report, or information by sworn affidavit, oath, or deposition.

(b) The effective date of this section is August [~~March~~] 1, 2001.

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

Filed with the Office of the Secretary of State, on April 2, 2001.

TRD-200101895

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: August 1, 2001

For further information, please call: (512) 936-7700



## CHAPTER 217. LICENSING REQUIREMENTS

### 37 TAC §217.19

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code §217.19, concerning the reactivation of a license. The proposed amendment includes changes to subsections (b) and (c) of this section. Clarification is provided in subsection (b) of this section, stating that, before individuals with inactive licenses can be appointed, they must meet the current licensing standards by having successfully completed a prior basic licensing course that fulfills the current licensing course requirement. Individuals must have also successfully completed the legislatively required continuing education for the current training cycle. Once an individual has met the current standards; and made application, in the format currently prescribed by the commission, submitted any required fee(s) and upon the approval of the application, the commission will issue the holder of an inactive license an endorsement of eligibility to take the required licensing examination. This endorsement of eligibility will allow the applicant to take the examination three times. If failed three times, the applicant may not be issued another endorsement of eligibility until successful completion of the current licensure course. This amendment also proposes a change to the effective date in subsection (h) of this section.

Dr. D.C. Jim Dozier, Executive Director of the Commission, has determined that for the first five-year period that the proposed amended section is in effect there will be no new fiscal implications for state or local government as a result of enforcing or administering the rule.

Dr Dozier has also determined that for each year of the first-five years this section is in effect, there will be no new anticipated public benefit as a result of enforcing this rule. There will be no effect on small or micro businesses. There will be no new anticipated increase in economic cost to individuals who are required to comply with the rule as proposed.

Written comments should be submitted to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas 78723, or by facsimile (512) 936-7714.



This amendment is proposed under Texas Occupations Code Annotated, Chapter 1701, §1701.151 which authorizes the Commission to promulgate rules for the administration of this chapter.

The following statute is affected by this proposed rule: Texas Occupations Code Annotated, Chapter 1701, §1701.151 - General Powers.

§217.19. *Reactivation of a License*

(a) The commission will place all licenses in an inactive status when the licensee has not been reported to the commission as appointed for more than two years after:

- (1) the last report of termination; or
- (2) the date of last reactivation.

(b) Individuals with basic licensure training over two years old must meet the requirements of §217.19(f) and (g) before they may be appointed.

(c) Individuals with basic licensure examination results over two years old must meet the requirements of §217.19(f) and (g) before they may be appointed.

(d) The holder of an inactive license is unlicensed for purposes of these sections and the Occupations Code, Chapter 1701.

(e) This section includes any permanent peace officer qualification certificate with an effective date before September 1, 1981.

(f) Before individuals with inactive licenses may be appointed they must:

(1) meet the current licensing standards, with successful completion of a prior basic licensing course fulfilling the current licensing course requirement; and

(2) successfully complete the legislatively required continuing education for the current training cycle.

(g) Once an individual has:

- (1) met the current standards; and
- (2) made application, in the format currently prescribed by the commission, submitted any required fee(s); and upon the approval of the application, the commission will issue the holder of an inactive license an endorsement of eligibility to take the required licensing examination. This endorsement of eligibility will allow the applicant to take the examination three times. If failed three times, the applicant may not be issued another endorsement of eligibility until successful completion of the current licensure course.

(h) The effective date of this section is August [~~March~~] 1, 2001.

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

Filed with the Office of the Secretary of State, on April 2, 2001.

TRD-200101896

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: August 1, 2001

For further information, please call: (512) 936-7700



## CHAPTER 219. PRELICENSING AND REACTIVATION COURSES, TESTS, AND ENDORSEMENTS OF ELIGIBILITY

### 37 TAC §219.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code §219.1, concerning eligibility to take state licensing examinations. The proposed amendment includes changes to subsection (d) of this section. Clarification is provided in subsection (d) of this section, stating that, in order to issue an endorsement of eligibility, the person issuing such an endorsement must have on file for the person to whom it is issued, written documentation of successful completion of the basic licensing course for the license sought. This amendment also proposes a change to the effective date in subsection (l) of this section.

Dr. D.C. Jim Dozier, Executive Director of the Commission, has determined that for the first five-year period that the proposed amended section is in effect there will be no new fiscal implications for state or local government as a result of enforcing or administering the rule.

Dr Dozier has also determined that for each year of the first-five years this section is in effect, there will be no new anticipated public benefit as a result of enforcing this rule. There will be no effect on small or micro businesses. There will be no new anticipated increase in economic cost to individuals who are required to comply with the rule as proposed.

Written comments should be submitted to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas 78723, or by facsimile (512) 936-7714.

This amendment is proposed under Texas Occupations Code Annotated, Chapter 1701, §1701.151 which authorizes the Commission to promulgate rules for the administration of this chapter.

The following statute is affected by this proposed rule: Texas Occupations Code Annotated, Chapter 1701, §1701.151 - General Powers.

§219.1. *Eligibility to Take State Examinations.*

(a) To be eligible to take a state licensing examination, a student must have a valid endorsement of eligibility.

(b) An endorsement of eligibility to take an examination is issued by an academy coordinator, the executive director of the commission, or a person authorized by the executive director. An endorsement of eligibility based on training that was completed more than two years before the date of issue may be issued only by the executive director of the commission.

(c) Duplicate, out-of-state, second, and third endorsements may be issued only by the executive director of the commission.

(d) In order to issue the endorsement of eligibility, the person issuing such an endorsement must have on file, for the person to whom it is issued, written documentation of successful completion of the basic licensing course for license sought; and

(1) written documentation that the person is currently licensed by the commission; or

(2) if the person is not currently licensed by the commission, written documentation that the applicant meets the current enrollment standards.

- (e) A valid endorsement of eligibility shall:
  - (1) be in the current commission format;
  - (2) be a completed original document bearing all required signatures,
  - (3) state that the examinee has met the current minimum training standards appropriate to the license sought; and
  - (4) include a date of issue.
- (f) For an endorsement of eligibility to be or remain valid:
  - (1) it must not be issued in error or based on false or incorrect information; specifically, the applicant must meet the current enrollment standards; and
  - (2) it must be presented before two years from the date of issue.

(g) An examination may not be taken by an individual who already holds any license or certificate to be awarded upon passing that examination.

(h) Once an initial endorsement of eligibility is issued, an examinee will be allowed three opportunities to pass the examination. After three failures, the examinee must re-qualify by repeating the entire training course for the license sought. If an attempt is invalidated for any reason, that attempt will count as one of the three opportunities.

(i) The effective date of this section is August [~~March~~] 1, 2001.

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

Filed with the Office of the Secretary of State, on April 2, 2001.

TRD-200101897  
 Edward T. Laine  
 Chief, Professional Standards and Administrative Operations  
 Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: August 1, 2001  
 For further information, please call: (512) 936-7700



## CHAPTER 229. TEXAS PEACE OFFICERS' MEMORIAL ADVISORY COMMITTEE

### 37 TAC §229.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code §229.1, concerning the general eligibility of deceased Texas peace officers and their inclusion on the Texas Peace Officers' Memorial. The amendment proposes the elimination of subsection (a)(3) of this section concerning reserve peace officer's. This amendment also proposes a change to the effective date in subsection (c) of this section.

Dr. D.C. Jim Dozier, Executive Director of the Commission, has determined that for the first five-year period that the proposed amended section is in effect there will be no new fiscal implications for state or local government as a result of enforcing or administering the rule.

Dr Dozier has also determined that for each year of the first-five years this section is in effect, there will be no new anticipated public benefit as a result of enforcing this rule. There will be no

effect on small or micro businesses. There will be no new anticipated increase in economic cost to individuals who are required to comply with the rule as proposed.

Written comments should be submitted to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas 78723, or by facsimile (512) 936-7714.

This amendment is proposed under Texas Occupations Code Annotated, Chapter 1701, §1701.151 which authorizes the Commission to promulgate rules for the administration of this chapter.

The following statute is affected by this proposed rule: Texas Occupations Code Annotated, Chapter 1701, §1701.151 - General Powers.

#### §229.1. General Eligibility of Deceased Texas Peace Officers.

(a) A deceased Texas peace officer, killed in the line of duty, is eligible for inclusion on the Texas peace officers' memorial if the person was:

(1) a Texas peace officer among those listed under the Texas Code of Criminal Procedure, Article 2.12;

(2) a Texas peace officer among those licensed by the Texas Commission on Law Enforcement Officer Standards and Education, under the Government Code, Chapter 415, or Occupations Code 1701;

~~[(3) a Texas peace officer officially called to duty as a Texas reserve peace officer;]~~

(3) ~~[(4)]~~a Texas peace officer among those listed under the Texas Education Code;

(4) ~~[(5)]~~a Texas peace officer among those named as such by other Texas law;

(5) ~~[(6)]~~a Texas peace officer who, in historical perspective, would be eligible under any of the preceding criteria; or

(6) ~~[(7)]~~a Texas corrections officer employed or appointed by a municipal, county or state penal institution.

(b) If the supported finding is that the Texas peace officer died as a result of infectious disease contracted while lawfully performing official duties, or by exposure to hazardous materials or conditions while lawfully performing official duties, the Texas peace officer is eligible for inclusion.

(c) The effective date of this section as amended shall be August [~~March~~] 1, 2001.

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

Filed with the Office of the Secretary of State, on April 2, 2001.

TRD-200101898  
 Edward T. Laine  
 Chief, Professional Standards and Administrative Operations  
 Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: August 1, 2001  
 For further information, please call: (512) 936-7700



## PART 11. TEXAS JUVENILE PROBATION COMMISSION

## CHAPTER 343. STANDARDS FOR JUVENILE PRE-ADJUDICATION SECURE DETENTION FACILITIES

### 37 TAC §343.1

The Texas Juvenile Probation Commission proposes an amendment to §343.1 concerning definitions. The amendment is being proposed in an effort to alleviate the misinterpretation of the term chronic overcrowding with juvenile probation departments.

Scott Friedman, Director of Field Services, has determined that for the first five year period the amendments are in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcement or implementation.

Mr. Friedman has also determined that for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcement or implementation will be primarily the to ensure that facilities will know that conditions of overcrowding are not permissible and to help ensure the safety of both residents and staff. There will be no impact on small business or individuals as a result of the amendments.

Public comments on the proposed amendments may be submitted to Kristy M. Carr at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547.

The amendment is proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by these amendments.

#### §343.1. Definitions.

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

(1) - (3) (No change)

~~(4) Detention Facility Chronic Overcrowding--A detention facility shall be considered to be chronically overcrowded if, within a six month period, the daily population count taken between the hours of 6:00 am and 8:00 am exceeds the rated capacity of the facility by 20% or more on 90 or more days.~~

(4) ~~[(5)]~~ Detention Officer--A person whose primary responsibility is the direct and immediate supervision of the daily activities of detained juveniles. Administrative, food services, janitorial, and other auxiliary staff are not considered to be detention officers.

(5) ~~[(6)]~~ Hold Over Detention Facility--Any holdover facilities located in the same building or grounds with an adult correctional facility, including those authorized by Section 51.12(I), Texas Family Code, shall comply with criteria set forth in the federal Juvenile Justice and Delinquency Prevention Act (42 U.S.C. 5601, et.seq.) and any subsequent amendments, rules and interpretive commentary passed or promulgated thereto after the effective date of this standard.

(6) ~~[(7)]~~ Rated Capacity--Maximum number of juveniles who may be housed within a facility in accordance with TJPC Standards.

(7) ~~[(8)]~~ Secure Detention Facility--Any public or private residential facility that includes construction and fixtures designed to

physically restrict the movements and activities of juveniles or other individuals held in lawful custody in the facility and is used for the temporary placement of any juvenile or other individual who is accused of having committed an offense and is awaiting court action, an administrative hearing, or other transfer action. Such facilities shall be operated separately from any post-adjudication facility. Where such facilities are located in the same building or on the same grounds as a post-adjudicatory facility, written policies and procedures require contact between the two populations be kept to a minimum.

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 30, 2001.

TRD-200101881

Lisa Capers

Deputy Executive Director and General Counsel  
Texas Juvenile Probation Commission

Earliest possible date of adoption: May 13, 2001

For further information, please call: (512) 424-6710



### 37 TAC §343.8

The Texas Juvenile Probation Commission proposes an amendment to §343.8 concerning multiple occupancy sleeping units. The amendment is being proposed in an effort to reapply standards that were inadvertently removed from the Texas Administrative Code during the last rule adoption relating to §343.8.

Scott Friedman, Director of Field Services, has determined that for the first five year period the amendments are in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcement or implementation.

Mr. Friedman has also determined that for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcement or implementation will be primarily the ability to ensure the safety of juvenile, staff and visitors within a pre-adjudication facility. There will be no impact on small business or individuals as a result of the amendments.

Public comments on the proposed amendments may be submitted to Kristy M. Carr at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547.

The amendment is proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by these amendments.

#### §343.8. Physical Plant.

(a) Written policy and procedure and practice of the following standards shall apply to all detention facilities.

(1)- (4) (No change)

(5) Safety plan. Safety plan. Written policies shall promote the safety of juveniles, staff, and visitors. The policies shall be reviewed annually by a qualified fire prevention and safety officer. These shall include, but shall not be limited to:

(A) conformance with the Life Safety Code, NFPA 101 and/or applicable state and local fire safety codes. The Life Safety Code will not apply in geographic areas under the jurisdiction of a local

government that has adopted fire protection ordinances that apply in that geographic area. Compliance shall be documented by the authority having jurisdiction;

(B) maintenance of a current fire drill log;

(C) proper disposal of combustible refuse;

(D) a posted plan for prompt evacuation of the facility;

(E) training of staff to conduct fire drills on all shifts and to implement written emergency plans;

(F) procedures for use and control of flammable, toxic, and caustic materials; and

(G) provisions to detect and promptly correct conditions hazardous to the health and safety of juveniles and staff.

(6)-(9) (No change)

(b) (No change)

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

Filed with the Office of the Secretary of State, on March 30, 2001.

TRD-200101880

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Earliest possible date of adoption: May 13, 2001

For further information, please call: (512) 424-6710



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES**

#### **CHAPTER 79. LEGAL SERVICES**

##### **SUBCHAPTER E. ADVISORY COMMITTEES**

###### **40 TAC §79.403**

The Texas Department of Human Services (DHS) proposes an amendment to §79.403, concerning mandated advisory committees, in its Legal Services chapter. The purpose of the amendment is to add specifications for the Home and Community Support Services Advisory Council and the Texas Board of Human Services/Board of Nurse Examiners Memorandum of Understanding Advisory Committee.

Eric M. Bost, commissioner, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Bost also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of adoption of the proposed rule will be rules that are more consumer-friendly, because they will be properly located with DHS's other advisory committee rules. There will be no adverse economic effect on small or micro businesses, because the rules place no requirements on small or microbusinesses.

Questions about the content of this proposal may be directed to Linda Kotek at (512) 438-3158 in DHS's Long Term Care Section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-049, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

The amendment is proposed under the Health and Safety Code, Chapter 142, which provides the department with the authority to adopt rules that govern the HCSSA Advisory Council and the Texas Board of Human Services/Board of Nurse Examiners Memorandum of Understanding Advisory Committee.

The amendment implements the Health and Safety Code, Chapter 142.001-142.030.

§79.403. *Mandated Advisory Committees.*

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

(f) Home and Community Support Services Advisory Council.

(1) Legal base. The council's legal base is Health and Safety Code, §142.015.

(2) Structure. The council has 13 members who are appointed by the governor. The council includes three consumer representatives and ten non-consumer representatives as follows:

(A) three consumer representatives;

(B) two representatives of agencies that are licensed to provide certified home health services;

(C) two representatives of agencies that are licensed to provide home health services but are not certified home health services;

(D) three representatives of agencies that are licensed to provide hospice services with one representative appointed from:

(i) a community-based non-profit provider of hospice services;

(ii) a community-based proprietary provider of hospice services; and

(iii) a hospital-based provider of hospice services;

and

(E) three representatives of agencies that are licensed to provide personal assistance services.

(3) Terms of office. The term of office of each member is two years.

(A) Members serve staggered terms so that the terms of seven members will expire on January 31 of each even-numbered year and the terms of six members will expire on January 31 of each odd-numbered year.

(B) Vacancies on the council are filled in the same manner in which the position was originally filled and are filled by a person who meets the qualifications of the vacated position.

(4) Officers. The council elect a presiding officer and an assistant presiding officer from among its members at its first meeting after August 31 of each year.

(A) Each officer serves until the next regular election of officers.

(B) The presiding officer presides at all council meetings at which he or she is in attendance, calls meetings in accordance with this subsection, appoints subcommittees of the council as necessary, and causes proper reports to be made to the Texas Board of Human Services. The presiding officer may serve as an ex-officio member of any subcommittee of the council.

(C) The assistant presiding officer performs the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer serves until a successor is elected to complete the unexpired portion of the term of the office of presiding officer.

(D) A vacancy that occurs in the offices of presiding officer or assistant presiding officer is filled at the next council meeting.

(E) The presiding officer serves for one year but may not serve as presiding officer and/or assistant presiding officer for more than two years.

(F) The council may reference its officers by other terms, such as chairperson and vice-chairperson.

(5) Responsibilities.

(A) The council advises the Texas Department of Human Services on licensing standards and on the implementation of Health and Safety Code, Chapter 142.

(B) As required in Health and Safety Code, §142.009(1), the council makes recommendations for a memorandum of understanding (MOU) that establishes procedures to eliminate or reduce duplication of standards or conflicts between standards and of functions in license, certification, or compliance surveys and complaint investigations. Also, in accordance with Health and Safety Code, §142.009(1), the Health and Human Services Commission (HHSC) must review the recommendation of the council relating to the MOU before considering approval. The MOU must be approved by HHSC.

(C) At each meeting of the council, DHS provides an analysis of enforcement actions taken under this chapter, including the type of enforcement action, the results of the action, and the basis for the action. The council may advise DHS on its implementation of the enforcement provisions of the Health and Safety Code, Chapter 142.

(D) The council must meet as least once a year and may meet to conduct council business at other times at the discretion of the presiding officer, any three members of the council, or DHS's commissioner.

(i) DHS staff makes meeting arrangements. DHS staff contact council members to determine availability for a meeting date and place.

(ii) DHS informs each member of the council of a council meeting at least five working days before the meeting.

(iii) A simple majority of the members of the council constitutes a quorum for the purpose of transacting official business.

(iv) The council is authorized to transact official business only when in a legally constituted meeting with quorum present.

(v) The agenda for each council meeting includes an item entitled public comment under which any person may address the council on matters relating to council business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(E) The council may establish subcommittees as necessary to assist the council in carrying out its duties.

(i) The presiding officer appoints members of the council to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the council to serve on subcommittees.

(ii) Subcommittees must meet when called by the subcommittee chairperson or when so directed by the council.

(iii) A subcommittee chairperson must make regular reports to the advisory council at each council meeting or in interim written reports as needed. The reports must include an executive summary or minutes of each subcommittee meeting.

(F) Members must attend council meetings as scheduled. Members must attend meetings of subcommittees to which the member is assigned.

(i) A member must notify the presiding officer or appropriate DHS staff if he or she is unable to attend a scheduled meeting.

(ii) It is grounds for removal from the council if a member fails to meet council responsibilities for a substantial part of the term for which the member is appointed because of:

(I) illness or disability;

(II) absenteeism from more than half of the council and subcommittee meetings during a calendar year; or

(III) absenteeism from at least three consecutive council meetings.

(iii) The validity of an action of the council is not affected by the fact that it is taken when a ground for removal of a member exists.

(G) The council must file an annual written report with the board.

(i) The report must list:

(I) the meeting dates of the council and any subcommittees;

(II) the attendance records of its members;

(III) a brief description of actions taken by the council;

(IV) a description of how the council has accomplished the tasks given to the council by the board;

(V) the status of any rules which were recommended by the council to the board; and

(VI) anticipated activities of the council for the next year.

(ii) The report must identify the costs related to the council's existence, including the cost of agency staff time spent in support of the council's activities.

(iii) The report must cover the meetings and activities in the immediate preceding 12 months and must be filed with the board each July. The report must be signed by the presiding officer and appropriate DHS staff.

(H) The council carries out any other tasks given to the council by the board.

(6) Abolishment. The abolishment date is July 1, 2003.

(7) Staff support. DHS provides staff support for the council.

(8) Procedures. *Roberts Rules of Order, Newly Revised*, are the basis of parliamentary decisions except where otherwise provided by law or rule.

(A) Once a quorum is established, a majority vote of the members present must approve any action taken by the council.

(B) Each member has one vote.

(C) A member may not authorize another individual to represent the member by proxy.

(D) The council must 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.

(E) DHS staff record minutes of each council meeting.

(i) A draft of the minutes approved by the presiding officer is provided to the board and each member of the council within 30 days of each meeting.

(ii) After approval by the council, the minutes must be signed by the presiding officer.

(9) Statement by members.

(A) The board, DHS, and the council are not bound in any way by any statement or action on the part of any council member except when a statement or action is in pursuit of specific instructions from the board, DHS, or council.

(B) The council and its members may not participate in legislative activity in the name of the board, DHS, or the council except with approval through DHS's legislative process. Council members are not prohibited from representing themselves or other entities in the legislative process.

(10) Reimbursement for expenses. In accordance with the requirements specified in the Government Code, Chapter 2110, a council member may receive reimbursement for the member's expenses incurred for each day the member engages in official business if authorized by the General Appropriations Act or budget execution process.

(A) No compensatory per diem is paid to council members unless required by law.

(B) A council member who is an employee of a state agency, other than DHS, may not receive reimbursement for expenses from DHS.

(C) A nonmember of the council who is appointed to serve on a subcommittee may not receive reimbursement for expenses from DHS.

(D) Each member who is to be reimbursed for expenses must submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each council meeting.

(E) Requests for reimbursement of expenses must be made on official state travel vouchers prepared by DHS staff.

(g) Texas Board of Human Services/Board of Nurse Examiners Memorandum of Understanding Advisory Committee.

(1) Legal base. The Health and Safety Code, §142.016(b), requires the Texas Board of Human Services (board) and the Board of Nurse Examiners (BNE) to jointly establish and appoint the committee.

(2) Structure.

(A) DHS and BNE appoint the advisory committee that must include at a minimum:

(i) one representative from the BNE and one representative from the Texas Department of Human Services (DHS) to serve as co-chairmen;

(ii) one representative from the Texas Department of Mental Health and Mental Retardation;

(iii) one representative from the Texas Department of Health;

(iv) one representative from the Texas Nurses Association;

(v) one representative from the Texas Association for Home Care, Incorporated, or its successor;

(vi) one representative from the Texas Hospice Organization, Incorporated, or its successor;

(vii) one representative of the Texas Respite Resource Network or its successor; and

(viii) two representatives of organizations such as the Personal Assistance Task Force or the Disability Consortium that advocate for clients in community-based settings.

(B) The representatives from the organizations listed in subparagraph (A)(i)-(vii) of this paragraph may serve without further approval of the board or the BNE. The representatives of organizations described in subparagraph (A)(viii) of this paragraph must be approved by the board and the BNE before serving.

(3) Terms of office. The term of office of each member is six years. Members must serve after expiration of their term until a replacement is appointed.

(A) Members are appointed for staggered terms with the terms of an equivalent number of members expiring on January 31 of each even-numbered year.

(B) If a vacancy occurs, a person is appointed to serve the unexpired portion of that term.

(4) Officers. The representatives from DHS and the BNE serve as co-chairmen of the committee.

(A) The co-chairmen preside at all committee meetings at which they are in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board.

(B) In the absence of one co-chairman, the appropriate state agency designates a temporary co-chairman. The temporary co-chairman acts in full authority for the designated period of time.

(5) Responsibilities.

(A) The committee advises the board and the BNE regarding the development, modification, or renewal of a memorandum of understanding (MOU) governing the circumstances under which the provision of health-related tasks or services do not constitute the practice of professional nursing.

(B) The committee carries out any other tasks given to the committee by the board and the BNE that are reasonable and necessary to accomplish the purpose of the MOU.

(C) The committee must meet as necessary to conduct committee business.

(i) A meeting may be called by agreement of DHS staff, BNE staff, and either the co-chairmen or at least three members of the committee.

(ii) DHS staff make meeting arrangements. DHS staff contact committee members to determine availability for a meeting date and place.

(iii) DHS staff informs each member of the committee of a committee meeting at least five working days before the meeting.

(iv) A simple majority of the members of the committee constitute a quorum for the purpose of transacting official business.

(v) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(vi) The agenda for each committee meeting includes an item entitled public comment under which any person may address the committee on matters relating to committee business. The co-chairmen may establish procedures for public comment, including a time limit on each comment.

(D) The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(i) The co-chairmen appoints members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The co-chairmen may also appoint nonmembers of the committee to serve on subcommittees.

(ii) Subcommittees must meet when called by the subcommittee chairperson or when so directed by the committee.

(iii) A subcommittee chairperson must make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports must include an executive summary or minutes of each subcommittee meeting.

(E) Members must attend committee meetings as scheduled. Members must attend meetings of subcommittees to which the member is assigned.

(i) A member must notify the presiding officer or appropriate DHS staff if he or she is unable to attend a scheduled meeting.

(ii) It is grounds for removal from the committee if a member fails to meet committee responsibilities for a substantial part of the term for which the member is appointed because of:

(I) illness or disability;

(II) absenteeism from more than half of the council and subcommittee meetings during a calendar year; or

(III) absenteeism from at least three consecutive council meetings.

(iii) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(6) Abolishment. The abolishment date is July 1, 2003.

(7) Staff. DHS staff, in conjunction with designated BNE staff, provide support for the committee.

(8) Procedures. *Roberts Rules of Order, Newly Revised*, is the basis of parliamentary decisions except where otherwise provided by law or rule.

(A) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(B) Each member has one vote.

(C) A member may not authorize another individual to represent the member by proxy.

(D) The committee must 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.

(E) DHS staff record minutes of each committee meeting.

(i) A draft of the minutes approved by the co-chairmen must be provided to the board, the BNE designated staff, and each member of the committee within 30 days of each meeting.

(ii) After approval by the committee, the minutes must be signed by the co-chairmen.

(9) Responsibility of DHS and BNE. The DHS and the BNE annually review and renew or modify the MOU as necessary.

(10) Statement by members. The board, DHS, and the committee are not bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, DHS, or committee.

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

Filed with the Office of the Secretary of State, on April 2, 2001.

TRD-200101902

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: May 13, 2001

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



# WITHDRAWN RULES

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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*.

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**TITLE 22. EXAMINING BOARDS**

**PART 19. POLYGRAPH EXAMINERS BOARD**

**CHAPTER 395. CODE OF OPERATING PROCEDURE OF POLYGRAPH EXAMINERS**

**22 TAC §§395.8, 395.10, 395.18**

The Polygraph Examiners Board has withdrawn from consideration proposed new §395.18 and amendment to §395.8 and §395.10 which appeared in the October 27, 2000, issue of the *Texas Register*(25 TexReg 10615).

Filed with the Office of the Secretary of State on March 28, 2001

TRD-200101810

Frank DiTucci

Executive Officer

Polygraph Examiners Board

Effective date: March 28, 2001

For further information, please call: (512) 424-2058



**TITLE 30. ENVIRONMENTAL QUALITY**

**PART 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION**

**CHAPTER 7. MEMORANDA OF UNDERSTANDING**

**30 TAC §7.119**

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed new §7.119, submitted by the Texas Natural Resource Conservation Commission has been automatically withdrawn. The new section as proposed appeared in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9864).

Filed with the Office of the Secretary of State on March 30, 2001.

TRD-200101871



**CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES  
SUBCHAPTER G. TRANSPORTATION PLANNING**

**30 TAC §114.250**

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed repeal of §114.250, submitted by the Texas Natural Resource Conservation Commission has been automatically withdrawn. The proposed repeal appeared in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9865).

Filed with the Office of the Secretary of State on March 30, 2001.

TRD-200101872



**CHAPTER 305. CONSOLIDATED PERMITS  
SUBCHAPTER N. ADOPTION OF MEMORANDUM OF UNDERSTANDING BY REFERENCE**

**30 TAC §305.521**

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed repeal of §305.521, submitted by the Texas Natural Resource Conservation Commission has been automatically withdrawn. The proposed repeal appeared in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9866).

Filed with the Office of the Secretary of State on March 30, 2001.

TRD-200101873



**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**PART 1. GENERAL LAND OFFICE**

**CHAPTER 3. PROPERTY ACCOUNTABILITY**

**31 TAC §3.1**

The General Land Office has withdrawn from consideration proposed new §3.1 which appeared in the March 23, 2001, issue of the *Texas Register* (26 TexReg 2287).

Filed with the Office of the Secretary of State on March 28, 2001.  
TRD-200101815

Larry Soward  
Chief Clerk  
General Land Office  
Effective date: March 28, 2001  
For further information, please call: (512) 305-9129



# ADOPTED RULES

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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.

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## TITLE 1. ADMINISTRATION

### PART 5. GENERAL SERVICES COMMISSION

#### CHAPTER 125. SUPPORT SERVICES DIVISION--TRAVEL AND VEHICLE

The General Services Commission ("Commission") adopts amendments to Title 1, T.A.C., Subchapter A - Travel Management Services, §125.3; adopts amendments to Subchapter B - State Vehicle Fleet Management, §125.41 and adopts new §§125.42 and 125.43; and adopts amendments to Subchapter C - Texas Alternative Fuels Program, §§125.63 and 125.65. The amendments and new rules are adopted in accordance with the requirements of the Texas Government Code, §§2171.104 and 2171.1045 concerning the development of a management plan for improving the administration and operation of the state's vehicle fleet. The amendments are adopted without changes to the proposed text as published in the February 9, 2001, issue of the *Texas Register* (26 TexReg 1221). The text will not be republished.

The amendments and new rules are adopted to carry out the legislative intent of the Texas Government Code, §§2171.104 and 2171.1045 which directs state agencies to adopt rules consistent with the State Vehicle Fleet Management Plan (the "Plan") developed by the Commission's Office of Vehicle Fleet Management under the direction of the State Council of Competitive Government.

The amendments and new rules will provide additional definitions to clarify language; state the Commission's adherence to the Plan developed by the Office of Vehicle Fleet Management under the direction of the Council of Competitive Government; provide for the disposal of vehicles that are under-used; the maintenance of vehicle fleet data; the use of state fuel contracts and alternative fuels; and the utilization of fleet management "Best Practices" when appropriate and feasible.

No comments have been received concerning the adoption of the amendments and new rules concerning the State Vehicle Fleet Management Plan.

#### SUBCHAPTER A. TRAVEL MANAGEMENT SERVICES

##### 1 TAC §125.3

The amendment is adopted under the authority of the Texas Government Code, Title 10, Subtitle D, §§ 2171.104 and 2171.1045 which provides the General Services Commission with the authority to promulgate rules consistent with the Plan.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 30, 2001.

TRD-200101884

Cynthia J. Hill

Acting General Counsel

General Services Commission

Effective date: April 19, 2001

Proposal publication date: February 9, 2001

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



#### SUBCHAPTER B. STATE VEHICLE FLEET MANAGEMENT

##### 1 TAC §§125.41 - 125.43

The amendment and new rules are adopted under the authority of the Texas Government Code, Title 10, Subtitle D, §§2171.104 and 2171.1045 which provides the General Services Commission with the authority to promulgate rules consistent with the Plan.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 30, 2001.

TRD-200101885

Cynthia J. Hill

Acting General Counsel

General Services Commission

Effective date: April 19, 2001

Proposal publication date: February 9, 2001

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



#### SUBCHAPTER C. TEXAS ALTERNATIVE FUELS PROGRAM

**1 TAC §125.63, §125.65**

The amendments are adopted under the authority of the Texas Government Code, Title 10, Subtitle D, §§ 2171.104 and 2171.1045 which provides the General Services Commission with the authority to promulgate rules consistent with the Plan.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 30, 2001.

TRD-200101886

Cynthia J. Hill

Acting General Counsel

General Services Commission

Effective date: April 19, 2001

Proposal publication date: February 9, 2001

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



**CHAPTER 125. SUPPORT SERVICES  
DIVISION--TRAVEL AND VEHICLE  
SUBCHAPTER A. TRAVEL MANAGEMENT  
SERVICES**

**1 TAC §125.27**

The General Services Commission adopts amendments to Title 1, T.A.C., Chapter 125, Subchapter A. §125.27 concerning the State Travel Management Program (STMP). The amendments are adopted without changes to the proposed text that was published in the February 9, 2001, issue of the *Texas Register* (26 TexReg 1225). The text will not be republished.

The amendment to §125.27 is being adopted in order to position the state to explore alternative methods and procedures for making travel arrangements.

The adoption of the amendment to §125.27 will delete language relating to the Travel Agency Services contracts that requires contract travel agencies to provide reservations, ticketing, re-ticketing, ticket delivery, and refunds at no additional charge to the state.

No comments have been received concerning the adoption of the amendment to Title 1, T.A.C., §125.27.

The amendment is adopted under the authority of the Texas Government Code, Title 10, Subtitle D, §§2152.003 and 2171.002 which provides the General Services Commission with authority to promulgate rules necessary to implement the section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cynthia J. Hill

Acting General Counsel

General Services Commission

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

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**TITLE 16. ECONOMIC REGULATION**

**PART 2. PUBLIC UTILITY  
COMMISSION OF TEXAS**

**CHAPTER 26. SUBSTANTIVE RULES  
APPLICABLE TO TELECOMMUNICATIONS  
SERVICE PROVIDERS**

**SUBCHAPTER F. REGULATION OF  
TELECOMMUNICATIONS SERVICE**

**16 TAC §26.127**

The Public Utility Commission of Texas (commission) adopts an amendment to §26.127, relating to Abbreviated Dialing Codes, with changes to the proposed text as published in the November 3, 2000, *Texas Register* (25 Tex Reg 10863). The amendment is necessary to alleviate congestion in 911 calling by providing a source to access information regarding available community resources in circumstances involving immediate needs for social services. In addition, the assignment will allow for better coordination of a state network that provides local and state access points for health and human-services information. This amendment was adopted under Project Number 22939.

Adoption of this amendment follows a petition for rulemaking, filed on June 8, 2000, by the Texas Health and Human Services Commission (HHSC) on behalf of the Texas Information and Referral Network. This petition requested that the commission assign the 211 dialing code for use by the public to access services providing free information and referrals with respect to community resources. On July 21, 2000, in its Third Report and Order and Order on Reconsideration (FCC 00-256/FCC 00-257), the Federal Communications Commission (FCC) announced its decision to assign the 211 code for community information and referral services and the 511 code for traffic and transportation information. At its open meeting of August 10, 2000, based on the mandate given by the FCC and the compelling reasons advanced by the petitioners, the commission agreed to proceed with the rulemaking to amend §26.127.

A public hearing on the proposed amendment was held at commission offices on January 9, 2001. Representatives from the following entities attended the hearing: Southwestern Bell Telephone Company (SWBT), John Staurulakis Inc., General Services Commission (GSC), United Ways of Texas, Health and Human Services Commission, Verizon Southwest, CCG Consulting, Texas Silver-Haired Legislature, Government Connect, The Resource House, Texas Statewide Telephone Cooperative, Inc., AT&T Communications of Texas L.P. (AT&T), Commission on State Emergency Coordination, and the Office of the Attorney General. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The commission received written comments on the proposed amendment from the following individuals and organizations: Pat O'Brien of Dallas, Texas; Literacy Volunteers of America; Community Council of the Rio Grande Valley, Inc.; United Way of the Texas Gulf Coast; United Way of Brazoria County; BP Amoco Corporation Chocolate Bayou Works, Alvin, Texas; The Women's Advocacy Project, Inc., Austin, Texas; Tate Austin

Public Relations; The ARC of the Capital Area; Women's Haven of Tarrant County, Inc.; United Way of Southern Cameron County; United Way/Capital Area; Nancy Lee of Longview, Texas; the United Ways of Texas; Linda Castaria; Marta Nichols; United Way Greater Wichita Falls; Dan L. Nicewander of Plano, Texas; Martha T. Blaine of Dallas, Texas; East Texas Council on Alcoholism and Drug Abuse (ETCADA), Longview, Texas; Brinks Home Security, Irving, Texas; Homer Hanna High School, Brownsville, Texas; United Cerebral Palsy of Tarrant County; Joe R. Thompson of Fort Worth, Texas; United Way of Metropolitan Tarrant County; Reba and Bob Ragsdale; Dallas County Community Action Committee, Inc.; Lucretia Holmes of Plano, Texas; Elizabeth Graham of Richardson, Texas; Community Action Network, Austin, Texas; Lourdes S. Kilgore of Brownsville, Texas; Central Dallas Ministries; Timothy W. McKinney of Fort Worth, Texas; Marilyn K. Self of Dallas, Texas; United Way Brazos Valley; Nancy and Leonard Berry; Harry Green of College Station, Texas; United Way of San Antonio & Bexar County; CarLinc Network, Waco, Texas; Rio Grande Cancer Foundation; United Way of Tyler/Smith County; Jewish Federation of Fort Worth and Tarrant County; SETON, Austin, Texas; United Way of the Greater Fort Hood Area; United Way Corpus Christi; Literacy Council of Tyler; Myriam Hubbard Palemer of Arlington, Texas; AIDS Outreach Center, Tarrant County; Prevent Blindness Texas, El Paso, Texas; Texas Workforce Commission, Austin, Texas; Marjory Boswell of Fort Worth, Texas; Brazos Valley Community Action Agency, Bryan, Texas; LMSW; First Call for Help United Way; Carolina Karn of Bryan, Texas; American Cancer Society, Austin, Texas; Visiting Nurse Association of Houston, Inc.; Asian American Health Coalition, Houston, Texas; Patricia F. Cheong of Colleyville, Texas; Career and Recovery Resources, Inc., Houston, Texas; Matagorda County United Way; Pamela J. Rooney; Cancer Care Services, Fort Worth, Texas; Arlington Independent School District; Citizen Advocate of Lubbock, Texas; United Way of Metropolitan Dallas; Charles A. Ellison of College Station, Texas; B/CS Chamber of Commerce; Penny Zent; AT&T SWBT; GSC; and two anonymous letter writers.

Virtually all of the above commenters voiced general support for the rule and stated that the commission should adopt the proposed rule. None of the commenters opposed the rule, though AT&T did not specifically endorse it. Only AT&T and SWBT, which expressed general support for the rule, filed written comments related to specific provisions of the rule.

#### *Subsection (c)*

SWBT indicated that this subsection would lead to confusion due to the fact that all N11 codes are currently assigned.

The commission agrees with SWBT that this provision may cause confusion, as with the adoption of this rule, all N11 codes in Texas have been assigned and are therefore unavailable for internal business and testing purposes. Accordingly, the commission deletes subsection (c) as proposed from the rule.

#### *Subsection (e)(2) (now subsection (d)(2))*

SWBT recommended that the commission provide specific parameters as to what qualifies as "community resources" or "immediate needs for social services," lest the use of the 211 code become unmanageable. SWBT noted that such specifics could be addressed as implementation issues.

The commission does not believe that either "community resources" or "immediate needs for social services" needs modification. The commission believes that sufficient clarity

has been provided in the rule regarding the scope and purpose for use of the 211 code. The commission believes that the rule as written provides for maximum flexibility in determining appropriate health and human services that fall under the rule and declines to create an exclusive list for definitional purposes. The commission agrees with SWBT that certain specifics may be appropriately addressed as implementation issues when solutions are determined regarding how 211 service will be implemented.

#### *Subsection(e)(6) (now subsection (d)(6))*

Both AT&T and SWBT expressed concern that the published rule did not provide for cost recovery by certificated telecommunications utilities (CTUs) for the services they provide to 211 area information centers (AICs). SWBT noted that the FCC, in directing the use of the codes, stated that the AICs intend to provide the service free to end users; consequently, SWBT concluded, "it is logical that they (AICs) assume the cost of providing the service." Accordingly, SWBT said it expected to file tariffs for providing 211 service to a state-authorized agency providing information and referral services similar to the tariffs filed for providing non-emergency 311 service. In addition, SWBT opined that if an agency requests the creation of a new database (as using the 911 database is prohibited), the associated costs should be recovered from the agency requesting the 211 service. Likewise, AT&T specifically observed that the 211-service definition in the rule, providing for free access by end users to 211 service, might be used by AICs to claim that AICs should receive the underlying service free from CTUs. CTUs are entitled to recover such costs, AT&T contended, just as in the provision of 911 services. It recommended that the rule clarify this right for both 211 service and 511 service.

GSC recommended not putting additional language in the rule that might constrain the decision made by the HHSC to use what may be the best method possible for deploying a solution. GSC also argued that the competitive market should drive the technological and cost-recovery aspects of the decisions. In addition, GSC stated that the potential exists for possible additional language being required only after the technical solution and cost-recovery method are identified and selected by the HHSC.

The commission believes that by not mandating language that specifically prohibits cost recovery, CTUs should be able to recover costs for implementing service. The commission does not know of the specific technological solutions that ultimately will be used to provision 211 service, and therefore does not know what costs are appropriate for CTUs to recover. As a general matter, however, the commission does not believe that the rule as written prohibits cost recovery. The commission does believe that old subsection (e)(6) (now subsection (d)(6)) should be clarified to make certain that, although CTUs may appropriately recover costs for implementing 211 service, CTUs may not charge an end-user a fee on a per-call or per-use basis for accessing the 211 system.

AT&T also raised the matters of access charges and reciprocal compensation in connection with 211 and 511 calls. Such calls, AT&T asserted, are more like 911 calls than standard POTS ("plain old telephone service") calls; therefore, it continued, to the extent 911 calls are now and continue to be exempt from reciprocal compensation, 211 and 511 calls should be as well. Likewise, AT&T opined that access charges should not be applied to 211 or 511 calls to the extent such calls must be routed in a way that normally would require the application of access charges to POTS calls.

The commission finds that 211 service is akin to 311 or 911 service and should be treated the same with respect to reciprocal compensation and access charges. The commission agrees with AT&T that to the extent 911 calls are exempt from reciprocal compensation and access charges, so too should 211 and 511 calls. The commission finds no reason in the record of this rulemaking to treat specific N11 dialing codes differently. The commission does not believe that any language in the rule is in conflict with this position, and therefore makes no changes to the rule.

In a related vein, AT&T argued that the areas served by individual AICs for 211 service (and their equivalents for 511 service) should be required to correspond to existing rate centers and/or NPA-NXX codes. Otherwise, it stated, implementation of the new dialing codes will impose undue burdens on local exchange companies. Similarly, SWBT recommended that the rule include a provision requiring the termination of 211 calls onto toll-free numbers when calls are placed outside the local calling area. If such a requirement is not included, SWBT stated, the rule may need to address how carriers should handle 211 calls made outside the local area.

The commission believes that these issues are better addressed in the implementation docket that is being scheduled to work with interested parties in developing technology-neutral standards or solutions. The commission does not agree with AT&T that the areas served by individual AICs should be required to correspond to those of existing rate centers. Many factors are involved in the designation of AICs that do not always translate into identical boundaries. Indeed, the boundaries of AICs that have already been established do not as a general matter correspond to existing rate centers. The commission is confident that the industry will devise solutions for the most cost-effective way to implement 211 service, while maintaining the integrity of the AIC structure. In addition, the commission agrees with SWBT that termination of 211 calls onto toll-free numbers when calls are placed outside the local calling area is worthy of consideration. However, the commission is reluctant to impose this specific requirement based on the limited facts in this record. As the commission does not know at this time how 211 service ultimately will be implemented from a technology standpoint, the commission declines to include SWBT's recommendation. The commission expects this topic to be fully developed in the implementation docket, in which technology solutions will be considered. The commission also reiterates that whatever specific procedures are adopted, end users are not to be charged a fee for placing 211 calls.

Lastly, AT&T recommended including in the rule a policy statement that the creation of the 211 and 511 networks "does not render any entity the exclusive owner of the content of the information in the 211 and 511 databases and that competitive providers should as well be provided nondiscriminatory access to the information within those databases, consistent with any applicable privacy requirements, for the purposes of providing services to their customers." AT&T proposed such a statement on the grounds that the information contained in the 211 and 511 databases could prove to be of competitive value with increasing local competition.

The commission agrees with AT&T that competitive providers should be allowed to access the information in the databases, consistent with applicable privacy requirements. As is the case for the 911 database, however, the entity that creates and maintains the 211 or 511 database should be allowed to charge for

providing this information to other carriers. Holders of a certificate of convenience and necessity must receive commission approval of tariffs that provide for such charges.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2001) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002

§26.127. *Abbreviated Dialing Codes.*

(a) Code assignments. The following abbreviated dialing codes may be used in Texas:

- (1) 211 - Community Information and Referral Services;
- (2) 311 - on-Emergency Governmental Service;
- (3) 411 -
  - (A) Directory Assistance; and
  - (B) Directory Assistance Call Completion;
- (4) 511 - Traffic and Transportation Information;
- (5) 611 - Repair Service;
- (6) 711 - Telecommunications Relay Service;
- (7) 811 - Business Office; and
- (8) 911 - Emergency Service.

(b) Use only as directed. A certificated telecommunications utility (CTU) within the State of Texas may assign or use N11 dialing codes only as directed by the commission.

(c) Limitations. The following limitations apply to a CTU's use of N11 dialing codes for internal business and testing purposes:

- (1) use may not interfere with the assignment of such numbers by the FCC and the North American Numbering Plan (NANP); and
- (2) use of an N11 dialing code must be discontinued on short notice if the number is reassigned on a statewide or nationwide basis.

(d) 211 service.

(1) Scope and purpose. This subsection applies to the assignment, provision, and termination of 211 service. Through this subsection, the commission intends to enhance the ability of the public to access services that provide free information and referral to community resources in situations that are not immediately life-endangering, but still represent a serious but less urgent threat to basic human needs and individuals' health or welfare.

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

(A) Alliance of Information and Referral Systems (AIRS) - A professional organization whose mission is to unite and serve the field and to advance the profession of information and referral as a vital means of bringing people and services together. AIRS

has developed national quality standards and methods of evaluating information and referral services.

(B) Area Information Center (AIC) - An entity that serves as regional coordinator for health and human services information for a specified geographical area or region.

(C) Community resource - A for profit or nonprofit resource that provides health or human services in a designated geographic area.

(D) Information and referral service - A service whose primary purpose is to maintain information about human service resources in the community and to link people who need assistance with appropriate service providers and/or to supply descriptive information about the agencies or organizations which offer services.

(E) Selective routing - The feature provided with 211 service by which 211 calls are automatically routed to the 211 answering point for serving the place from which the call originates.

(F) Texas Information and Referral Network (Texas I & R Network) - A program of the Health and Human Services Commission (HHSC) that is responsible for the development, coordination, and implementation of the statewide information and referral network.

(G) 211 answering point - An AIC that:

(i) provides 24 hour, seven day a week operations;

(ii) is assigned by HHSC the responsibility to receive 211 calls;

(iii) serves the area or region designated by HHSC; and

(iv) performs the roles and responsibilities of an AIC.

(H) 211 service - A telecommunications service provided by a CTU to a designated area information center through which the end user of a public phone system has the ability to access services providing free information and referrals regarding community service organizations.

(3) Role and responsibilities of the Texas Health and Human Services Commission (HHSC).

(A) To designate an AIC as a 211 provider for a particular geographical area;

(B) HHSC and the AICs educate the populace about the use of 211 service from its inception through termination;

(C) HHSC is responsible for dispute resolution should a conflict regarding the selection of an AIC occur; and

(D) HHSC may terminate an AIC's designation for good cause and is responsible for ensuring prompt and efficient selection of a new AIC for continuation of service.

(4) Use of the 211 system.

(A) 211 calls may not be completed over the 311 or 911 networks or use the 311 or 911 databases.

(B) The 211 network shall not be used for commercial advertisements.

(5) Privacy policy. To preserve the privacy of callers who wish to use the 211 service anonymously, an AIC which uses Automatic Number Identification (ANI), Automatic Location Identification (ALI) service or other equivalent non-blockable information-gathering features for the provision of 211 service must establish an in-house

procedure that is consistent with the AIRS national standards and the standards set forth by HHSC that allows access to the 211 service while honoring the caller's call and line-blocking preferences and/or caller anonymity.

(6) Fee. Neither an AIC nor a CTU may charge end users a fee on a per-call or per-use basis for using the 211 system.

(e) 311 service.

(1) Scope and purpose. This subsection applies to the assignment, provision, and termination of 311 service. Through this subsection, the commission strives to strengthen the 911 system by alleviating congestion on the 911 system through the establishment of a framework for governmental entities to implement a 311 system for non-emergency police and other governmental services.

(2) Definition. The term "governmental entity" when used in this subsection means any county, municipality, emergency communication district, regional planning commission, appraisal district, or any other subdivision or district that provides, participates in the provision of, or has authority to provide fire-fighting, law enforcement, ambulance, medical, 911, or other emergency service as defined in Texas Health & Safety Code §771.001, as may be subsequently amended.

(3) A certificated telecommunications utility must have a commission-approved application to provide 311 service.

(4) Requirements of application by certificated telecommunications utility.

(A) Applications, tariffs, and notices filed under this subsection shall be written in plain language, shall contain sufficient detail to give customers, governmental entities, and other affected parties adequate notice of the filing, and shall conform to the requirements of §26.209 of this title (relating to New and Experimental Services) or §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges), whichever is applicable.

(B) A CTU shall provide a copy of the text of the proposed notice to notify the public of the request for 311 service with the filing of an application for regulatory approval of the certificated telecommunications utility's provision of 311 service.

(C) No application for 311 service allowing the governmental entity to charge its citizens a fee on a per-call or per-use basis for using the 311 system shall be approved.

(D) All applications for 311 service shall include the governmental entity's plan to educate its populace about the use of 311 at the inception of 311 service and its plan to educate its populace at the termination of the governmental entity's provision of 311 service.

(5) Notice. The presiding officer shall determine the appropriate level of notice to be provided and may require additional notice to the public.

(A) The certificated telecommunications utility shall file with the commission a copy of the text of the proposed notice to notify the public of the request for 311 service and the filing of an application for regulatory approval of the certificated telecommunications utility's provision of 311 service. This copy of the proposed notice shall be filed with the commission not later than ten days after the certificated telecommunications utility receives the 311 service request; and

(B) The proposed notice shall include the identity of the governmental entity, the geographic area to be affected if the new 311 service is approved, and the following language: "Persons who wish to



comment on this application should notify the commission by (specified date, 30 days after notice is published in the *Texas Register*). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or toll free at (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136."

(6) A certificated telecommunications utility may provide 311 service only to governmental entities.

(7) A 311 service request shall start the six-month deadline to "take any necessary steps to complete 311 calls" as required by the Federal Communications Commission's Order In the Matter of the Use of N11 Codes and Other Abbreviated Dialing Arrangements, CC Docket No. 92-105, FCC 97-51, 12 F.C.C.R. 5572 (February 19, 1997).

(8) 311 calls shall not be completed over the 911 network or use the 911 database.

(9) The 311 network shall not be used for commercial advertisements.

(10) To preserve the privacy of callers who wish to use the governmental entity's non-emergency service anonymously, a certificated telecommunications utility which uses Automatic Number Identification (ANI) service, Automatic Location Identification (ALI) service or other equivalent non-blockable information-gathering features for the provision of 311 service must establish a non-abbreviated phone number that will access the same non-emergency police and governmental services as the 311 service while honoring callers' call- and line- blocking preference. When publicizing the availability of the 311 service, the governmental entity must inform the public if its 311 service has caller or number identification features, and must publicize the availability of the non-abbreviated phone number that offers the same service with caller anonymity. When a certificated telecommunications utility uses Caller Identification (Caller ID) services or other equivalent features to provide 311 service, relevant provisions of the commission's substantive rules and of the Public Utility Regulatory Act apply.

(11) The commission shall have the authority to limit the use of 311 abbreviated dialing codes to applications that are found to be in the public interest.

(12) The commission shall have the authority to decide which governmental entity shall provide 311 service when there are conflicting requests for concurrent 311 service for the same geographic area, to the extent that negotiations between or among the affected governmental entities fail. The commission shall consider the following factors in determining conflicting requests for 311 service:

(A) the nature of the service(s), including but not limited to the proposed public education portion, to be provided by the governmental entity; and

(B) the potential magnitude of use of the requested 311 service (i.e., the number of residents served by the governmental entity and their potential frequency of access to the governmental agencies wishing to use the 311 service).

(13) When termination of 311 service is desired, the certificated telecommunications utility shall file a notice of termination with the commission that contains:

(A) proposed notice to the affected area of the termination of 311 service; and

(B) the program to educate the affected public of the termination of 311 service.

(14) The commission, after receiving the certificated telecommunications utility's proposed notice of termination of 311 service and approving the proposed notice through an administrative review, will cause the approved notice to be published in the *Texas Register*.

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 27, 2001.

TRD-200101786

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

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

## TITLE 22. EXAMINING BOARDS

### PART 5. STATE BOARD OF DENTAL EXAMINERS

#### CHAPTER 101. DENTAL LICENSURE

##### 22 TAC §101.7

The State Board of Dental Examiners adopts amendments to §101.7, Licensure by Credentials in conjunction with its review of Chapter 101, Dental Licensure and in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167, without changes to the proposed text as published in the February 16, 2001 issue of the *Texas Register* (26 TexReg 1458).

Paragraph (3)(A) and (3)(B) will be amended by deleting the phrase "prior to applying" and adding the phrase "preceding application to the State Board of Dental Examiners." The adopted amendments clarify language in the rule requiring that a dentist licensed in another jurisdiction who applies for a Texas dental license by virtue of credentials, must have continuously practiced dentistry during the five years immediately preceding application. In the past some applicants interpreted current language to mean "five calendar years" rather than the five year period immediately prior to application.

The amended rule provides assurance to the public that the intent of the rule will be easier to understand. The language of the amendment makes it clear that the five-year period must have occurred immediately before the application.

No comments were received regarding adoption of the proposal.

The amended rule is adopted under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jeffrey Hill

Executive Director

State Board of Dental Examiners

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Proposal publication date: February 16, 2001

For further information, please call: (512) 463-6400



## 22 TAC §101.8

The State Board of Dental Examiners adopts amendments to §101.8, Persons with Criminal Backgrounds, in conjunction with its review of Chapter 101, Dental Licensure and in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167, without changes to the proposed text as published in the February 16, 2001 issue of the *Texas Register* (26 TexReg 1459).

The adopted amendments track the language of the statutes. The former subsection (a) is amended to include the wording now found in current subsection (b). Former subsection (d), now subsection (e) is amended at (8) to specify felony theft. Changes in statutory references have been made to reflect the codification of the Dental Practice Act into the Occupations Code.

The adopted rule provides that the public will have a clearer understanding of the types of criminal offenses that could lead to revocation or suspension of a license or denial of an application for licensure. The enabling statutes require that the board issue guidelines stating how particular crimes relate to fitness for licensing and other criteria that affect licensing decisions. New subsection (a) states the purpose of the rule, that is, to comply with the requirements of the enabling statute. New subsection (b) clarifies that revocation, suspension or denial may be based on conviction under state or federal law of a felony or misdemeanor that directly relates to the duties of the profession. Paragraph (8) of new subsection (e) clarifies that a felony theft directly relates. Paragraph (10) clarifies that felony driving while intoxicated is another offense that is considered to directly relate. Former language concerning habitual use or addiction to controlled substance abuse has been deleted because a finding of such conduct might or might not result in a criminal conviction.

No comments were received regarding adoption of the proposal.

The amended rule is adopted under Texas Government Code §2001.021 et. seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry; §53.022 and §53.023 which establishes whether a conviction relates to practice dentistry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jeffrey Hill

Executive Director

State Board of Dental Examiners

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For further information, please call: (512) 463-6400



## CHAPTER 103. DENTAL HYGIENE LICENSURE

### 22 TAC §103.2

The State Board of Dental Examiners adopts amendments to §103.2, Licensure by Credentials, Dental Hygienists, in conjunction with its review of Chapter 103, Dental Hygiene Licensure and in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167, without changes to the proposed text as published in the February 16, 2001 issue of the *Texas Register* (26 TexReg 1460).

Paragraph (3)(A) and (3)(B) will be amended by deleting the phrase "prior to applying" and adding the phrase "preceding application to the State Board of Dental Examiners." The adopted amendments clarify language in the rule requiring that a dental hygienist licensed in another jurisdiction who applies for a Texas dental hygiene license by virtue of credentials, must have continuously practiced dental hygiene during the five years immediately preceding application. In the past some applicants interpreted current language to mean "five calendar years" rather than the five year period immediately prior to application.

The amended rule provides assurance to the public that the intent of the rule will be more easier to understand. The language of the amendment makes it clear that the five year period must have occurred immediately before the application.

No comments were received regarding adoption of the proposal.

The amended rule is adopted under Texas Government Code §2001.021 et. seq; Texas Civil Statutes, the Occupations Code §262.102 which authorizes the Board to make rules affecting the practice of dental hygiene; §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jeffrey Hill

Executive Director

State Board of Dental Examiners

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For further information, please call: (512) 463-6400



## CHAPTER 104. CONTINUING EDUCATION

### 22 TAC §104.2

The State Board of Dental Examiners adopts amendments to §104.2, Providers in conjunction with its review of Chapter 104, Continuing Education and in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167, without changes to the proposed text as published in the February 16, 2001 issue of the *Texas Register* (26 TexReg 1461).

The rule is amended to add the Western Regional Examining Board, the American Academy of Dental Hygiene, the American Dental Education Association, and the American Heart Association to the list of providers.

The amended rule provides an expanded list of educational providers available for dental professionals to obtain the continuing education required for annual license renewal.

No comments were received regarding adoption of the proposal.

The amended rule is adopted under Texas Government Code §2001.021 et seq; Texas Civil Statutes, the Occupations Code §257.005 which provides that the Board shall develop a mandatory Continuing Education program and §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jeffrey Hill

Executive Director

State Board of Dental Examiners

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For further information, please call: (512) 463-6400



## CHAPTER 110. ENTERAL CONSCIOUS SEDATION

### 22 TAC §§110.1-110.4

The State Board of Dental Examiners adopts new Chapter 110, Enteral Conscious Sedation and new §§110.1 Definitions, 110.2 Permit, 110.3 Permit Requirements and Clinical Provisions and 110.4 Effective Date with changes to the text published in the December 8, 2000 issue of the *Texas Register* (25TexReg12029). Changes were made to §110.1, Definitions at (3), (6), (7), (15) and added new definitions (18) and (19). Changes were also made to §110.2, Permit at subsection (b) and (e), and to §110.3 at subsection (c). No changes were made to §110.4. The new chapter will require that dentists who administer conscious sedation/anesthesia to patients, either orally or rectally, to obtain a permit to do so. The primary purpose of the new rules is to provide assurance to Texans that Texas dentists who administer conscious sedation through any route (those who administer conscious sedation parenterally, i.e., other than orally or rectally, are currently required to have a permit) have been adequately trained to do so. Depending on courses taken, a dental school graduate may not be fully trained to administer enteral conscious sedation. The new rules assure that such training will have been

obtained by those who administer such sedation. Administration of medication for pain relief only will not require a permit under these rules. The rules also provide requirements for monitoring patients who are sedated, documentation of procedures followed and prescribe discharge criteria.

When the Board conducted public hearings in the summer of 1998 and again in 1999 on the parenteral conscious sedation rules, many speakers, especially those from the Texas dental schools, urged the Board to include enteral conscious sedation in those rules. The Board President appointed an ad hoc committee to study the issues and to prepare enteral conscious sedation rules. The rules adopted are the result of the Board's review of that committee's recommendations with changes based on input from the public.

Written comments were received and a public hearing was conducted by the entire Board on January 26, 2001. Most, if not all, commenters generally approved of the rules and proposed improvements to the rules rather than objecting to the concept of the rules. The Board has made minor changes to the rules in response to comments made. A discussion of all comments follows.

Written comments were made by four individuals. One commenter made written comments and suggested two changes. The first was a recommendation that §110.2(e)(2)(B) be changed by deleting the requirement that the permitted dentist and his/her staff must maintain current certification in basic cardiopulmonary resuscitation (CPR) and replacing it with a one time requirement that a PALS course be taken. Even though that section of the rule addresses both the dentist and staff, its effect is primarily directed toward staff. In order for dentists to renew their licenses they must submit proof of current completion of a cardiopulmonary resuscitation course. Staff should not be required to have training at the intense level provided by PALS. A basic CPR course is adequate to prepare them to assist the dentist in the event of an emergency. Further, CPR training for dentist and staff should periodically be reinforced and a one time program cannot accomplish this.

The commenter also proposed that §110.3 be amended to allow a dentist to make use of the service of a certified registered nurse anesthetist (CRNA) to administer anesthesia in a hospital or surgery center setting. The rule at subsection (d)(4) provides that a dentist may not allow a CRNA to administer anesthesia in the dentist's office unless the dentist has a permit for the procedure being performed. In a hospital setting where the hospital is responsible for the administration of anesthesia, non-dentists who administer anesthesia are not affected by the board's rules.

Another commenter also indicated that he heartily endorsed the rules. He suggested that various definitions of "supervision" be included and that the term "continuous direct supervision" be printed in bold type face. His issue is that by defining all types of supervision in the rules and by highlighting the one that applies in the context of these rules the reader will have no question about which definition applies. The board is of the opinion that only definitions that apply should be included within the rule and that highlighting is unnecessary since there is only the one definition of supervision.

Another commenter also wrote and commented that §110.3(c) and (d) should be amended to make it clear that a permit is required when nitrous oxide/oxygen inhalation sedation is used with any enteral agent by changing (c) as follows: "Administration of nitrous oxide inhalation conscious sedation in combination

with enteral administration of any agent, including minor tranquilizers used for anxiolysis, used for any sedation procedure requiring a permit under board rules requires both an enteral conscious sedation permit and a nitrous oxide/oxygen inhalation conscious sedation permit."

His point is well taken as the proposed language requires a permit only when an enteral agent is being used for sedation purposes. The better view is that when any enteral agent is being used in combination with nitrous oxide/oxygen inhalation conscious sedation an enteral conscious sedation permit is required. Accordingly the language proposed by the commenter is adopted.

The same commenter also noted that subsection (d) of §110.3 could be interpreted by some readers to allow administration of potent benzodiazepines in combination with nitrous oxide/oxygen inhalation conscious sedation without a permit. The Board is of the opinion that the language change to subsection (c) discussed above makes it clear that such an interpretation is unreasonable.

Another commenter made written comments and made three suggestions. First, that "anesthesia services" be amended to read "anesthesia/sedation services". The board agrees and the term is changed in each place it shows up in all the rules. The commenter also suggested that §110.1(7) be amended to make it clear that the Board could require a facility inspection of a location where a permitted dentist is employed. The Board agrees with the commenters' point but the Board is of the opinion that the language should be changed beyond the insertion of the word "in" to avoid reference to "primary or satellite facilities". The language is changed as follows: "Facility inspection - an on-site inspection to determine if a facility where the applicant proposes to provide anesthesia/sedation is supplied, equipped, staffed and maintained in a condition to support provision of anesthesia/sedation services that meet the minimum standard of care; may be required by the State Board of Dental Examiners prior to the issuance of a sedation/anesthesia permit or any time during the term of the permit."

The commenter also proposed inclusion of a definition of the term "anesthesia/sedation services". The Board is of the opinion that the term is defined by the context of the entire set of rules, and that an attempt to define the term would not serve to clarify the issue.

Two other commenters appeared at the public hearing and in general offered support for the rules as published. Both, however, offered suggested changes.

The first speaker appeared on behalf of the Texas Dental Association. He proposed that the board include a definition of the term "enteral". The board agrees that a definition is appropriate, and proposes to amend §110.1 by adding new definition (18) as follows: "(18) Enteral sedation - sedation that is achieved by a route of administration through the alimentary tract either orally or rectally."

The Texas Dental Association representative also suggested adding a list of minor tranquilizers be included in §110.3(d) to avoid questions concerning who must be permitted. The ad hoc committee appointed by the Board devoted a great deal of time to the issue and determined that listing those agents requiring a permit before use would be difficult to administer for a number of reasons including the fact that such a list would frequently change as new drugs are developed and as existing drugs are

approved or accepted for oral use. More troubling than frequent changes to a list is the fact that many agents used for sedation are also used for analgesic and anxiolytic effect. To require that a dentist who, for example, wishes to orally administer Demerol for relief of pain to have an enteral conscious sedation permit simply because Demerol is also used for sedation is not reasonable. The Board recognizes that leaving it to the practitioner to define the purpose for which a medication is administered may result in a few individuals claiming that a permit is not needed when in fact medications are being administered for sedative effect. Nevertheless, the positive effect of these rules, the assurance that dentists who use enteral agents for sedation are trained to do so, far out weigh the possible negative mentioned. Should the Board attempt stricter rules, the legitimate outcry from the profession would likely be so great that the rules would not be adopted.

The Board will monitor the effectiveness of the rules and should they prove to be ineffective because of this "loophole" the Board can consider closing it.

Another individual appeared at hearing and proposed several changes addressed below. The commenter proposed adding a definition of "protective reflexes". The Board agrees and has added new definition (19) to §110.1 as follows: "(19) Protective reflexes - includes the ability to swallow water sprays and breath independently without coughing (i.e., laryngospasm) as well as maintain an unobstructed airway (i.e., lack of snoring and other signs of an obstructed airway). Severe and/or persistent coughing is probably indicative of a deep sedation level and partial loss of protective reflexes."

The commenter also suggested that §110.1(15) should be amended by changing the word "conscious" to "consciousness". The Board agrees and has made the change.

The commenter proposed amending Rule §110.1(3) to reflect that patients who are sleeping and whose only response to painful stimuli is a reflex withdrawal are not in a state of conscious sedation. The Board agrees and the last sentence of paragraph (3) is amended as follows: "...Further, patients who are sleeping and whose only response is reflex withdrawal from repeated painful stimuli would not be considered to be in a state of conscious sedation."

The commenter also proposed amending the definitions of deep sedation, §110.1(4) to show "sleep" as an example of depressed consciousness and to provide that a patient may lose the ability to independently maintain an airway on room air. The definition in the rule is the definition used by the American Dental Association in its anesthesia guidelines. The Board is of the opinion that it is an appropriate description for use in these rules.

The commenter also proposed that §110.2 be amended to provide for different permits for dentists who orally sedate children, and for those who orally sedate adults. The ad hoc committee also discussed this type of approach at great length and determined that requiring a permit only for administration of enteral conscious sedation for children or having multiple levels of permits was not the most effective way to fully address the concerns with enteral sedation. Further, two levels of permits would impose an additional administrative burden on the agency with very little, if any, benefit. The commenter proposed language changes to §110.2(e)(C) to address dentists who would be permitted to sedate children only. Since the rules do not provide for levels of permits there is no need for this change.

The commenter recommended amending §110.3(b) to provide that enteral sedation may only be used to achieve conscious sedation unless the practitioner has a deep sedation permit. These rules address only conscious sedation levels and are not intended to in any way affect administration of deep sedation by those dentists having a deep sedation permit. Further, an individual who is permitted under these rules only is not permitted to administer deep sedation, whatever the route.

The commenter also proposed amending §110.3(h)(4) to eliminate an exception for brief procedures on the basis that the period of sedation will outlast the time of the procedure. Once a procedure is completed and the patient is in recovery the section of the rule addressing recovery will control. That section (i) requires continual monitoring of vital signs until oxygenation and circulation are stable.

The commenter also proposed that §110.3(h)(2) be amended to emphasize a need to monitor patients on room air unless oxygen saturation of the blood falls below 93%. This change falls under the heading of the knowledge needed to safely administer enteral conscious sedation. A permit will not be issued to licensees until they have completed appropriate training. This addition is not needed.

The last two proposals made by the commenter are similar to the comment addressed above in that they would add verbiage to the rules that is part of the information that is included in the training necessary to obtain an enteral conscious sedation permit. The first is a proposal to add a statement that use of nitrous oxide/oxygen inhalation conscious sedation may obscure respiratory depression because nitrous oxide/oxygen inhalation conscious sedation is administered with oxygen. The second is an admonition to the permittee to be mindful of the pharmacological half life of the drugs utilized.

Finally, the Board on its own has amended §110.2(e)(1)(A) to include a requirement that completion of training must include documentation that the applicant has administered enteral conscious sedation in a minimum of five cases.

The new rules are adopted under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001(a) which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry to protect the public health and safety.

#### §110.1. Definitions.

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

- (1) Analgesia -- the diminution or elimination of pain.
- (2) Competent -- displaying special skill or knowledge derived from training and experience.
- (3) Conscious Sedation -- a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command, and that is produced by a pharmacologic or non-pharmacologic method, or a combination thereof. In accord with this particular definition, the drugs and/or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Further, patients who are sleeping and whose only response is reflex withdrawal from repeated painful stimuli would not be considered to be in a state of conscious sedation.

(4) Deep Sedation -- an induced state of depressed consciousness accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or respond purposefully to verbal command, and is produced by a pharmacological or non-pharmacological method, or a combination thereof.

(5) Direct supervision -- the dentist responsible for the sedation/anesthesia procedure shall be physically present in the office and shall be continuously aware of the patient's physical status and well being.

(6) Facility -- the office where a permit holder practices dentistry and provides anesthesia/sedation services.

(7) Facility inspection -- an on-site inspection to determine if a facility where the applicant proposes to provide anesthesia/sedation is supplied, equipped, staffed and maintained in a condition to support provision of anesthesia/sedation services that meet the minimum standard of care; may be required by the State Board of Dental Examiners prior to the issuance of a sedation/anesthesia permit or any time during the term of the permit.

(8) General anesthesia -- an induced state of unconsciousness accompanied by partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, and is produced by a pharmacological or non-pharmacological method or a combination thereof.

(9) Immediately available -- on-site in the facility and available for immediate use.

(10) Local anesthesia -- the elimination of sensations, especially pain, in one part of the body by the regional injection of a drug.

(11) May -- indicates freedom or liberty to follow a reasonable alternative.

(12) Must or shall -- indicates an imperative need and/or duty; an essential or indispensable item; mandatory.

(13) Behavioral management -- to modify pharmacologically and/or psychologically behavior to a level that dental treatment can be performed effectively and efficiently.

(14) Enteral conscious sedation-- light to mild conscious sedation administered not for analgesic effect, but primarily for behavioral management.

(15) Anti-anxiety sedative -- a sedative agent administered in a dosage intended to reduce anxiety without diminishing consciousness or protective reflexes.

(16) Minor tranquilizer -- a pharmacological agent which allows for uninterrupted interactive ability in a totally awake patient with no compromise in the ability to maintain a patent airway continuously and without assistance.

(17) Anxiolysis -- pharmacological reduction of anxiety through the administration of a minor tranquilizer, which allows for uninterrupted interactive ability in a totally awake patient with no compromise in the ability to maintain a patent airway continuously and without assistance.

(18) Enteral sedation -- sedation that is achieved by a route of administration through the alimentary tract either orally or rectally.

(19) Protective reflexes -- includes the ability to swallow water sprays and breath independently without coughing (i.e., laryngospasm) as well as maintain an unobstructed airway (i.e., lack of snoring and other signs of an obstructed airway). Severe and/or persistent

coughing is probably indicative of a deep sedation level and partial loss of protective reflexes.

*§110.2. Permit.*

(a) A dentist licensed to practice in Texas who desires to use enteral conscious sedation either, must have a parenteral conscious sedation anesthesia permit or a deep/general sedation anesthesia permit issued pursuant to board rule or must obtain an enteral conscious sedation permit from the State Board of Dental Examiners. A permit is not required for administration of Schedule II drugs prescribed for pain control.

(1) A permit may be obtained by completing an application form approved by the State Board of Dental Examiners, a copy of which may be obtained from the SBDE.

(2) The application form must be filled out completely and appropriate fees paid.

(3) Prior to issuance of a sedation/anesthesia permit the Board may require that the applicant undergo a facility inspection or further review of credentials. The SBDE may direct an Anesthesia Consultant, appointed pursuant to board rule to assist in this inspection or review. The applicant will be notified in writing if an inspection is required and provided with the name of an Anesthesia Consultant who will coordinate the inspection. The applicant must make arrangements for completion of the inspection within 180 days of the date the notice is mailed. An extension of no more than 90 days may be granted if the designated Anesthesia Consultant requests one.

(4) An applicant for a sedation/anesthesia permit must be licensed and in good standing with the State Board of Dental Examiners. For purposes of these rules "good standing" means that a licensee is not suspended, whether or not the suspension is probated. Applications from licensees who are not in good standing will not be approved.

(b) Once a permit is issued, the State Board of Dental Examiners upon payment of required fees shall automatically renew the permit annually unless after notice and opportunity for hearing the Board finds the permit holder has, or is likely to provide anesthesia/sedation services in a manner that does not meet the minimum standard of care. At such hearing the Board shall consider factors including patient complaints, morbidity, mortality, and anesthesia consultant recommendations.

(c) Annual dental license renewal certificates shall include the annual permit renewal, except as provided for in subsection (b) of this section and shall be assessed an annual renewal fee of \$5.00 payable with the license renewal. New permit fees are \$28.75 payable with the application for permit.

(d) Permit Restrictions: the Board may elect to issue a temporary enteral conscious sedation permit which will expire on a date certain. A full sedation/anesthesia permit may be issued after the dentist has complied with requests of the Board which may include, but shall not be limited to, review of the dentist's anesthetic technique, facility inspection and/or review of patient records to ascertain that the minimum standard of care is being met. If a full permit is not issued, the temporary permit will expire on the stated date, and no further action by the State Board of Dental Examiners will be required, and no hearing will be conducted.

(e) Educational/Professional Requirements:

(1) To become permitted to administer enteral conscious sedation, the dentist must satisfy one of the following criteria:

(A) must have completed training consistent with that described in Part I or Part III of the American Dental Association

(ADA) Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry, and have documented administration of enteral conscious anesthesia/sedation in a minimum of five cases;

(B) must have completed an ADA accredited post-doctoral training program which affords comprehensive and appropriate training necessary to administer and manage enteral conscious sedation;

(C) must have completed the two-day conscious sedation course in Pediatric Dentistry approved and developed by the American Academy of Pediatric Dentistry; or

(D) must have completed a two day enteral conscious sedation course approved by the SBDE.

(2) The following shall apply to the administration of enteral conscious sedation in the dental office:

(A) the operating dentist must complete at least every three years appropriate Continuing Education in enteral conscious sedation.

(B) the operating dentist and his/her clinical staff must maintain current certification in basic cardiopulmonary resuscitation given by the American Heart Association or the American Red Cross.

*§110.3. Permit Requirements and Clinical Provisions.*

(a) Enteral conscious sedation may be induced and maintained by a permitted dentist licensed by the State of Texas and practicing in Texas, a physician anesthesiologist licensed by the Texas State Board of Medical Examiners, or a Certified Registered Nurse Anesthetist (CRNA) licensed in Texas. When a Certified Registered Nurse Anesthetist (CRNA) is permitted to function under the supervision of a dentist, in the dental office, provision of enteral conscious sedation by a CRNA shall require the operating dentist to be permitted for its utilization.

(b) Enteral conscious sedation is indicated for use only for conscious sedation as defined in Rule 110.1 of this title (relating to Definitions). Enteral conscious sedation is not indicated for use to achieve deep sedation.

(c) Administration of nitrous oxide/oxygen inhalation conscious sedation in combination with enteral administration of any agent, including minor tranquilizers used for anxiolysis, requires both an enteral conscious sedation permit and a nitrous oxide/oxygen inhalation conscious sedation permit.

(d) Minor tranquilizers used for anxiolysis may be prescribed for administration outside of the dental office when pre-procedure instructions are likely to be followed. Medications such as chloral hydrate and all drugs included in the Drug Enforcement Administration (DEA) Controlled Substances Schedule II must not be administered outside of the dental office for sedation purposes. Medications other than minor tranquilizers used for anxiolysis administered outside of the office require a permit.

(e) Standard of care requirements. Each dentist must maintain the minimum standard of care as detailed in board rules, and shall in addition:

(1) adhere to the clinical requirements as detailed in subsection (f) of this section;

(2) maintain under continuous direct supervision auxiliary personnel who shall be capable of reasonably assisting in procedures, problems, and emergencies incident to the use of enteral conscious sedation.

(3) maintain current certification in basic cardiopulmonary resuscitation for the assistant staff by having them pass a course given by the American Heart Association or the American Red Cross; and

(4) not allow an enteral conscious sedation procedure to be performed in his/her office by a Certified Registered Nurse Anesthetist (CRNA) unless the dentist holds a permit issued by the State Board of Dental Examiners for the procedure being performed. This provision addresses dentists and is not intended to address the scope of practice of persons licensed by any other agency.

(f) Clinical Requirements. Each dentist must meet the following clinical requirements for utilization of enteral conscious sedation:

(1) Patient Evaluation. Patients who are administered enteral conscious sedation must be suitably evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II), this may be simply a review of their current medical history and medication use. However, with individuals who may not be medically stable or who have a significant health disability (ASA III, IV) consultation with their primary care physician or consulting medical specialist regarding potential procedure risk is recommended.

(2) Pre-Procedure preparation, informed consent:

(A) the patient and/or guardian must be advised of the procedure associated with the delivery of the enteral conscious sedation.

(B) equipment must be evaluated and maintained for proper operation.

(C) baseline vital signs should be obtained at the discretion of the operator depending on the medical status of the patient and the nature of the procedure to be performed.

(D) dentists administering enteral conscious sedation shall use sedative agents that he/she is competent to administer and shall administer such agents in a manner that is within the standard of care.

(g) Personnel and Equipment: In addition to the dentist, at least one member of the assistant staff should be present during the administration of enteral conscious sedation.

(h) Monitoring and Documentation:

(1) Patients who have been administered enteral conscious sedation must be monitored during waiting periods prior to operative procedures. A responsible adult given appropriate written pre-procedural instruction may provide such monitoring. The patient should be monitored for alertness, responsiveness, breathing and skin coloration.

(2) Dentists administering enteral conscious sedation must maintain direct supervision of the patient during the operative procedure and for such a period of time necessary to establish pharmacologic and physiologic vital sign stability.

(A) Oxygenation. Color of mucosa, skin or blood shall be continually evaluated. Oxygen saturation must be evaluated continuously by pulse oximetry, except as provided in paragraph (4) of this section.

(B) Ventilation. Must perform observation of chest excursions and/or auscultation of breath sounds.

(C) Circulation. Must take and record an initial blood pressure and pulse and thereafter as appropriate except as provided in paragraph (4) of this section.

(3) An appropriate time oriented anesthetic record must be maintained including documentation of individual administering the drug(s) and showing the name(s) of drug(s) and dosage(s) used.

(4) In selected circumstances, enteral conscious sedation may be utilized without pulse oximetry or taking blood pressure and pulse. These circumstances include: sedation administered for brief procedures; extremely young children, patients who cooperate poorly due to unwillingness or inability to follow instructions, or patients whose level of anxiety will tend to be heightened by monitoring. When these situations occur, the dentist responsible for administering enteral conscious sedation must document the reasons preventing the recommended monitoring.

(i) Recovery and Discharge:

(1) recovery from enteral conscious sedation must include:

(A) positive pressure oxygen and suction equipment must be immediately available in the recovery area and/or operatory;

(B) continual monitoring of vital signs when the sedation/anesthesia is no longer being administered; i.e., the patient must have direct continuous supervision until oxygenation, and circulation are stable and the patient is appropriately responsive for discharge from the facility;

(C) the dentist must determine and provide for documentation that oxygenation, circulation, activity, skin color and level of consciousness are appropriate and stable prior to discharge;

(D) must provide explanation and documentation of written postoperative instructions to patient and/or a responsible adult at time of discharge;

(E) the dentist must determine that the patient has met the following discharge criteria prior to leaving the office:

(i) cardiovascular function satisfactory and stable;

(ii) airway patency uncompromised and satisfactory;

(iii) patient easily arousable and protective reflexes intact;

(iv) state of hydration adequate;

(v) patient can talk, if applicable;

(vi) patient can sit unaided, if applicable;

(vii) patient can ambulate, if applicable, with minimal assistance;

(viii) For the child who is very young or disabled, and incapable of the usually expected responses, the pre-sedation level of responsiveness or the level as close as possible for that child should be achieved.

(ix) Responsible individual is available.

(2) patients who have unusual reactions to enteral conscious sedation must be assisted and monitored either in an operatory chair or recovery room until stable for discharge;

(3) the dentist must determine that the patient is appropriately responsive prior to discharge.

(j) Emergency Management. The dentist, personnel and facility must be prepared to treat emergencies that may arise from the administration of enteral conscious sedation, and must have the ability to provide positive pressure ventilation with 100% oxygen with an age appropriate device.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jeffrey Hill

Executive Director

State Board of Dental Examiners

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For further information, please call: (512) 463-6400



## CHAPTER 111. PROFESSIONAL CORPORATIONS

### 22 TAC §111.6

The State Board of Dental Examiners adopts the repeal of Chapter 111, Professional Corporations and §111.6, Requirements, as part of the rules review process and in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167, without changes to the proposed text as published in the February 16, 2001 issue of the *Texas Register* (26 TexReg 1462).

The rule, last reviewed in 1984, impermissibly restricts the application of the Professional Corporations Act, Article 1528e, Texas Revised Civil Statutes. The rule as written limits the incorporators of a dental practice to licensed dentists. There is no basis for such a limitation in the statutes. Only a licensed dentist can be a director, officer or shareholder of a professional corporation formed by dentists, but any individual is allowed to be an incorporator. The role of the incorporator is largely limited to the act of execution of the articles of incorporation and restrictions on who may serve as incorporators have largely been eliminated.

No comments were received regarding the adoption of the proposal.

The rule is adopted for repeal under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jeffrey Hill

Executive Director

State Board of Dental Examiners

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## CHAPTER 113. REQUIREMENTS FOR DENTAL OFFICES

### 22 TAC §113.2

The State Board of Dental Examiners adopts amendments to §113.2, X-Ray Laboratories, in conjunction with its review of Chapter 113, Requirements for Dental Offices, and in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167, without changes to the proposed text as published in the February 16, 2001, issue of the *Texas Register* (26TexReg1462).

The new language of subsection (a) clarifies that in-house dental laboratories are regulated by the Dental Practice Act and must be on the premises of a dental office. The new language substitutes the words "Texas licensed dentist" for "legally practicing dentist." The new language is more precise. The new language about supervision acknowledges that ultimate responsibility for those activities that occur in a dental office, such as the taking of x-rays, rests with a licensed dentist and eliminates confusion.

New subsection (b) adds the requirement that the lead apron have a thyroid collar and is also corrected for grammar. New subsection (c) is also restructured for grammatical consistency.

The amendments provide for a rule that is easier to read and understand and that reflects the realities of modern dental practices.

No comments were received regarding adoption of the proposal.

The amended rule is adopted under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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### 22 TAC §113.3

The State Board of Dental Examiners adopts the repeal of §113.3, Office Leases, in conjunction with its review of Chapter 113, Requirements for Dental Offices and in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167, without changes to the proposed text as published in the February 16, 2001, issue of the *Texas Register* (26TexReg1463).

The repeal of the rule provides for the elimination of a rule that was obsolete, irrelevant and unnecessary duplicative.

Rule 113.3 addresses a narrow segment of the spectrum of improper influence on the independent professional judgment of



a dentist by persons other than dentists and is provided for in greater detail and clarity in subsection (c) paragraph (1) of Rule 109.500, Improper Influence on Professional Judgment, effective February 7, 2000. The intent of Rule 113.3 was to prevent the improper sharing of dental fees with a non-dentist. The intent is still valid and is well served by the language of Rule 109.500. Rule 109.500 has been repealed contemporaneously with adoption of new Rule 108.70, which will supplant the current Rule 109.500. Because the language of rule 113.3 is unnecessarily duplicative, it is repealed.

No comments were received regarding adoption of the proposal.

The repeal is adopted under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 463-6400



## 22 TAC §113.4

The State Board of Dental Examiners adopts the repeal of §113.4, Retail Leases, in conjunction with its review of Chapter 113, Requirements for Dental Offices and in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167, without changes to the proposed text as published in the February 16, 2001, issue of the *Texas Register* (26TexReg1458).

The intent of the language of Rule 113.4 as written is exhaustively addressed in new rule 108.1, Professional Responsibility, which supplanted former rule 109.103. The former rule 113.4 was intended to prevent the unauthorized practice of dentistry by commercial establishments. A dental license is issued to a person who may structure the operation of his/her practice in any one of several business entities, including partnerships, associations and corporations so long as such structures are lawful. Rule 113.4 is inappropriate, obsolete, irrelevant and unnecessarily duplicative and is proposed for repeal.

No comments were received regarding adoption of the proposal.

The repeal is adopted under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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 28, 2001.

TRD-200101846

Jeffrey Hill

Executive Director

State Board of Dental Examiners

Effective date: April 17, 2001

Proposal publication date: February 16, 2001

For further information, please call: (512) 463-6400



## CHAPTER 116. DENTAL LABORATORIES

### 22 TAC §116.2

The State Board of Dental Examiners adopts amendments to §116.2, Dental Technicians in conjunction with its review of Chapter 116 Dental Laboratories and in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167, without changes to the proposed text as published in the February 16, 2001 issue of the *Texas Register* (26TexReg1464).

The reference to Article 4551, Section 1 has been changed to refer to Section 266.001, Occupations Code, reflecting the codification of the Dental Practice Act into the Occupations Code, effective September 1, 1999. Language is also amended to comply with statutory language, which states that a dental technician may be certified by a nationally recognized board and does not specify a particular board.

The amended rule provides assurance to the public that the statutory references are current and that the rule accurately tracks statutory language

No comments were received regarding adoption of the proposal.

The amended rule is adopted under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §266.102(b) which authorizes the Board to adopt rules affecting dental laboratories and §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jeffrey Hill

Executive Director

State Board of Dental Examiners

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For further information, please call: (512) 463-6400



### 22 TAC §116.3

The State Board of Dental Examiners adopts amendments to §116.3, Requirements, in conjunction with its review of Chapter 116, Dental Laboratories, and in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167, without changes to the proposed text as

published in the February 16, 2001 issue of the *Texas Register* (26TexReg1464).

The references to articles in the former Dental Practice Act are changed to the Occupations Code, effective September 1, 1999. The 76th Legislature also enacted Senate Bill 964, referred to properly in the amendment, which impacted on the former Dental Practice Act provisions dealing with registration of laboratories.

Amendments to subsection (c) are intended to clarify that, in order to satisfy the requirement for a certified dental technician, that person must be present at the dental laboratory and working as an employee of the laboratory. The former language was vague and difficult to interpret. The last sentence in subsection (c) is deleted. The requirement is that a certified dental technician work as an employee for a dental laboratory a minimum of 30 hours per week. It is conceivable, albeit doubtful, that a technician could serve more than one laboratory a minimum of 30 hours per week. It is not unheard of for employees to work 60 hour weeks and this restriction that a CDT may be the designated CDT for only one laboratory per year will not withstand constitutional scrutiny.

The amended rule provides assurance to the public that the requirements for registration and operation of a dental laboratory in Texas will be in compliance with the most recent legislation and reasonable and fair in their application.

No comments were received regarding adoption of the proposal.

The amended rule is adopted under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §266.102 (b) which authorizes the Board to adopt rules affecting dental laboratories; §266.152 (d) which requires dental laboratories to have a CDT working on premise 30 hours per week and §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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 28, 2001.

TRD-200101844

Jeffrey Hill

Executive Director

State Board of Dental Examiners

Effective date: April 17, 2001

Proposal publication date: February 16, 2001

For further information, please call: (512) 463-6400



## 22 TAC §116.4

The State Board of Dental Examiners adopts amendments to §116.4 Continuing Education in conjunction with its review of Chapter 116 Dental Laboratories and in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167, without changes to the proposed text as published in the February 16, 2001 issue of the *Texas Register* (26TexReg1466).

Amendments to §116.4 at subsection (b) are to correct grammar only. The phrase "...shall be comprised of..." is changed to read "...shall comprise...". Language in subsection (a) paragraph

(1) and subsection (c) is amended to comply with statutory language, which states that a dental technician may be certified by a nationally recognized board and does not specify a particular board.

The amended rule provides assurance to the public that the language of the rule will be easier to read and accurately tracks statutory language.

No comments were received regarding adoption of the proposal.

The amended rule is adopted under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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 28, 2001.

TRD-200101843

Jeffrey Hill

Executive Director

State Board of Dental Examiners

Effective date: April 17, 2001

Proposal publication date: February 16, 2001

For further information, please call: (512) 463-6400



## 22 TAC §116.5

The State Board of Dental Examiners adopts amendments to §116.5 Exemption in conjunction with its review of Chapter 116 Dental Laboratories and in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167, without changes to the proposed text as published in the February 16, 2001 issue of the *Texas Register* (26TexReg1466).

Subsection (a) is amended to comply with Senate Bill 964, Section 25, effective September 1, 1999. Paragraphs (1) and (2) are changed to modify the language to comply with statutory language. Subsection (b) is amended to make it clear that a dental technician must be present and working as an employee in the dental laboratory.

The amended rule provides assurance to the public that the rule complies with statutory language and is easier to understand.

No comments were received regarding adoption of the proposal.

The amended rule is adopted under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §266.102 which authorizes the Board to adopt rules affecting dental laboratories and §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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 28, 2001.

TRD-200101842

Jeffry Hill  
Executive Director  
State Board of Dental Examiners  
Effective date: April 17, 2001  
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For further information, please call: (512) 463-6400



## 22 TAC §116.20

The State Board of Dental Examiners adopts amendments to §116.20 Definitions and in conjunction with its review of Chapter 116 Dental Laboratories in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167, without changes to the proposed text as published in the February 16, 2001 issue of the *Texas Register* (26TexReg1467).

Changes in statutory references have been made to reflect the codification of the Dental Practice Act into the Occupations Code, effective September 1, 1999.

The amended rule provides assurances to the public that statutory references are current.

No comments were received regarding adoption of the proposal.

The amended rule is adopted under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §266.102 which authorizes the Board to adopt rules affecting dental laboratories and §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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 28, 2001.

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Jeffry Hill  
Executive Director  
State Board of Dental Examiners  
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For further information, please call: (512) 463-6400



## 22 TAC §116.21

The State Board of Dental Examiners adopts amendments to §116.21, Dental Laboratory and in conjunction with its review of Chapter 116 Dental Laboratories in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167, without changes to the proposed text as published in the February 16, 2001 issue of the *Texas Register* (26TexReg1468).

Changes in statutory references have been made to reflect the codification of the Dental Practice Act into the Occupations Code.

The amended rule provides assurances to the public that statutory references are current.

No comments were received regarding adoption of the proposal.

The amended rule is adopted under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §266.102 which authorizes the Board to adopt rules affecting dental laboratories and §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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 28, 2001.

TRD-200101840  
Jeffry Hill  
Executive Director  
State Board of Dental Examiners  
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For further information, please call: (512) 463-6400



## 22 TAC §116.22

The State Board of Dental Examiners adopts amendments to §116.22, In House Dental Laboratory in conjunction with its review of Chapter 116 Dental Laboratories and in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167, without changes to the proposed text as published in the February 16, 2001, issue of the *Texas Register* (26TexReg1458).

The language of the rule is changed to correct grammar and to reflect the changes in statutory references by the codification of the Dental Practice Act into the Occupations Code, effective September 1, 1999. The clause "...and the laboratory does not employ more than two dental technicians..." is changed to read "An in house laboratory may not employ more than two dental technicians."

The amended rule provides assurance to the public that statutory references are current and that the language of the rule will be easier to understand.

No comments were received regarding adoption of the proposal.

The amended rule is adopted under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §266.102 which authorizes the Board to adopt rules affecting dental laboratories and §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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 28, 2001.

TRD-200101839

Jeffrey Hill  
Executive Director  
State Board of Dental Examiners  
Effective date: April 17, 2001  
Proposal publication date: February 16, 2001  
For further information, please call: (512) 463-6400



## 22 TAC §116.24

The State Board of Dental Examiners adopts amendments to §116.24, Registration Application and in conjunction with its review of Chapter 116 Dental Laboratories in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167, without changes to the proposed text as published in the February 16, 2001, issue of the *Texas Register* (26TexReg1469).

The language of the rule is amended to reflect changes in statutory references of the Dental Practice Act into the Occupations Code, effective September 1, 1999.

The amended rule provides assurances to the public that statutory references are current.

No comments were received regarding adoption of the proposal.

The amended rule is adopted under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §266.102 which authorizes the Board to adopt rules affecting dental laboratories and §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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 28, 2001.

TRD-200101838  
Jeffrey Hill  
Executive Director  
State Board of Dental Examiners  
Effective date: April 17, 2001  
Proposal publication date: February 16, 2001  
For further information, please call: (512) 463-6400



## 22 TAC §116.25

The State Board of Dental Examiners adopts amendments to §116.25, Responsibility and in conjunction with its review of Chapter 116, Dental Laboratories in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167, without changes to the proposed text as published in the February 16, 2001, issue of the *Texas Register* (26 TexReg 1458).

The language of the rule is amended to reflect changes in statutory references of the Dental Practice Act into the Occupations Code, effective September 1, 1999.

The amended rule provides assurance to the public that statutory references are current.

No comments were received regarding adoption of the proposal.

The amended rule is adopted under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §266.102 which authorizes the Board to adopt rules affecting dental laboratories and §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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 28, 2001.

TRD-200101837  
Jeffrey Hill  
Executive Director  
State Board of Dental Examiners  
Effective date: April 17, 2001  
Proposal publication date: February 16, 2001  
For further information, please call: (512) 463-6400



## CHAPTER 119. SPECIAL AREAS OF DENTAL PRACTICE

### 22 TAC §119.6

The State Board of Dental Examiners adopts amendments to §119.6, Pediatric Dentistry and in conjunction with its review of Chapter 119, Special Areas of Dental Practice, in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167, without changes to the proposed text as published in the February 16, 2001, issue of the *Texas Register* (26 TexReg 1470).

The language of the rule is amended to comply with the definition of the specialty recommended and adopted in 1995 by the American Dental Association. The Board has determined that the new definition is a refinement of the original definition and contains more precise language.

The amended rule provides assurance to the public that the language of the definition of pediatric dentistry comports with an updated and acceptable interpretation of this special area of dental practice.

No comments were received regarding adoption of the proposal.

The amended rule is adopted under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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 28, 2001.

TRD-200101836

Jeffry Hill  
Executive Director  
State Board of Dental Examiners  
Effective date: April 17, 2001  
Proposal publication date: February 16, 2001  
For further information, please call: (512) 463-6400

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**22 TAC §119.7**

The State Board of Dental Examiners adopts amendments to §119.7 Periodontology and in conjunction with its review of Chapter 119 Special Areas of Dental Practice in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167, without changes to the proposed text as published in the February 16, 2001 issue of the *Texas Register* (26TexReg1470).

The language of the rule is amended to comply with the definition of the specialty recommended and adopted in 1995 by the American Dental Association. The Board has determined that the new definition is a refinement of the original definition and contains more precise language.

The amended rule provides assurance to the public that the language of the definition of periodontics comports with an updated and acceptable interpretation of this special area of dental practice.

No comments were received regarding adoption of the proposal.

The amended rule is adopted under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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 28, 2001.

TRD-200101835

Jeffry Hill

Executive Director

State Board of Dental Examiners

Effective date: April 17, 2001

Proposal publication date: February 16, 2001

For further information, please call: (512) 463-6400

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**CHAPTER 125. APPLICATIONS FOR SPECIAL CONSIDERATION OR EXCEPTION TO BOARD RULES**

**22 TAC §125.1**

The State Board of Dental Examiners adopts amendments to §125.1 Board to Rule on Requests for Exceptions to Rules, and in conjunction with its review of Chapter 125 Applications for Special Consideration or Exception to Board Rules in accordance with the General Appropriations Act of 1997, Article IX, Acts of

the 75th Legislature 1997, §167, without changes to the proposed text as published in the February 16, 2001 issue of the *Texas Register* (26TexReg1471).

Rule 125.1 was adopted in 1976 at a time when the Board conducted adjudicative hearings under the Administrative Procedure and Texas Register Act. Hearings are now conducted by the State Office of Administrative Hearings (SOAH). The rule, as written, requires notice and hearing before an exception to the rules can be considered. Many of the former rules concerning practices and procedures before the agency have been supplanted by provisions of the Administrative Procedure Act and SOAH rules. The Board has determined that it is appropriate to have a vehicle for applicants to request an exception to the rules, so long as such appearance does not involve a discussion of the merits of a pending investigation or contested case that is scheduled for hearing at SOAH.

The amended rule provides an avenue to request exceptions to Board rules that is easily understood and followed.

No comments were received regarding adoption of the proposal.

The amended rule is adopted under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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 28, 2001.

TRD-200101834

Jeffry Hill

Executive Director

State Board of Dental Examiners

Effective date: April 17, 2001

Proposal publication date: February 16, 2001

For further information, please call: (512) 463-6400

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**PART 19. POLYGRAPH EXAMINERS BOARD**

**CHAPTER 395. CODE OF OPERATING PROCEDURE OF POLYGRAPH EXAMINERS**

**22 TAC §395.17**

The Polygraph Examiners Board adopts an amendment to §395.17, concerning Code of Operating Procedure of Polygraph Examiners, without changes to the proposed text as published in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10615).

The section is amended to replace the word papers with documents.

This action is done due to the Board's review of the chapter.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Polygraph Examiners Act, Article 4413 (29cc), §6, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Article 4413 (29cc).

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 28, 2001.

TRD-200101809

Frank DiTucci

Executive Director

Polygraph Examiners Board

Effective date: April 17, 2001

Proposal publication date: October 27, 2000

For further information, please call: (512) 424-2058



## TITLE 25. HEALTH SERVICES

### PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

#### CHAPTER 401. SYSTEM ADMINISTRATION SUBCHAPTER D. CONTRACTS MANAGEMENT FOR COMMUNITY-BASED SERVICES

##### 25 TAC §§401.341 - 401.355

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeals of §§401.341 - 401.355 of Chapter 401, Subchapter D, concerning contracts management for community-based services, without changes to the proposal as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12591). New §§412.51 - 412.64 of new Chapter 412, Subchapter B, concerning the contracts management for local authorities, which replace the repealed sections, are contemporaneously adopted in this issue of the *Texas Register*.

The repeals allow for the adoption of new sections governing contracts management for local authorities.

No comment on the proposal was received.

These sections are repealed under the Texas Health and Safety Code, §532.015, which provides the Texas MHMR Board (board) with broad rulemaking authority, and §534.052(a), which requires the board to adopt rules that it considers necessary and appropriate to ensure the adequate provision of community services through a local authority; §534.017, which authorizes TDMHMR to allow local authorities to participate in TDMHMR's purchasing contracts or group purchasing program; and §534.061, which requires TDMHMR to develop mechanisms for periodically monitoring the services of a provider who contracts with a local authority to provide community services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 2, 2001.

TRD-200101900

Andrew Hardin

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Effective date: April 22, 2001

Proposal publication date: December 22, 2000

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



## CHAPTER 412. LOCAL AUTHORITY RESPONSIBILITIES SUBCHAPTER B. CONTRACTS MANAGEMENT FOR LOCAL AUTHORITIES

### 25 TAC §§412.51 - 412.64

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§412.51 - 412.64 of new Chapter 412, Subchapter B, concerning contracts management for local authorities. Sections 412.52 - 412.57, 412.62, and 412.63 are adopted with changes to the proposed text as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12592). Sections 412.51, 412.58 - 412.61, and 412.64 are adopted without changes. The repeals of §§401.341 - 401.355 of Chapter 401, Subchapter D, concerning contracts management for community-based services, which the new sections would replace, are contemporaneously adopted in this issue of the *Texas Register*.

The new subchapter governs the management of local authority contracts for all goods and services and requires any contract award and renewal to meet best value as determined by considering all relevant factors.

The new subchapter was proposed as governing the management of local authority contracts for goods and community services that were specifically identified in the performance contract. However, TDMHMR has expanded the subchapter's application to include local authority contracts for *all goods and services*. Proposed language in §412.54(k) indicated that local authorities must comply with Uniform Grant and Contracts Management Standards (UGMS) when contracting for goods and community services that were specifically identified in the performance contract. Broadening the scope of the subchapter's application does not impose additional requirements on a local authority because as a "subrecipient" or "subgrantee" under UGMS, local authorities currently must purchase all goods and services in accordance with UGMS.

Minor changes have been made throughout the subchapter for clarity, to correct grammatical errors, and to be consistent with the changes made to the subchapter's application. Definitions have been added for "best value" and "intellectual property." The definition for "community services" has been modified and incorporated into a new definition for "services." The new definition for "services" also defines "non-community services" as all services other than community services. The definitions of "contract," "contractor," "goods," "performance contract," and "solicitation" have been modified for clarity or to be consistent with other changes. Language relating to proper ownership of goods proposed in §412.54(f) has been deleted because proper ownership of goods specified in the performance contract should be established in the performance contract, and therefore, is governed

by rules relating to contracts management for TDMHMR facilities and Central Office, which was proposed as 25 TAC Chapter 417, Subchapter B, in the December 29, 2000, issue of the *Texas Register*. Language was added to §412.56(a) to clarify that a local authority is not prohibited from amending a community services contract to add a new community service if the contract was procured through open enrollment.

Written comment on the proposal was received from the Betty Hardwick Center, Abilene; The Texas Council of Community MHMR Centers, Austin; the Parent Association for the Retarded of Texas (PART), Austin; and the parent of a state school resident, Garland.

Regarding contracting with former employees in §412.54(d), one commenter asked if the provision meant that a local authority employee who "participated" in negotiating a contract with a private provider in "fiscal year 1" could not resign, become employed by the private provider, and then negotiate and contract with the local authority on behalf of the private provider for the same type of contract in "fiscal year 2." The commenter also asked if the two contracts would be considered two different "particular matters." TDMHMR responds that since every contracting situation is unique, whether or not the scenario presented by the commenter is permitted would depend on the facts in each situation. TDMHMR must comply with a similar requirement and determines the legality of each situation on an individual basis. TDMHMR notes that the provision, which originates in state statute (Texas Health and Safety Code, §534.007), currently applies to a former officer or employee of a community MHMR center. TDMHMR is extending the requirement to local authorities by this rule.

Regarding proper ownership of goods in §412.54(f), one commenter expressed concern about how the provision would impact a local authority and asked if a good could be amortized if the local authority did not actually own it. Regarding (f)(2), the commenter asked how proper ownership is determined. The commenter also asked if the provision implied that TDMHMR would require a local authority to transfer its good or goods to another entity upon TDMHMR's designation of that entity as the new local authority. TDMHMR responds that there would be no need to amortize because the term of a performance contract is 12 months. A good purchased by the local authority pursuant to its performance contract would be paid in full within that 12 months, thereby eliminating the need to amortize, regardless of who owned the good. Regarding the determination of proper ownership, TDMHMR responds that the decision would be made on a case-by-case basis by considering the monetary value of the property and its future usefulness. TDMHMR notes that language relating to proper ownership of goods proposed in §412.54(f) has been deleted because proper ownership of goods specified in the performance contract should be established in the performance contract, and therefore, is governed by rules relating to contracts management for TDMHMR facilities and Central Office. Regarding transfer of a local authority good(s) to a newly designated local authority, TDMHMR responds that the decision would be made on a case-by-case basis during discussions with the government officials in the local service area who appoint the board of the outgoing local authority. The transfer of local authority functions and responsibilities from one entity to another would require a transition plan that, among other things, addressed the possible transfer of specific goods (tangible personal property and intellectual property related to the performance of authority functions) from the outgoing local authority to the incoming local authority.

Regarding relevant factors used in determining best value in §412.55(b)(5), a commenter requested that "maintenance agreement" be defined. TDMHMR responds that the term generally means an agreement to maintain property, such as routine cleaning and repair of office equipment or vehicles. TDMHMR declines to add a definition to the rule because it may limit the term's meaning as intended by statute (Texas Health and Safety Code, §533.016(c)(5)).

Regarding "the character, responsibility, integrity, reputation, and experience of the respondent" as a relevant factor used in determining best value in §412.55(b)(15), one commenter asked how such criteria are to be applied. TDMHMR responds that the local authority is responsible for determining which factors are relevant to the procurement and how the relevant factors are to be applied to each procurement. TDMHMR notes that local authorities, when determining lowest and best bid in accordance with the Texas Health and Safety Code, §534.055(f), are currently required to consider "the character, responsibility, integrity, reputation, and experience of the bidder."

Regarding contracting with a former employee who is employed by a state agency in §412.54(d)(2), two commenters asked why a former officer or employee of a state agency under (d)(2) is exempt. The commenters stated that a former officer or employee of a state agency should not be exempt and requested that (d)(2) be deleted and that (d)(1) be explained more fully. TDMHMR responds that the provision, and exemption, is in state statute (Texas Health and Safety Code, §534.007) as applicable to a former officer or employee of a community MHMR center and that TDMHMR is extending the requirement to local authorities by rule. The exception contained in (d)(1) seems to indicate that a former employee whose annual salary was below \$42,216 would not be in a position to influence the contracting process in such a way as to create an unfair advantage for his/her current employer. TDMHMR notes that, since state agencies and other local authorities do not generally compete with private organizations for contracts with a local authority, it would be highly unlikely that the state agency or local authority who employs a former local authority employee would have an unfair advantage in obtaining a contract with the local authority.

Regarding obtaining best value in §412.55(a)(2), two commenters suggested that language be added requiring the local authority to acquire community services by a procurement method that provides the best value to the individual receiving the services and his/her legally authorized representative (LAR) in addition to the local authority. The commenters stated that best value must always include, as the top priority, the people who will be receiving the service and their LARs. The commenters also requested similar language be added to §412.55(b)(4) as it relates to meeting the needs of the individual and LAR. TDMHMR responds by adding a definition of "best value" which achieves, among other objectives, meeting the needs of the individuals served by the programs administered by the local authority.

Regarding unrestricted access to contractors' facilities, records, and data for monitoring purposes in §412.57(b)(18), two commenters suggested that language be added to include access to the individuals being served under the contract. The commenters stated that monitors needed "access to individuals to monitor more than just 'paperwork' concerning their individual programs and services." The commenters also stated that monitors should have access to individuals *without reasonable notice*. TDMHMR responds that the provision mirrors the language

in the Texas Health and Safety Code, §534.061(c). The absence of language specific to access to individuals as a contract provision does not mean that TDMHMR or the local authority would not have access to individuals served by the contractor. Texas Health and Safety Code, §534.061(a)-(b), addresses the monitoring of community services provided by local authority contractors. The local authority could not comply with those statutory monitoring requirements or the monitoring requirements contained in §412.62 of this subchapter if it did not have access to individuals. TDMHMR notes that the contract provisions listed in §412.57 are not all inclusive. A local authority is responsible for including in its community services contracts provisions that enable the local authority to comply with all applicable federal and state laws and regulations, including this subchapter. Regarding access to individuals *without reasonable notice*, TDMHMR responds that such a provision could result in violations of individuals' privacy.

Regarding monitoring contracts in §412.62(a), two commenters recommended adding language to require monitoring for the protection of individuals' rights; protection from abuse, neglect, and exploitation; and meeting each individual's Plan of Care services. The commenters suggested adding the requirement to assess the risk of each contract and assign a monitoring level as required in TDMHMR proposed rules governing contracts management for TDMHMR facilities and Central Office. One of the commenters recommended that all consumer services and programs be monitored at a Level III. Additionally, the commenters requested that the reference in §412.62(a)(5) be changed to §412.57(b)(1)-(20). TDMHMR responds that the language in §412.62(a), which requires the local authority to monitor a contractor for compliance with the community services contract, addresses the commenters' concerns. As required in §412.57(16), each community services contract must specify the relevant TDMHMR rules with which the contractor must comply. And TDMHMR rules governing protection of individuals' rights and protection from abuse, neglect, and exploitation are relevant to every community service. Regarding community services contracts being assessed for risk and assigned Level III monitoring, TDMHMR responds that the purpose of assessing a contract's risk is to determine the appropriate level of monitoring and that such provisions were included in its proposed rules governing contracts management for TDMHMR facilities and Central Office (Chapter 417, Subchapter B) in order to comply with the 1999 Appropriations Act, Article II, Section 2, Rider 13, which states that no funds appropriated to a health and human service agency may be utilized for contracts for the purchase of program-related client services unless such contracts include clearly defined goals, outputs, and measurable outcomes which directly relate to program objectives, include clearly defined sanctions or penalties for non compliance with contract terms and conditions, and specify the accounting, reporting, and auditing requirements applicable to funds received under the contract. While local authorities may develop policies and procedures that address risk assessment and monitoring levels, TDMHMR declines to extend such prescriptive requirements to local authorities. Regarding the commenters' suggestion to change the reference in (a)(5) to §412.57(b)(1)-(20), TDMHMR declines to change the reference because it properly references the provision in §412.57(b)(13) for a community services contract to have clearly defined performance expectations. All of the other paragraphs in §412.57(b) do not pertain to performance expectations.

Regarding the definition of "goods" in §412.53(9), one commenter suggested deleting the phrase "specified in the performance contract." The commenter stated that, because §412.55(a)(1) requires goods to be acquired by any procurement method in the Uniform Grant and Contracts Management Standards (UGMS), restricting the definition of goods to the tangible personal property specified in the performance contract is misleading because UGMS applies to all goods a local authority purchases as a "subrecipient" or "subgrantee," and not just goods specified in the performance contract. TDMHMR responds that, although it intended to include the broad requirement that local authorities comply with UGMS when purchasing all goods (rather than just those goods specified in the performance contract) in its draft rules governing local authorities, TDMHMR has determined that broadening the scope of this subchapter to include all goods purchased by a local authority using TDMHMR funds and required local match funds accomplishes the same purpose. Therefore, TDMHMR has modified the definition of "goods" as suggested by the commenter.

Regarding the proper ownership of goods that are intellectual property in §412.54(f)(1), one commenter suggested adding the phrase "specified in the performance contract" so that the paragraph pertaining to the purchase of goods that are intellectual property is clear that only such goods are the exclusive property of TDMHMR. The commenter stated that without the added phrase the rule could be interpreted to mean that any intellectual property purchased by a local authority is the exclusive property of TDMHMR, which would clearly be a misinterpretation or misapplication of the proposed rules. TDMHMR responds by modifying the language as suggested by the commenter.

One commenter suggested adding a definition of "intellectual property." The commenter expressed willingness to assist department staff in developing a definition that was acceptable to both TDMHMR and the commenter if no such definition could be found in an authoritative source. TDMHMR responds by adding a definition of intellectual property.

The new rules are adopted under the Texas Health and Safety Code, §532.015, which provides the Texas MHMR Board (board) with broad rulemaking authority, and §534.052(a), which requires the board to adopt rules that it considers necessary and appropriate to ensure the adequate provision of community services through a local authority; §533.016, which authorizes the expenditure of public money to acquire goods and services by a procurement method that provides best value; §533.017, which authorizes TDMHMR to allow local authorities to participate in TDMHMR's purchasing contracts or group purchasing program; §534.061, which requires TDMHMR to develop mechanisms for periodically monitoring the services of a provider who contracts with a local authority to provide community services; and the 1999 Appropriations Act, Article II, Section 2, Rider 13, which states that no funds appropriated to a health and human service agency may be utilized for contracts for the purchase of program-related client services unless such contracts include clearly defined goals, outputs, and measurable outcomes which directly relate to program objectives.

*§412.52. Application.*

This subchapter applies to all contracts for goods and services awarded by a local authority.

*§412.53. Definitions.*

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



(1) Application--Documents prepared by a respondent in response to a request for applications.

(2) Best value--The optimum combination of economy and quality that is the result of fair, efficient, and practical procurement decision-making and which achieves the following objectives:

(A) promote fairness and competition for local authority contracts;

(B) support the delivery of services and benefits that best meets the needs of clients of programs administered by the local authority;

(C) promote timely, high quality, and responsive performance by contractors; and

(D) encourage and reward the continuing participation of quality contractors.

(3) Business entity--A sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

(4) Consumer--A person in the priority population or otherwise designated in the performance contract as eligible for community services.

(5) Contract--A written agreement, including a purchase order, between a local authority and a business entity that obligates the entity to provide goods or services in exchange for money or other valuable consideration.

(6) Contract management--Initiating, procuring, awarding, monitoring, and enforcing a contract.

(7) Contract term--The period of time during which a contract is in effect, identified by a starting and ending date.

(8) Contractor--A business entity that has a contract for goods or services with a local authority.

(9) Goods--Tangible personal property and intellectual property.

(10) Intellectual property--Any intangible asset that consists of human knowledge and ideas (e.g., software).

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

(12) Local service area--A geographic area composed of one or more Texas counties delimiting the population which may receive community services from a local authority.

(13) Participated--To have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.

(14) Particular matter--A specific investigation, application, request for a ruling or determination, proceeding related to the development of policy, contract, claim, charge, accusation, arrest, or judicial or other proceeding.

(15) 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.

(16) Priority population--Those groups of persons with mental illness and mental retardation identified in TDMHMR's current

strategic plan as being most in need of mental health and mental retardation services.

(17) Proposal--Documents prepared by a respondent in response to a request for proposals.

(18) Respondent--A business entity that submits an oral, written, or electronic response to a solicitation. The term is intended to include "applicant," "offeror," "proposer," and other similar terminology to describe a business entity that responds to a solicitation.

(19) Response--An oral, written, or electronic "offer," "proposal," "quote," "application," or other applicable expression of interest to a solicitation.

(20) Services--

(A) Community 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 as well as all other services specified in the performance contract.

(B) Non-community services--All services other than community services.

(21) Solicitation--A notification of the local authority's intent to purchase community services (e.g., request for proposals and request for applications).

(22) TDMHMR--The Texas Department of Mental Health and Mental Retardation.

#### §412.54. Accountability.

(a) All purchases of goods and services must be made pursuant to a contract.

(b) Conflicts of interests and standards of conduct for local authority employees and officers.

(1) Conflicts of interest. Local authority employees and officers may not have a conflict of interest in contracts management. An employee or officer has a conflict of interest when the employee, officer, a partner of the employee or officer, or a person related within the second degree of consanguinity or affinity to the employee or officer, has or intends to have:

(A) employment with a respondent or contractor;

(B) paid consultation with a respondent or contractor;

(C) membership on a respondent's or contractor's board of directors;

(D) ownership of 10% or more of the voting stock of shares of a respondent or contractor;

(E) ownership of 10% or more or \$5,000 or more of the fair market value of a respondent or contractor; or

(F) income from a respondent or contractor in excess of 10% of the employee's, officer's, or related person's gross income for the previous year.

(2) Standards of conduct. The local authority must develop and enforce standards of conduct governing its employees' and officers' who participate in contracts management, which prohibits such employees and officers from:

(A) accepting or soliciting any gift, favor, service, or benefit from a business entity, respondent, or contractor that might reasonably tend to influence the employee or officer in the discharge of official duties relating to contract management, or that the employee or

officer knows or should know is being offered with the intent to influence the employee's or officer's official duties; or

(B) intentionally or knowingly soliciting, accepting, or agreeing to accept any benefit for having exercised official powers or for having performed official duties in favor of another business entity, respondent, or contractor.

(c) Conflicts of interests and standards of conduct for a respondent and its officers and employees.

(1) Conflict of interest. A respondent and its officers and employees responsible for development of a response or performance of a contract for which the respondent is submitting a response may not be related within the second degree of consanguinity or affinity to a local authority employee or officer participating in the contract management for the contract for which the respondent is submitting a response.

(2) Standards of conduct.

(A) A respondent and its officers and employees may not attempt to induce any business entity to submit or not to submit a response.

(B) A respondent and its officers and employees must arrive at its response independently and without consultation, communication, or agreement for the purposes of restricting competition.

(C) A respondent and its officers and employees may not have a relationship with any person, at the time of submitting the response or during the contract term, that may interfere with fair competition.

(D) A respondent and its officers and employees may not participate in the development of specific criteria for award of the contract, nor participate in the selection of the response to be awarded the contract.

(d) The local authority may not contract with a former officer or employee of the local authority if the contract relates to a particular matter (as defined) in which the former officer or employee participated (as defined) during the period of employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility, unless:

(1) the former employee was compensated on the last day of service or employment below the amount prescribed by the General Appropriations Act for salary group 17, Schedule A, or salary group 9, Schedule B, of the position classification salary schedule; or

(2) the former officer or employee is employed by a state agency or another local authority.

(e) The local authority must ensure that its contractors comply with all contract provisions regardless of whether a contractor subcontracts some or all of the contract.

(f) A local authority may make advance payments to a contractor provided the payments meet a public purpose, ensure adequate consideration, and sufficient controls are in place to ensure accomplishment of the public purpose. With the exception of contracts paid on a capitated basis, at the end of each contract term the contractor must return to the local authority any state or federal funds received from or through TDMHMR which have not been encumbered.

(g) The local authority is prohibited from contracting with a business entity that is currently:

(1) held in abeyance or barred from the award of a federal or state contract; or

(2) is not in good standing for state tax, pursuant to the Texas Business Corporation Act, Texas Civil Statutes, Article 2.45.

(h) The local authority must ensure each contractor is provided information relating to the local authority's policies and procedures that are relevant to the contractor.

(i) The local authority shall ensure quality community services are provided to consumers, including during the transition from one contractor to another.

(j) When purchasing goods and services, the local authority shall comply with the Uniform Grant and Contracts Management Standards (UGMS) promulgated by the Governor's Office of Budget and Planning (pursuant to the Texas Government Code, Chapter 783, and 1 TAC, Part 1, Chapter 5, Subchapter A, Division 4), except to the extent that any provision in §412.55(a)(2) of this title (relating to Contract Procurement) conflicts with UGMS, Part III (State Uniform Administrative Requirements for Grants and Cooperative Agreements), Subpart C (Post-Award Requirements; Changes Property, and Subawards), Section \_\_.36(d) (Procurement), then §412.55(a)(2) of this title (relating to Contract Procurement) shall control. In UGMS:

(1) the terms "recipient" and "grantee" apply to TDMHMR;

(2) the terms "subrecipient" and "subgrantee" apply to the local authority; and

(3) the terms "vendor" and "subcontractor" apply to a contractor (as defined in this subchapter), unless the contractor operates as a "subgrantee" as defined under UGMS, Part III (State Uniform Administrative Requirements for Grants and Cooperative Agreements), Subpart A (General), Section \_\_.3 (Definitions).

§412.55. *Procurement.*

(a) Procurement method. The local authority must develop and enforce procurement procedures that comply with this subchapter.

(1) Goods and non-community services. The local authority must acquire goods and non-community services by any procurement method described in the Uniform Grant and Contracts Management Standards (UGMS), Section \_\_.36(d), that provides the best value to the local authority.

(2) Community services. The local authority must acquire community services by a procurement method described in this subchapter that provides the best value to the local authority. All community services must be procured competitively in accordance with §412.58 of this title (relating to Competitive Procurement of Community Services Contracts) unless the local authority determines that the community service(s):

(A) can be procured non-competitively in accordance with §412.59 of this title (relating to Non-competitive Procurement of Community Services Contracts); or

(B) should be procured through open enrollment in accordance with §412.60 of this title (relating to Open Enrollment).

(b) Relevant factors. The local authority must consider all relevant factors in determining best value, which may include:

(1) any installation cost;

(2) the delivery terms;

(3) the quality and reliability of the respondent's goods or services;

(4) the extent to which the goods or services meet the local authority's needs;

(5) indicators of probable respondent performance under the contract, such as past offeror performance, the respondent's financial resources and ability to perform, the respondent's experience and responsibility, and the respondent's ability to provide reliable maintenance agreements;

(6) the impact on the ability of the local authority to comply with laws and rules relating to historically underutilized businesses or relating to the procurement of goods and services from persons with disabilities;

(7) the total long term cost to the local authority of acquiring the respondent's goods or services;

(8) the cost of any employee training associated with the acquisition;

(9) the effect of an acquisition on the local authority's productivity;

(10) the acquisition price;

(11) whether the respondent can perform the contract or provide the service(s) within the contract term, without delay or interference;

(12) the respondent's history of compliance with the laws relating to its business operations and the affected service(s) and whether it is currently in compliance;

(13) whether the respondent's financial resources are sufficient to perform the contract and to provide the service(s);

(14) whether necessary or desirable support and ancillary services are available to the respondent;

(15) the character, responsibility, integrity, reputation, and experience of the respondent;

(16) the quality of the facilities and equipment available to or proposed by the respondent;

(17) the ability of the respondent to provide continuity of services;

(18) the ability of the respondent to meet all applicable written policies, principles, and regulations; and

(19) any other factor relevant to determining the best value for the local authority in the context of a particular acquisition.

(c) Award. All contracts must be awarded based on best value, as determined by considering all relevant factors.

(d) Renewal of community services contracts. The local authority may renew a community services contract only if the contract meets best value as determined by considering all relevant factors.

*§412.56. Community Services Contracting Requirements.*

(a) The local authority is prohibited from amending a community services contract:

(1) to increase the contract amount by more than 25%; or

(2) to add a new community service unless the contract was procured through open enrollment.

(b) Upon written request by an unsuccessful respondent, the local authority must provide information concerning why the respondent's response was not selected for award.

(c) The local authority must develop written procedures that provide respondents an opportunity to protest a contract award.

(1) The procedures must allow respondents to protest matters relating to:

(A) alleged conflict of interests;

(B) alleged failure of the local authority to comply with statute or rule; and

(C) alleged failure of the local authority to comply with its procurement procedures.

(2) The procedures must describe the local authority's process for reviewing and resolving protests.

(d) The local authority must maintain for five years or until the end of any litigation concerning the contract the following contract management documentation:

(1) justification for non-competitive procurement as permitted in §412.59(a) of this title (relating to Non-competitive Procurement of Community Services Contracts), if applicable;

(2) the solicitation and any modifications or revisions made to the solicitation;

(3) all responses to the solicitation and any modifications or revisions made to such responses;

(4) the evaluations of all responses and evidence that the local authority considered all relevant factors;

(5) written correspondence between the local authority and respondents prior to contract award;

(6) optional or required credentials (certifications, licenses, accreditations), if any;

(7) written protests, if any, and their disposition;

(8) the executed contract;

(9) written correspondence between the local authority and the contractor concerning the contractor's performance; and

(10) copies of any audits performed or required by the local authority.

*§412.57. Provisions for Community Services Contracts.*

(a) The local authority must ensure that all its community services contracts are consistent with the local authority's performance contract and with the model contracts designed by TDMHMR as required by the Texas Health and Safety Code, §534.055(c).

(b) The local authority must include in all of its community services contracts that are funded by TDMHMR provisions stating:

(1) the contract term;

(2) the community service(s) to be purchased;

(3) the identification of all parties;

(4) the total allowable payment or, if the community service is procured through open enrollment or is on a capitated basis, the rate of payment;

(5) the method of payment;

(6) that the contractor must comply with all applicable federal and state laws, rules, and regulations, including:

(A) Title VI of the Civil Rights Act of 1964;

(B) Section 504 of the Rehabilitation Act of 1973;

(C) the Americans with Disabilities Act of 1990 (ADA); and

(D) the Age Discrimination in Employment Act of 1967;

(7) that if, as a result of a change to a TDMHMR rule or state or federal law, the contractual obligations of the contractor are materially changed or a significant financial burden is placed on the contractor, then the parties may renegotiate in good faith to amend the contract;

(8) that no consumer will be excluded from participation in, denied the benefits of, or unlawfully discriminated against, in any program or activity funded by the contract on the grounds of race, color, ethnicity, national origin, religion, sex, age, disability, or political affiliation in accordance with applicable laws;

(9) that all documents pertinent to the contract, including consumer records, will be retained by the contractor for a period of five years;

(10) that all consumer-identifying information will be maintained by the contractor as confidential in accordance with applicable law and Chapter 414, Subchapter A of this title (relating to Client-Identifying Information);

(11) that the contractor, its licensed staff, and other appropriate staff (such as QMHP-CS) will be credentialed before services are delivered to consumers by such contractor and staff;

(12) a dispute resolution process;

(13) the clearly defined performance expectations which directly relate to the community service's objectives, including goals, outputs, and measurable outcomes, and that the contractor must provide services in accordance with such expectations;

(14) that any allegation of abuse, neglect, or exploitation of a consumer under the contract will be reported in accordance with applicable law, TDMHMR rules, and Texas Department of Protective and Regulatory Services rules;

(15) that AIDS/HIV workplace guidelines, similar to those adopted by TDMHMR and AIDS/HIV confidentiality guidelines and consistent with state and federal law, will be adopted and implemented by the contractor;

(16) that the contractor will comply with the relevant TDMHMR rules, certifications, accreditations, and licenses, that are specified in the contract;

(17) that services will be provided in accordance with consumers' treatment plans;

(18) that pursuant to Texas Health and Safety Code, §534.061, TDMHMR, the local authority, and their designees, including independent financial auditors, shall have, with reasonable notice, unrestricted access to all facilities, records, data, and other information under the control of the contractor as necessary to enable the local authority to audit, monitor, and review all financial and programmatic activities and services associated with the contract;

(19) any sanctions and remedies the local authority may take in response to the contractor's failure to comply with the contract provisions; and

(20) that the contractor will immediately notify the local authority of any change, or potential change, in its status that could affect its inclusion in the provider network.

(c) The local authority must include in all of its community services contracts for residential services that are funded by TDMHMR provisions stating:

(1) that the contractor shall provide evidence of criminal history record information on the contractor's applicants, employees, and volunteers, pursuant to the Texas Health and Safety Code, §533.007 and Chapter 250; the Texas Government Code, §411.115; and Chapter 414, Subchapter K of this title (relating to Criminal History Clearances); and

(2) that if an applicant, employee, or volunteer of the contractor has a criminal history relevant to his or her employment as described in Chapter 414, Subchapter K of this title (relating to Criminal History Clearances), then the contractor will take appropriate action with respect to the applicant, employee, or volunteer, including terminating or removing the employee or volunteer from direct contact with consumers served by the contractor.

(d) Community services contracts that require the contractor to assume responsibility for the funds of a consumer must contain provisions requiring the contractor to have and abide by a written policy, which is subject to approval by the local authority, for protecting and accounting for such funds in accordance with generally accepted accounting principles.

§412.62. *Monitoring and Enforcing Community Services Contracts.*

(a) Monitoring. The local authority must maintain a contracts management system that ensures each community services contractor performs in accordance with the provisions of the contract. The local authority shall monitor each community services contractor's compliance with the contract and evaluate the contractor's provision of services, including:

- (1) competency of the contractor to provide care;
- (2) consumers' access to services;
- (3) safety of the environment in which services are provided;
- (4) continuity of care;
- (5) compliance with the performance expectations (referred to in §412.57(b)(13) of this title (relating to Provisions for Community Services Contracts));
- (6) satisfaction of consumers and family members with services provided; and
- (7) utilization of resources.

(b) Enforcing. The local authority shall enforce each community services contract. The local authority shall develop policies and procedures regarding contract enforcement that address the use of at least the following enforcement actions:

- (1) training;
- (2) technical assistance for contractors;
- (3) a plan of correction; and
- (4) sanctions, which may include:
  - (A) withholding or recouping funds;
  - (B) imposing financial penalties;
  - (C) requiring service delivery at no additional cost to the local authority;
  - (D) suspending participation in the provider network;
  - (E) contract amendment; and

(F) contract termination.

§412.63. *References.*

The following laws and rules are referenced in this subchapter:

- (1) Texas Health and Safety Code, Chapter 250, §533.007, §533.017, §533.035, §534.052, §534.055, §534.061, §534.065, and §534.066;
- (2) Tax Code, Chapter 171;
- (3) Texas Civil Statutes, Article 2.45;
- (4) Texas Government Code, Chapter 783, and §411.115;
- (5) Title VI of the Civil Rights Act of 1964;
- (6) Section 504 of the Rehabilitation Act of 1973;
- (7) the Americans with Disabilities Act of 1990 (ADA);
- (8) the Age Discrimination in Employment Act of 1967;
- (9) 1 TAC, Part 1, Chapter 5, Subchapter A, Division 4;
- (10) Chapter 414, Subchapter A of this title (relating to Client-Identifying Information); and
- (11) Chapter 414, Subchapter K of this title (relating to Criminal History Clearances).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 2, 2001.

TRD-200101899

Andrew Hardin

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Effective date: April 22, 2001

Proposal publication date: December 22, 2000

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



## TITLE 43. TRANSPORTATION

### PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

#### CHAPTER 1. MANAGEMENT

#### SUBCHAPTER H. VEHICLE FLEET MANAGEMENT

##### 43 TAC §1.600

The Texas Department of Transportation adopts new §1.600 concerning restrictions on assignment of vehicles. New section §1.600 is adopted without changes to the text as proposed by publication in the February 9, 2001, issue of the *Texas Register* (26 TexReg 1260), and will not be republished.

##### EXPLANATION OF ADOPTED NEW SECTION

House Bill 3125, 76th Legislature, 1999 required the General Services Commission and the Council on Competitive Government to develop a plan for improving the administration and operation of the state's vehicles. This plan was recently adopted. The bill further requires each state agency to adopt rules, consistent with the plan, relating to the assignment and use of the

agency's vehicles. Section 1.600 is necessary to comply with H.B. 3125.

##### COMMENTS

No comments were received on the proposed new section.

##### STATUTORY AUTHORITY

The new section is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Government Code, §2171.1045, which requires the department to adopt rules relating to the assignment and use of the department's vehicles.

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 30, 2001.

TRD-200101868

Richard D. Monroe

General Counsel

Texas Department of Transportation

Effective date: April 19, 2001

Proposal publication date: February 9, 2001

For further information, please call: (512) 463-8630



## CHAPTER 23. TRAVEL INFORMATION

The Texas Department of Transportation adopts the repeal of §§23.40-23.47, Memorandum of Understanding with the Texas Department of Commerce and the Texas Parks and Wildlife Department, and simultaneously adopts new §23.40, Memorandum of Understanding with the Texas Department of Economic Development, Texas Parks and Wildlife Department, the Texas Commission on the Arts, and the Texas Historical Commission. The repeals and new section are adopted without changes to the text as proposed by publication in the February 9, 2001, issue of the *Texas Register* (26 TexReg 1261), and will not be republished.

##### EXPLANATION OF ADOPTED REPEALS AND NEW SECTION

The department previously adopted a memorandum of understanding (MOU) with the Texas Department of Commerce and Texas Parks and Wildlife Department to coordinate travel and tourism responsibilities. This MOU, codified as 43 TAC §§23.40-23.47, has expired.

Government Code, §481.028, requires the Texas Department of Economic Development to develop a memorandum of understanding with the Texas Department of Transportation (TxDOT) and the Texas Parks and Wildlife Department to cooperate in marketing and promoting Texas as a travel destination and provide services to travelers, and requires each agency to adopt the MOU by rule. Rider 29 to TxDOT's appropriations for Fiscal Years 2000-2001 requires TxDOT, Texas Parks and Wildlife Department, Texas Department of Economic Development, Texas Historical Commission, and the Texas Commission on the Arts to adopt an MOU concerning travel and tourism. In order to comply with §481.028 and Rider 29, it is necessary to repeal existing §§23.40-23.47 and simultaneously propose new §23.40 concerning a Memorandum of Understanding with the Texas Department of Economic Development, the Texas Parks and Wildlife

Department, the Texas Commission on the Arts, and the Texas Historical Commission. This section adopts by reference the provisions of the MOU proposed for adoption by the Texas Department of Economic Development and published in the December 29, 2000, issue of the Texas Register (25 TexReg 12878).

#### COMMENTS

No comments were received on the proposed repeals and new section.

### SUBCHAPTER D. MEMORANDUM OF UNDERSTANDING WITH THE TEXAS DEPARTMENT OF COMMERCE AND THE TEXAS PARKS AND WILDLIFE DEPARTMENT

#### 43 TAC §§23.40 - 23.47

#### STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Government Code, §481.028, which requires the Texas Department of Economic Development to develop a memorandum of understanding with TxDOT and the Texas Parks and Wildlife Department to cooperate in marketing and promoting Texas as a travel destination and provide services to travelers, and requires each agency to adopt the MOU by rule.

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 30, 2001.  
TRD-200101870

Richard D. Monroe  
General Counsel  
Texas Department of Transportation  
Effective date: April 19, 2001  
Proposal publication date: February 9, 2001  
For further information, please call: (512) 463-8630



### SUBCHAPTER D. MEMORANDUM OF UNDERSTANDING

#### 43 TAC §23.40

The new section is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Government Code, §481.028, which requires the Texas Department of Economic Development to develop a memorandum of understanding with TxDOT and the Texas Parks and Wildlife Department to cooperate in marketing and promoting Texas as a travel destination and provide services to travelers, and requires each agency to adopt the MOU by rule.

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 30, 2001.

TRD-200101869  
Richard D. Monroe  
General Counsel  
Texas Department of Transportation  
Effective date: April 19, 2001  
Proposal publication date: February 9, 2001  
For further information, please call: (512) 463-8630



# —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.

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## Proposed Rule Reviews

Texas Department of Health

### Title 25, Part 1

The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part 1, Chapter 73. Laboratories, §§73.1, 73.11, 73.21, 73.22, 73.23, and 73.24.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, 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 readopting these rules 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 these rules 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-200101859  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: March 29, 2001



The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part 1, Chapter 99. Occupational Diseases, §99.1

This review is in accordance with the requirements of the Texas Government Code, §2001.039, 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 readopting 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-200101860  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: March 29, 2001



Texas Natural Resource Conservation Commission

### Title 30, Part 1

The Texas Natural Resource Conservation Commission (commission) files this notice of intention to review and proposes the readoption of Chapter 315, Pretreatment Regulations for Existing and New Sources of Pollution, which pertains to publicly owned wastewater treatment facilities. This review of Chapter 315 is proposed in accordance with the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, § 9 - 10.13, 76th Legislature, 1999, which require state agencies to review and consider for readoption each of their rules every four years. A review must include an assessment of whether the reasons for the rules continue to exist.

CHAPTER SUMMARY



Chapter 315 incorporates rules that the United States Environmental Protection Agency (EPA) adopted in accordance with the National Pollutant Discharge Elimination System (NPDES), Clean Water Act (CWA), §402, to implement national pretreatment standards to control pollutants which pass through or interfere with wastewater treatment processes in publicly owned treatment works (POTWs). The EPA rules describe the objectives of the pretreatment program regulations and provide for requirements no less stringent than those found in the CWA and Texas Water Code (TWC). The EPA rules also set forth the requirements for development of pretreatment programs by POTWs implemented by the Texas Pollutant Discharge Elimination System (TPDES) program, which include the POTWs' legal authority, enforcement response plan, standard operating procedures, and technically based local limits.

Chapter 315 contains one subchapter and has not been revised since its initial effective date. It adopts by reference pretreatment regulations from 40 Code of Federal Regulations (CFR) Part 403 and Appendices A - E which were in effect on the date of TPDES program authorization, as amended, except §403.16. In addition, the rule provides that where 40 CFR §403.11(b)(2) and §403.11(c) provide procedures for requesting and holding a public hearing, the commission shall instead require notice of and hold a public meeting. The Texas Water Commission adopted the rule, without changes to the federal pretreatment regulations, and notice of the adoption was published in the September 21, 1990 issue of the *Texas Register* (15 TexReg 5501).

#### PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULE CONTINUE TO EXIST

The commission conducted a preliminary review and determined that the reasons for the rule in Chapter 315 continue to exist. This chapter is necessary to maintain TPDES authorization, which the commission assumed on September 14, 1998. Chapter 315 implements provisions of the TWC, §26.047 (Permit Conditions and Pretreatment Standards Concerning Publicly Owned Treatment Works) and §26.1211 (Pretreatment Effluent Standards). Further, this rule was promulgated under authority granted to the commission by the TWC, §5.102 and §5.105.

The commission's review of Chapter 315 has revealed an inconsistency, which the commission intends to address in future rulemaking. At the time of the commission's original adoption of the rule, 40 CFR, Part 403 contained only Appendices A - E. Appendix G, which relates to Pollutants Eligible for Removal Credits, was adopted by the EPA in 1995 and later amended in 1999. Currently, Chapter 315 does not include Appendix G. The commission also finds that the title and text of this chapter should be clarified by stating that it pertains to wastewater treatment processes for POTWs. The commission intends to update and clarify the chapter in a future rulemaking.

#### PUBLIC COMMENT

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9 - 10.13, 76th Legislature, 1999. The commission invites comments on whether the reasons for the rule in Chapter 315 continue to exist. Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2000-034-315-WT. Comments must be received by 5:00 p.m., May 14, 2001. For further information or questions concerning this proposal, please contact Auburn Mitchell, Policy and Regulations Division, at (512) 239-1873.

TRD-200101908

Margaret Hoffman  
Director, Environmental Law Division  
Texas Natural Resource Conservation Commission  
Filed: April 2, 2001



The Texas Natural Resource Conservation Commission (commission) files this notice of intention to review and proposes the readoption of Chapter 319, General Regulations Incorporated into Permits. This review of Chapter 319 is proposed in accordance with the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999, which require state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist.

#### CHAPTER SUMMARY

Chapter 319 provides general requirements for wastewater discharge permits under the Texas Pollutant Discharge Elimination System (TPDES) and commission wastewater permitting programs. This chapter consists of three subchapters: Subchapter A, Monitoring and Reporting System; Subchapter B, Hazardous Metals; and Subchapter C, Public Notice of Spills or Accidental Discharges from Wastewater Facilities Owned or Operated by Local Governments. Subchapter A sets out monitoring and reporting requirements for wastewater discharge permits under the TPDES and commission wastewater permitting programs. Subchapter B sets effluent quality levels for allowable concentrations of hazardous metals that are discharged into or adjacent to surface water in the state. Subchapter C specifies conditions under which notification of a spill must be given to appropriate local government officials and local media, procedures for giving the required notice, content of the notice, and the method of giving notice.

#### PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULE CONTINUE TO EXIST

The commission conducted a preliminary review and determined that the reasons for the rules in *Chapter 319* continue to exist. Chapter 319 is authorized under Texas Water Code (TWC), §5.103 which allows the commission to adopt any rules necessary to carry out its powers and duties under the TWC, and under TWC, §26.011, which provides the commission the authority to adopt rules consistent with provisions in the TWC relating to waste discharges. Further, Subchapter A is authorized under TWC, §26.042, which allows the commission to adopt rules relating to monitoring and reporting requirements for those discharging pollutants into or adjacent to water in the state. Subchapter B sets effluent quality levels for hazardous metals as authorized under TWC, §26.011. Lastly, Subchapter C is authorized under TWC, §26.039, which requires the commission to adopt rules specifying the conditions under which notification of a spill must be given to appropriate local government officials and local media, the procedures for giving the required notice, the content of the notice, and the manner of giving notice.

The commission's review of Chapter 319 has also revealed that the chapter needs updating to replace references to this agency's predecessor, the Texas Water Commission; to revise citations; to delete an obsolete section; and to reflect changes in authorized analytical test methods for effluent monitoring. The commission intends to propose a future rulemaking to make these and any other needed changes.

#### PUBLIC COMMENT

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9 - 10.13, 76th Legislature, 1999. The

commission invites comments on whether the reasons for the rules in Chapter 319 continue to exist. Comments may be submitted to Patricia Durón, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2000-035-319-WT. Comments must be received by 5:00 p.m., May 14, 2001. For further information or questions concerning this proposal, please contact Auburn Mitchell, Policy and Regulations Division, at (512) 239-1873.

TRD-200101909  
Margaret Hoffman  
Director, Environmental Law Division  
Texas Natural Resource Conservation Commission  
Filed: April 2, 2001



The Texas Natural Resource Conservation Commission (commission) files this notice of intention to review and proposes the readoption of Chapter 351, Regionalization. This review of Chapter 351 is proposed in accordance with the requirements of Texas Government Code, §2001.039; and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999, which requires state agencies to review and consider for readoption each of their rules every four years. A review must include an assessment of whether the reasons for the rules continue to exist.

#### CHAPTER SUMMARY

Chapter 351, Regionalization, is based on Texas Water Code (TWC), Subchapter C, Regional and Area-Wide Systems, which encourages and promotes the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state, and to prevent pollution and maintain and enhance the quality of the water in the state. Within any standard metropolitan statistical area in the state, the commission is authorized to implement this policy by defining areas of regional or area-wide systems, and designating system to serve the area defined. In accordance with this authority and TWC, §§26.003, 26.011, and 5.103, the commission adopted rules for the following eight regional areas: Northbelt, Rosillo Creek, East Fork Trinity River, Lower Rio Grande Valley, Harris County Fresh Water Supply District Number 63, Cibolo Creek, Blackhawk, and Vidor Metropolitan Area.

#### PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission conducted a preliminary review of the rules under Chapter 351 and determined that the reasons for adopting these rules continue to exist. These rules are needed as part of the commission's efforts to promote the development and use of regional and area-wide waste collection, treatment, and disposal systems under TWC, §§26.003 and 26.081 - 26.087. The commission invites comments on whether the reasons for the rules in Chapter 351 continue to exist.

#### PUBLIC COMMENTS

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2000-008-351-WT. Comments must be received by 5:00 p.m., May 14, 2001. For further information or questions concerning this proposal, please contact Michael Bame, Policy and Regulations Division, (512) 239-5658.

TRD-200101919

Margaret Hoffman  
Director, Environmental Law Division  
Texas Natural Resource Conservation Commission  
Filed: April 3, 2001



### Adopted Rule Reviews

State Board of Dental Examiners

#### Title 22, Part 5

The State Board of Dental Examiners adopts the review of the rules contained in Title 22, Texas Administrative Code, Part V, Examining Board, Chapter 101, Dental Licensure, in accordance with §2001.039 of the Texas Government Code, (Vernon 2000) and with the General Appropriations Act, Article IX, Rider 167, passed by the 75th legislature. The proposed review was published in the February 16, 2001, issue of the *Texas Register* (26 TexReg 1575).

No comments were received regarding this rule review.

As a result of the agency's review process the State Board of Dental Examiners adopts the amendments to §§101.7, 101.8, and readopts §§101.1, 101.2. The adopted amendments can be found in the Adopted Rules section of this issue of the *Texas Register*.

The agency finds that the reasons for originally adopting the rules continue to exist as the rules inform applicants about licensure requirements.

This concludes the review of Chapter 101, Dental Licensure.

TRD-200101822  
Jeffry Hill  
Executive Director  
State Board of Dental Examiners  
Filed: March 28, 2001



The State Board of Dental Examiners adopts the review of the rules contained in Title 22, Texas Administrative Code, Part V, Examining Board, Chapter 102, Fees, in accordance with §2001.039 of the Texas Government Code, (Vernon 2000) and with the General Appropriations Act, Article IX, Rider 167, passed by the 75th legislature. The proposed review was published in the February 16, 2001, issue of the *Texas Register* (26 TexReg 1575).

No comments were received regarding this rule review.

As a result of the agency's review process the State Board of Dental Examiners readopts §§102.1, 102.2 as the need for these rules continues to exist.

This concludes the review of Chapter 102, Fees.

TRD-200101823  
Jeffry Hill  
Executive Director  
State Board of Dental Examiners  
Filed: March 28, 2001



The State Board of Dental Examiners adopts the review of the rules contained in Title 22, Texas Administrative Code, Part V, Examining Board, Chapter 103, Dental Hygiene Licensure, in accordance with §2001.039 of the Texas Government Code, (Vernon 2000) and with the General Appropriations Act, Article IX, Rider 167, passed by the

75th legislature. The proposed review was published in the February 16, 2001 issue of the *Texas Register* (26 TexReg 1575).

No comments were received regarding this rule review.

As a result of the agency's review process the State Board of Dental Examiners adopts the amendments to §103.2, and readopts §§103.1, 103.4. The adopted amendments can be found in the Adopted Rules section of this issue of the *Texas Register*.

The agency finds that the reasons for adopting the rules continue to exist as these rules inform applicants about licensure requirements.

This concludes the review of Chapter 103, Dental Hygiene Licensure.

TRD-200101824

Jeffrey Hill

Executive Director

State Board of Dental Examiners

Filed: March 28, 2001



The State Board of Dental Examiners adopts the review of the rules contained in Title 22, Texas Administrative Code, Part V, Examining Board, Chapter 104, Continuing Education, in accordance with §2001.039 of the Texas Government Code, (Vernon 2000) and with the General Appropriations Act, Article IX, Rider 167, passed by the 75th legislature. The proposed review was published in the February 16, 2001, issue of the *Texas Register* (26 TexReg 1576).

No comments were received regarding this rule review.

As a result of the agency's review process the State Board of Dental Examiners adopts the amendments to §104.2 and readopts §§104.1, 104.3, 104.4, 104.5. The adopted amendments can be found in the Adopted Rules section of this issue of the *Texas Register*.

The agency finds that the reasons for adopting the rules continue to exist as these rules inform practitioners about the requirements for continuing education.

This concludes the review of Chapter 104, Continuing Education.

TRD-200101825

Jeffrey Hill

Executive Director

State Board of Dental Examiners

Filed: March 28, 2001



The State Board of Dental Examiners adopts the review of the rules contained in Title 22, Texas Administrative Code, Part V, Examining Board, Chapter 111, Professional Corporations in accordance with §2001.039 of the Texas Government Code, (Vernon 2000) and with the General Appropriations Act, Article IX, Rider 167, passed by the 75th legislature. The proposed review was published in the February 16, 2001 issue of the *Texas Register* (26 TexReg 1576).

No comments were received regarding this rule review.

As a result of the agency's review process the State Board of Dental Examiners adopts the repeal of the Chapter and §111.6. The agency has determined that the reasons for adopting this chapter no longer exist. Chapter 111 impermissibly restricts the application of the Professional Corporations Act and is therefore adopted for repeal. The adopted repeals can be found in the Adopted Rules section of this issue of the *Texas Register*.

This concludes the review of Chapter 111, Professional Corporations.

TRD-200101826

Jeffrey Hill

Executive Director

State Board of Dental Examiners

Filed: March 28, 2001



The State Board of Dental Examiners adopts the review of the rules contained in Title 22, Texas Administrative Code, Part V, Examining Board, Chapter 112, Visual Dental Health Inspections in accordance with §2001.039 of the Texas Government Code, (Vernon 2000) and with the General Appropriations Act, Article IX, Rider 167, passed by the 75th legislature.

The proposed review was published in the February 16, 2001 issue of the *Texas Register* (26 TexReg 1576).

No comments were received regarding this rule review.

As a result of the agency's review process the State Board of Dental Examiners readopts §§112.1, 112.2. The agency finds that the reasons for adopting the rules continue to exist as these rules provide a vehicle for assessment of dental needs in members of groups such as school children.

This concludes the review of Chapter 112, Visual Dental Health Inspections.

TRD-200101827

Jeffrey Hill

Executive Director

State Board of Dental Examiners

Filed: March 28, 2001



The State Board of Dental Examiners adopts the review of the rules contained in Title 22, Texas Administrative Code, Part V, Examining Board, Chapter 113, Requirements for Dental Offices in accordance with §2001.039 of the Texas Government Code, (Vernon 2000) and with the General Appropriations Act, Article IX, Rider 167, passed by the 75th legislature.

The proposed review was published in the February 16, 2001 issue of the *Texas Register* (26 TexReg 1576).

No comments were received regarding this rule review.

As a result of the agency's review process the State Board of Dental Examiners adopts the amendments to §113.2, and adopts the repeal of §§113.3, 113.4. The adopted amendments and repeals can be found in the Adopted Rules section of this issue of the *Texas Register*. The agency finds that the reasons for adopting the rule continues to exist. The agency adopts the repeal of §§113.3, 113.4 as these rules are duplicative of other existing rules.

This concludes the review of Chapter 113, Requirement for Dental Offices.

TRD-200101828

Jeffrey Hill

Executive Director

State Board of Dental Examiners

Filed: March 28, 2001



The State Board of Dental Examiners adopts the review of the rules contained in Title 22, Texas Administrative Code, Part V, Examining

Board, Chapter 114, Extension of Duties of Auxiliary Personnel Dental Assistants in accordance with §2001.039 of the Texas Government Code, (Vernon 2000) and with the General Appropriations Act, Article IX, Rider 167, passed by the 75th legislature.

The proposed review was published in the February 16, 2001 issue of the *Texas Register* (26 TexReg 1576).

No comments were received regarding this rule review.

As a result of the agency's review process the State Board of Dental Examiners readopts §§114.1 and 114.2 as the need for these rules continue to exist.

This concludes the review of Chapter 114, Extension of Duties of Auxiliary Personnel Dental Assistants.

TRD-200101829

Jeffry Hill  
Executive Director  
State Board of Dental Examiners  
Filed: March 28, 2001



The State Board of Dental Examiners adopts the review of the rules contained in Title 22, Texas Administrative Code, Part V, Examining Board, Chapter 116, Dental Laboratories in accordance with §2001.039 of the Texas Government Code, (Vernon 2000) and with the General Appropriations Act, Article IX, Rider 167, passed by the 75th legislature. The proposed review was published in the February 16, 2001 issue of the *Texas Register* (26 TexReg 1577).

No comments were received regarding this rule review.

As a result of the agency's review process the State Board of Dental Examiners adopts the amendments to §§116.2, 116.3, 116.4, 116.5, 116.20, 116.21, 116.22, 116.24, 116.25 and readopts §§116.1, 116.11, 116.23. The adopted amendments can be found in the Adopted Rules section of this issue of the *Texas Register*.

The agency finds that the reasons for adopting the rules continue to exist as these rules provide guidelines for the operation of dental laboratories.

This concludes the review of Chapter 116, Dental Laboratories.

TRD-200101830

Jeffry Hill  
Executive Director  
State Board of Dental Examiners  
Filed: March 28, 2001



The State Board of Dental Examiners adopts the review of the rules contained in Title 22, Texas Administrative Code, Part V, Examining Board, Chapter 117, Faculty Students in Accredited Dental Schools in accordance with §2001.039 of the Texas Government Code, (Vernon 2000) and with the General Appropriations Act, Article IX, Rider 167, passed by the 75th legislature. The proposed review was published in the February 16, 2001 issue of the *Texas Register* (26 TexReg 1577).

No comments were received regarding this rule review.

As a result of the agency's review process the State Board of Dental Examiners readopts §117.1 as the need for this rule continues to exist.

This concludes the review of Chapter 117, Faculty Students in Accredited Dental Schools.

TRD-200101831

Jeffry Hill  
Executive Director  
State Board of Dental Examiners  
Filed: March 28, 2001



The State Board of Dental Examiners adopts the review of the rules contained in Title 22, Texas Administrative Code, Part V, Examining Board, Chapter 119, Special Areas of Dental Practice in accordance with §2001.039 of the Texas Government Code, (Vernon 2000) and with the General Appropriations Act, Article IX, Rider 167, passed by the 75th legislature. The proposed review was published in the February 16, 2001 issue of the *Texas Register* (26 TexReg 1577).

No comments were received regarding this rule review.

As a result of the agency's review process the State Board of Dental Examiners adopts the amendments to §§119.6, 119.7 and readopts §§119.1, 119.2, 119.3, 119.4, 119.5, 119.8. The adopted amendments can be found in the Adopted Rules section of this issue of the *Texas Register*.

The agency finds that the reasons for adopting the rules continue to exist as these rules define special areas of dental practice.

This concludes the review of Chapter 119, Special Areas of Dental Practice.

TRD-200101832

Jeffry Hill  
Executive Director  
State Board of Dental Examiners  
Filed: March 28, 2001



The State Board of Dental Examiners adopts the review of the rules contained in Title 22, Texas Administrative Code, Part V, Examining Board, Chapter 125 Applications for Special Consideration or Exception to Board Rules in accordance with §2001.039 of the Texas Government Code, (Vernon 2000) and with the General Appropriations Act, Article IX, Rider 167, passed by the 75th legislature. The proposed review was published in the February 16, 2001 issue of the *Texas Register* (26 TexReg 1577).

No comments were received regarding this rule review.

As a result of the agency's review process the State Board of Dental Examiners adopts the amendments to §125.1. The adopted amendments can be found in the Adopted Rules section of this issue of the *Texas Register*.

The agency finds that the reasons for adopting the rule continues to exist as this rule provides an avenue to request exceptions to board rules.

This concludes the review of Chapter 125, Applications for Special Consideration or Exception to Board Rules.

TRD-200101833

Jeffry Hill  
Executive Director  
State Board of Dental Examiners  
Filed: March 28, 2001



Texas Department of Human Services

**Title 40, Part 1**

The Texas Department of Human Services (DHS) adopts without changes Title 40 TAC, Chapter 92 (relating to Licensing Standards for Assisted Living Facilities), Chapter 94 (relating to Nurse Aides), Chapter 95 (relating to Licensing Standards for Medication Aides), Chapter 96 (relating to Licensing Standards for Certification of Long Term Care Facilities), and Chapter 98 (relating to Licensing Standards for Adult Day Care Facilities), pursuant to Texas Government Code §2001.039.

The proposed review was published in the January 5, 2001, issue of the *Texas Register* (26 TexReg 245). No comments were received regarding the review.

TRD-200101955  
Paul Leche  
General Counsel  
Texas Department of Human Services  
Filed: April 4, 2001



Texas Department of Transportation

**Title 43, Part 1**

Notice of Readopted Rule: The Texas Department of Transportation readopts without changes Title 43 TAC, Part I, Chapter 11, Design and Chapter 2, Environmental Policy, with the exception of §2.67, Adopt-an-Area. The Texas Department of Transportation readopts Chapter 23, Travel Information, with the changes concurrently adopted in the final adoption section of this *Texas Register*.

This review was conducted in accordance with the General Appropriations Act of 1999, House Bill 1, Section 10.13, Article IX, and Government Code, §2001.039, as added by Senate Bill 178, 76th Legislature.

The proposed review was published in the January 5, 2001, edition of the *Texas Register* (26 TexReg 246). No comments were received regarding the readoption of these rules. The Texas Transportation Commission has reviewed these chapters and determined that the reasons

for adopting them continue to exist with the exception of §2.67, which will be repealed at a later date.

TRD-200101867  
Bob Jackson  
Deputy General Counsel  
Texas Department of Transportation  
Filed: March 30, 2001



Notice of Readopted Rule: The Texas Department of Transportation readopts without changes Title 43 TAC, Part I, Chapter 22, Use of State Property; Chapter 25, Traffic Operations; and Chapter 29, Maintenance.

This review was conducted in accordance with the General Appropriations Act of 1999, House Bill 1, Section 10.13, Article IX, and Government Code, §2001.039, as added by Senate Bill 178, 76th Legislature.

The proposed review was published in the February 2, 2001, edition of the *Texas Register* (26 TexReg 1181). No comments were received regarding the readoption of these rules. The Texas Transportation Commission has reviewed these chapters and determined that the reasons for adopting them continue to exist.

TRD-200101866  
Bob Jackson  
Deputy General Counsel  
Texas Department of Transportation  
Filed: March 30, 2001



# IN ADDITION

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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.

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## Texas State Affordable Housing Corporation

### Notice of Public Hearing

#### MULTIFAMILY HOUSING REVENUE BONDS (VISION HOUSING INITIATIVE 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 23, 2001 at 12:00 Noon at the Harvey Avenue Baptist Church, 1257 East Harvey Avenue, Fort Worth, Texas, 76104, 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 \$57,000,000, the proceeds of which will be loaned to Vision Housing Initiative (I), L.L.C., an Internal Revenue Code Section 501(c)(3) corporation, to finance the acquisition and rehabilitation of six separate multifamily housing projects (collectively the "Projects") located in the cities of Fort Worth, Houston and Pasadena, Texas. The public hearing, which is the subject of this notice, will concern the multifamily housing projects described as follows: Parkside Apartments, 170 units, 3101 Sappington Place, Fort Worth, Texas 76116 and Huntington Place, 184 units, 4900 N. Bryant Irvin, Fort Worth, Texas 76116. The Projects will be owned by Vision Housing Initiative (I), L.L.C.

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](mailto:dowen@tsahc.com).

TRD-200101921

Daniel C. Owen

Vice President

Texas State Affordable Housing Corporation

Filed: April 3, 2001



### Notice of Public Hearing

#### MULTIFAMILY HOUSING REVENUE BONDS (VISION HOUSING INITIATIVE 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 24, 2001 at 12:00 Noon at the Cullen Missionary Baptist Church, 13233 Cullen Boulevard, Houston, Texas, 77047, 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 \$57,000,000, the proceeds of which will be loaned to Vision Housing Initiative (I), L.L.C., an Internal Revenue Code Section 501(c)(3) corporation, to finance the acquisition and rehabilitation of six separate multifamily housing projects (collectively the "Projects") located in the cities of Fort Worth, Houston and Pasadena, Texas. The public hearing, which is the subject of this notice, will concern the multifamily housing projects described as follows: Kingsgate Village Apartments, 312 units, 7298 Kings Gate Circle, Houston, Texas 77074; Westfield Apartments, 424 units, 14405 Rio Bonito, Houston, Texas 77083 and Bennington Square Apartments, 313 units, 6300 W. Bellfort, Houston, Texas 77033. The Projects will be owned by Vision Housing Initiative (I), L.L.C.

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-200101922  
Daniel C. Owen  
Vice President  
Texas State Affordable Housing Corporation  
Filed: April 3, 2001



#### Notice of Public Hearing

##### MULTIFAMILY HOUSING REVENUE BONDS (VISION HOUSING INITIATIVE 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 25, 2001 at 12:00 Noon at the Grace Congregational Church, 207 South Main Street, Pasadena, Texas, 77506, 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 \$57,000,000, the proceeds of which will be loaned to Vision Housing Initiative (I), L.L.C., an Internal Revenue Code Section 501(c)(3) corporation, to finance the acquisition and rehabilitation of six separate multifamily housing projects (collectively the "Projects") located in the cities of Fort Worth, Houston and Pasadena, Texas. The public hearing, which is the subject of this notice, will concern the Vista del Sol Apartments containing 264 units, located at 701 South Avenue, Pasadena, Texas 77503. The Projects will be owned by Vision Housing Initiative (I), L.L.C.

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-200101923  
Daniel C. Owen  
Vice President  
Texas State Affordable Housing Corporation  
Filed: April 3, 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, 77550-2296, 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 downen@tsahc.com.

TRD-200101924  
Daniel C. Owen  
Vice President  
Texas State Affordable Housing Corporation  
Filed: April 3, 2001



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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 [dowen@tsahc.com](mailto:dowen@tsahc.com).

TRD-200101925

Daniel C. Owen

Vice President

Texas State Affordable Housing Corporation

Filed: April 3, 2001

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**Texas Board of Architectural Examiners**

Feasibility Study Request for Proposal

Pursuant to the 1999 General Appropriations Act, Article VIII-8, the Texas Board of Architectural Examiners announces the issuance of a Request for Proposal from individuals and firms with demonstrated competence and qualifications and documented expertise in the area of professional licensing examination development to submit proposals to conduct a feasibility study and submit a written report addressing the development of a Texas state licensing examination for applicants

for architectural registration in Texas. The purpose of the study is to determine whether significant cost savings might be realized through the development and implementation of a Texas state examination as an alternative to the national standardized licensing examination offered by the National Council of Architectural Registration Boards (NCARB). The consultant selected will be expected to conduct a comprehensive study focused on a cost-benefit analysis of the development and implementation of a Texas state architectural licensing examination. The consultant will be responsible for addressing all aspects of the development and implementation of a Texas state exam. The study shall include a thorough assessment of the costs of developing and administering a Texas state exam and shall include a time schedule for the development and implementation of a Texas state exam. The study also shall include a thorough assessment of the impact of a Texas state exam on opportunities for reciprocal registration in other jurisdictions for individuals who are licensed through the Texas state exam. All other significant benefits and consequences associated with a Texas state exam shall be addressed. The consultant selected will be responsible for submitting a thorough written report sufficiently detailed to allow decision makers to determine whether it is desirable to proceed with the development of a Texas state exam. Proposals must include a description of the planned strategy for conducting a thorough study of the development of a Texas state exam. Proposals also must include a detailed time schedule for conducting the study and preparing the written report of the study and must include a detailed schedule of all costs related to the study.

Each proposal must include descriptions of the proposer's qualifications, experience, personnel, and existing commitments and must include a list of references. A complete set of the work papers used to conduct the study and prepare the written report must be maintained by the consultant selected and must be provided to the Texas Board of Architectural Examiners (TBAE). All proposals must be specific and must be responsive to the criteria set forth in the RFP.

Contact: Copies of the RFP may be obtained from TBAE by contacting Carolyn Lewis at (512) 305-8525; [Carolyn.lewis@tbae.state.tx.us](mailto:Carolyn.lewis@tbae.state.tx.us). Interested parties are invited to submit proposals as more fully described in the Request For Proposals (RFP) available from TBAE at 333 Guadalupe, Suite 2-350, Austin, Texas 78701.

Closing Date: All proposals must be received in the Austin office of the Texas Board of Architectural Examiners no later than 5:00 p.m. on June 1, 2001. The feasibility study must be completed and the final written report must be received by TBAE no later than September 28, 2001. Submit five (5) copies of your proposal to Texas Board of Architectural Examiners, RFP Responses, P.O. Box 12337, Austin, Texas 78711-2337 no later than 5:00 p.m. on June 1, 2001. Proposals may be modified or withdrawn prior to the established due date.

Evaluation and Award Procedure: The Texas Board of Architectural Examiners reserves the right to conduct discussions with any and all proposers or to award a contract without such discussions based only on evaluation of the written proposals. All timely proposals shall be reviewed by a review committee according to the criteria listed in the RFP. The committee shall begin reviewing the timely proposals no later than June 2, 2001. TBAE plans to select a consultant and enter into an agreement for consulting services no later than June 29, 2001, but reserves the right enter into an agreement for consulting services after June 29, 2001, or to reject any and all proposals. If a consultant is selected and an agreement for consulting services is entered, TBAE shall submit information regarding the consultant and the agreement to the Secretary of State for publication in the *Texas Register* not later than the 20th day after the date the agreement is entered. Each proposal will be evaluated according to the demonstrated competence and qualifications and documented expertise of the person or entity submitting the

proposal. The consultant selected must demonstrate a present ability to complete the study and submit the written report prior to the stated deadline. Costs associated with the study also will be considered. Consideration also will be given to proposal content and to the proposer's writing skills and the apparent effectiveness of the planned strategy for conducting the feasibility study.

The following specific areas will be evaluated: Knowledge of the psychometric principles routinely employed by professional licensing examinations to ensure examination validity, reliability, and defensibility; Knowledge of the methods routinely employed to write multiple-choice questions for professional licensing examinations; Knowledge of the grading procedures routinely employed to score multiple-choice questions for professional licensing examinations; Knowledge of the methods employed to produce graphic vignettes for licensing examinations for design professionals; Knowledge of the grading procedures employed to score graphic vignettes for licensing examinations for design professionals; Knowledge of various test delivery methods that may be used to deliver professional licensing examinations, including both paper-and-pencil and computerized formats; Knowledge of the costs associated with the development and implementation of licensing examinations for design professionals; Knowledge of the technical skills generally necessary to competent architectural practice; Knowledge of the profession of architecture as it pertains to the educational system, the internship process, and licensure requirements; Knowledge of the standardized professional licensing examination employed by the National Council of Architectural Registration Boards (NCARB); Experience in the development of professional licensing examinations for architectural candidates; and Knowledge of standards for reciprocal registration implemented by architectural licensing boards throughout the United States.

Costs and time schedules associated with the study will be considered. Proposals should include a detailed breakdown of all costs related to the feasibility study. The total of all costs associated with the study may not exceed \$25,000.00.

Proposals must state that the proposed terms will remain in effect for at least forty-five (45) days after the scheduled due date.

The RFP in no manner obligates the State of Texas to the eventual purchase of any services described in the RFP. The Texas Board of Architectural Examiners reserves the right to reject any and all proposals. The State of Texas assumes no responsibility for expenses incurred in preparing responses to the RFP.

TRD-200101953

Carolyn Lewis

Deputy Director

Texas Board of Architectural Examiners

Filed: April 4, 2001

## Office of the Attorney General

### Access and Visitation Grant Request for Applications

Pursuant to 42 U.S.C. 669b, the U.S. Department of Health and Human Services is providing grant funding to the State of Texas for non-custodial parent access and visitation programs. The Office of the Attorney General is responsible for the administration of the program in Texas. The Office of the Attorney General intends to award grants to eligible entities for the purposes of the program.

These grants may be used to establish and administer programs to support and facilitate non-custodial parent's access to and visitation with

their children. Eligible activities include: mediation, counseling, education, development of parenting plans, visitation enforcement (including monitoring, supervision and neutral drop-off and pickup), and development of guidelines for visitation and alternative custody arrangements. Projects funded under this program do not have to run on a statewide basis. Entities eligible for funding include: courts, local public entities, and private non-profit organizations. Matching funds (cash or in-kind) are required.

To assist your organization in applying for these funds, our office has developed instructions to guide you through the application process. All request for applications can be submitted via e-mail, fax or U.S. mail, to:

**Arlene Pace**

**Office of the Attorney General**

**Child Support Division**

**P.O. Box 12017**

**Austin, Texas 78711-2017**

**512-460-6993 phone**

**512-460-6028 fax**

**arlene.pace@oag.state.tx.us.**

If you prefer, you can also download the application from our website at [www.oag.state.tx.us](http://www.oag.state.tx.us), click on the Child Support page.

The deadline for submitting applications is **5:00 p.m., Central Daylight Savings Time, Monday, May 21, 2001**. Applicants should note that submissions received after this time and date will only be considered at the OAG's discretion. Applicants should also be aware that intensified interest in the grant has necessitated our placing a cap of \$50,000 on any single award, so that we may allocate funding to as many deserving organizations as possible.

If you have any questions regarding this publication, please call A.G. Younger at 512-463-2110.

TRD-200101928

Susan D. Gusky

Assistant Attorney General

Office of the Attorney General

Filed: April 3, 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 March 17, 2001 through March 30, 2001.

Total amount of state ceiling remaining unreserved for the \$325,809,688 subceiling for qualified mortgage bonds under the Act as of March 30, 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 30, 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 30, 2001: \$94,742,906

Total amount of state ceiling remaining unreserved for the \$215,034,394 subceiling for residential rental project bonds under the Act as of March 30, 2001: \$15,049,394

Total amount of state ceiling remaining unreserved for the \$136,840,069 subceiling for student loans bonds under the Act as of March 30, 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 30, 2001: \$23,855,431

Total amount of the \$1,303,238,750 state ceiling remaining unreserved under the Act as of March 30, 2001: \$421,635,770

Following is a comprehensive listing of applications, which have received a Certificate of Reservation pursuant to the Act from March 17, 2001 through March 30, 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 March 17, 2001 through March 30, 2001:

1) Issuer: Gulf Coast Waste Disposal Authority

User: CITGO Petroleum Corporation

Description: All Other Issue--Pasadena, Texas

Amount: \$25,000,000

2) Issuer: Brazos River Harbor Navigation District of Brazoria County, Texas

User: Merey Sweeney, L.P.

Description: All Other Issue--Brazoria, Texas

Amount: \$25,000,000

Following is a comprehensive listing of applications, which were either withdrawn or cancelled pursuant to the Act from March 17, 2001 through March 30, 2001:

1) Issuer: Stephenville IDC

User: Raskas Cheese Products of Texas, Inc.

Description: Qualified Small Issue--Stephenville, Texas

Amount: \$10,000,000

2) Issuer: TDHCA

User: Hemma, Ltd.

Description: Multifamily Residential Rental Project--Hays Villas

Amount: \$9,000,000

Following is a comprehensive listing of applications, which released a portion or their entire reserved amount pursuant to the Act from March 17, 2001 through March 30, 2001: None

For a more comprehensive and up-to-date summary of the 2001 Private Activity Bond Allocation Program, please visit the website ([www.brb.state.tx.us](http://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](mailto:alvarez@brb.state.tx.us).

TRD-200101904

Steve Alvarez

Program Administrator

Texas Bond Review Board

Filed: April 2, 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 February 23, 2001, through March 15, 2001. The public comment period for these projects will close at 5:00 p.m. on April 16, 2001.

#### FEDERAL AGENCY ACTIONS

Applicant: Laguarta & Company; Location: The project site is located on the Gulf Intracoastal Waterway (GIWW), approximately 1.4 miles west of Port O'Connor, south of State Highway 185, and approximately 1,000 feet east of Scurlock Road, in Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Port O'Connor, Texas. Approximate UTM Coordinates: Zone 14; Easting 750460; Northing: 3147300. CCC Project No.: 01-0089-F1; Description of Proposed Action: The applicant proposes to construct a 194-residential-lot canal subdivision, a marina with 175-boat capacity, and a motel/conference/recreation center on a 69-acre tract of land. The project would include a concrete bulkhead along all the canals. Along the GIWW, the bulkhead will extend approximately 37 feet out from the existing shoreline. The applicant proposes to excavate in front of this bulkhead to 6 feet below mean sea level (MSL) for boat access. All channels inside the project will be excavated to 6 feet below MSL, and the entrance channel to the GIWW is proposed to be 8 feet below MSL. 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.

Applicant: Calhoun County Navigation District; Location: The project site is located near Port of Lavaca-Point Comfort at Lavaca Bay, in Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Point Comfort, Texas. Approximate UTM Coordinates: Zone 14; Easting 739030; Northing: 3170730. CCC Project No.: 01-0091-F1; Description of Proposed Action: The applicant proposes to amend Department of the Army (DOA) Permit 14541 by adding two upland confined dredged material placement areas (PA). The PAs would provide additional upland capacity for material excavated during the maintenance of facilities managed by the Port of Lavaca-Point Comfort at Lavaca Bay. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899.

Applicant: Cabot Oil & Gas Corporation; Location: The project site is located within the Corpus Christi Bayou channel, in Corpus Christi Bay, in State Tract 285, in Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Estes, Texas. Approximate UTM Coordinates: Zone 14; Easting 687365; Northing: 3087258. CCC Project No.: 01-0093-F1; Description of Proposed Action: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities for Well Number 1. The project includes installation

of a typical marine barge and keyway, a production platform with attendant facilities, and flowlines between well and production platforms. If necessary, approximately 2,667 cubic yards of shell, gravel, or crushed rock will be discharged to construct a 240-foot long by 100-foot wide by 3-foot deep pad to position the marine barge. The approximate water depth of Corpus Christi Bayou at the proposed well location will range from 3 feet MLT near the northern edge of the channel to 10 feet MLT near the channel centerline. Seagrass beds occur in the shallow bay waters in the vicinity of the proposed project. 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.

Applicant: DSND-Horizon, LLC; Location: The project site is located on the right descending bank of the Sabine-Neches Waterway, above Sabine Lake. The site is approximately 1/2 mile downstream of the intersection of the Neches River, Sabine-Neches Waterway, and Intra-coastal Canal (USACE Station 540 + 00), and at 8200 Yacht Club Road, Port Arthur, Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled West of Greens Bayou, Texas. Approximate UTM Coordinates: Zone 15; Easting 416844; Northing: 3314111. CCC Project No.: 01-0098-F1; Description of Proposed Action: The applicant proposes to amend Department of the Army permit 21750 to add the construction of 2 new dock facilities, consisting of breasting structures, mooring structures, and associated access structures, and to mechanically and/or hydraulically dredge approximately 125,000 cubic yards to allow boat or ship access to the new dock facilities. The proposed amendment also includes the placement of riprap along approximately 450 linear feet of shoreline for bank stabilization. Type of Application: This application is being evaluated under Section 404 of the Clean Water Act.

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](mailto: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-200101967

Larry R. Soward

Chief Clerk, General Land Office

Coastal Coordination Council

Filed: April 4, 2001

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**Comptroller of Public Accounts**

**Notice of Request for Proposals**

Pursuant to Chapter 2254, Subchapter B, and Sections 403.011 and 403.020, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP #120a) from qualified, independent firms and individuals to submit proposals for consulting services to assist Comptroller in gleaning data from eighteen (18) independent school district management and performance reviews (Reviews) for inclusion in Comptroller's Best Practices Database: A+ Ideas for Managing Schools (AIMS) Database (Project). Currently, thirteen (13) Reviews are ready to load into the AIMS Database and, within the next two months, another five (5) Reviews will be released. Comptroller seeks assistance from qualified independent individuals and firms to conduct four distinct segments of this Project;

therefore, this RFP contemplates the award of one or more contracts for four distinct projects valued at not more than \$15,000 each. Comptroller estimates the total budget for the Project at \$60,000. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about May 28, 2001.

Contact: Parties interested in submitting a proposal should contact Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, April 13, 2001, between 2 p.m. and 5 p.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller also made the complete RFP available electronically on the Texas Marketplace at: <http://www.marketplace.state.tx.us> after 2 p.m. (CZT) on Friday, April 13, 2001. All written inquiries and questions regarding the RFP or Project should be sent via facsimile to Mr. Harris at: (512) 475-0973, not later than 2:00 p.m. (CZT), on Tuesday, May 1, 2001. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace no later than May 4, 2001, or as soon thereafter as practical.

Closing Date: Proposals must be received in Assistant General Counsel's Office at the address specified above (ROOM G-24) no later than 2 p.m. (CZT), on Monday, May 14, 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. Comptroller will make the final decision regarding the award of a contract. Comptroller reserves the right to award one or more contracts under this RFP.

Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - April 13, 2001, 2 p.m. CZT; All Inquiries and Questions Due - May 1, 2001, 2 p.m. CZT; Official Responses to Questions Posted - May 4, 2001, or as soon thereafter as practical; Proposals Due - May 14, 2001, 2 p.m. CZT; Contract Execution - May 25, 2001, or as soon thereafter as practical; Commencement of Project Activities - May 28, 2001.

TRD-200101920

Pamela Ponder

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: April 3, 2001

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**Office of Consumer Credit Commissioner**

**Correction of Error**

The Office of Consumer Credit Commissioner adopted new 7 TAC §85.420, concerning purchase transactions. The notice of adoption was published in the March 30, 2001, *Texas Register* (26 TexReg 2536).

There were two typographical errors in the text of the adopted rule, as well as in the proposed text in the September 22, 2000, *Texas Register* (25 TexReg 9304).

In §85.420(a)(1), the reference to "§85.405(a)(4)" is incorrect. The paragraph should read:

"(1) §85.405(a)(5) of this title--Legible information;"

In §85.420(a)(2), the reference to "§85.405(a)(5)" is incorrect. The paragraph should read:

"(2) §85.405(a)(6) of this title--Proper identification;"

TRD-200101893



#### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 04/09/01 - 04/15/01 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.09 for the period of 04/09/01 - 04/15/01 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-200101918

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: April 3, 2001



### Texas Department of Criminal Justice

#### Notice to Bidders - Corsicana State Homes

The Texas Youth Commission invites bids for the repair of selected portions of the interior road and associated drainage system at the Corsicana State Home located in Corsicana, Texas. The project consists of removal of existing pavement including asphaltic concrete pavement, curb and gutter, base material, and damaged subgrade. New pavement shall be constructed including lime treated subgrade, base material, asphaltic concrete surfacing, curb and gutter and related items as further shown in the Contract Documents prepared by : Schaumburg & Polk, Inc.

All bidders will be required to meet the following requirements and submit evidence with submission of bid:

A. Contractor must have a minimum of five consecutive years of experience as a General Contractor and provide references for at least three projects within the last five years that have been completed of a dollar value and complexity equal to or greater than the proposed project.

B. Contractor must be bondable and insurable at the levels required.

All Bid must be accompanied by a Bid Guarantee in the amount of 5.0% of greatest amount bid. Bid Guarantee may be in the form of a Bid Bond or Certified Check. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

Bid Documents can be purchased from the Architect/Engineer at a cost of \$50.00 (non-refundable) per set, inclusive of mailing/delivery costs, or they may be viewed at various plan rooms. Payment checks for documents should be made payable to the Architect/Engineer : Schaumburg & Polk, Inc., 117 North Spring Avenue, Tyler, Texas; Contact: Allan Ross, Phone: (903) 595-9379; FAX: (903) 595-2093.

A Pre-Bid conference will be held at 10:00 AM on April 19, 2001, at the Corsicana State School, Corsicana, Texas followed by a site-visit. ATTENDANCE IS MANDATORY.

Bids will be publicly opened and read at 2:30 PM on May 1, 2001, in Room 1030 (Conference Room) at the TDCJ Purchasing and Leases Department located at Two Financial Plaza, Suite 525, Huntsville, Texas 77340.

The Texas Youth Commission requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUB's) in at least 11.9% of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-200101856

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Filed: March 29, 2001



#### Notice to Bidders - Corsicana State Home - Roof Repairs

The Texas Youth Commission invites bids for the Roof repairs at Corsicana, Texas. The project consists of the re-roofing of buildings 1, 3, 7, 9 and 10 at the existing Corsicana State Home, Corsicana, Texas as further shown in the Contract Documents prepared by : Schaumburg & Polk, Inc.

All bidders will be required to meet the following requirements and submit evidence with submission of bid:

A. Contractor must have a minimum of five consecutive years of experience as a General Contractor and provide references for at least three projects within the last five years that have been completed of a dollar value and complexity equal to or greater than the proposed project.

B. Contractor must be bondable and insurable at the levels required.

All Bid must be accompanied by a Bid Guarantee in the amount of 5.0% of greatest amount bid. Bid Guarantee may be in the form of a Bid Bond or Certified Check. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

Bid Documents can be purchased from the Architect/Engineer at a cost of \$ 25.00 (non-refundable) per set, inclusive of mailing/delivery costs, or they may be viewed at various plan rooms. Payment checks for documents should be made payable to the Architect/Engineer : Schaumburg & Polk, Inc., 117 North Spring Avenue, Tyler, Texas; Contact: Allan Ross, Phone: (903) 595-9379, FAX: (903) 595-2093.

A Pre-Bid conference will be held at 10:00 AM on April 19, 2001, at the Corsicana State School, Corsicana, Texas followed by a site-visit. ATTENDANCE IS MANDATORY.

Bids will be publicly opened and read at 3:00 PM on May 1, 2001, in Room 1030 (Conference Room) at the TDCJ Purchasing and Leases Department located at Two Financial Plaza, Suite 525, Huntsville, Texas 77340.

The Texas Youth Commission requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUB's) in at least 57.2% of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-200101855

Carl Reynolds  
General Counsel  
Texas Department of Criminal Justice  
Filed: March 29, 2001

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Notice to Bidders - Crockett State School

The Texas Youth Commission invites bids for the repair of selected portions of the interior road and associated drainage system at the Crockett State School located in Crockett, Texas. The project consists of removal of existing pavement including asphaltic concrete pavement, curb and gutter, base material, and damaged subgrade. New pavement shall be constructed including lime treated subgrade, base material, asphaltic concrete surfacing, curb and gutter and related items as further shown in the Contract Documents prepared by : Schaumburg & Polk, Inc.

All bidders will be required to meet the following requirements and submit evidence with submission of bid:

A. Contractor must have a minimum of five consecutive years of experience as a General Contractor and provide references for at least three projects within the last five years that have been completed of a dollar value and complexity equal to or greater than the proposed project.

B. Contractor must be bondable and insurable at the levels required.

All Bid must be accompanied by a Bid Guarantee in the amount of 5.0% of greatest amount bid. Bid Guarantee may be in the form of a Bid Bond or Certified Check. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

Bid Documents can be purchased from the Architect/Engineer at a cost of \$ 50.00 (non-refundable) per set, inclusive of mailing/delivery costs, or they may be viewed at various plan rooms. Payment checks for documents should be made payable to the Architect/Engineer : Schaumburg & Polk, Inc., 117 North Spring Avenue, Tyler, Texas; Contact: Allan Ross, Phone: (903) 595-9379; FAX: (903) 595-2093.

A Pre-Bid conference will be held at 2:00 PM on April 19, 2001, at the Crockett State School, Crockett, Texas followed by a site-visit. ATTENDANCE IS MANDATORY.

Bids will be publicly opened and read at 2:00 PM on May 1, 2001, in Room 1030 (Conference Room) at the TDCJ Purchasing and Leases Department located at Two Financial Plaza, Suite 525, Huntsville, Texas 77340.

The Texas Youth Commission requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUB's) in at least 11.9% of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-200101857  
Carl Reynolds  
General Counsel  
Texas Department of Criminal Justice  
Filed: March 29, 2001

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Notice to Bidders - West Texas State School

The Texas Youth Commission invites bids for improvements and construction at the West Texas State School. The project consist of road improvements, drainage improvements of selected portions of

the interior roads; and new construction of an additional road, also replace roofs on five buildings , replace the facilities condensers at the walk-in freezer/coolers; and install an debris trap; at the West Texas State School located in Pyote, Texas, South Service Road IH 20 Pyote, Texas 79777. The work includes mechanical, concrete, and civil as further shown in the Contract Documents prepared by : Parkhill, Smith & Cooper, Inc.

The successful bidder will be required to meet the following requirements and submit evidence within five days after receiving notice of intent to award from the Owner:

A. Contractor must have a minimum of five consecutive years of experience as a General Contractor and provide references for at least three projects within the last five years that have been completed of a dollar value and complexity equal to or greater than the proposed project.

B. Contractor must be bondable and insurable at the levels required.

All Bid must be accompanied by a Bid Guarantee in the amount of 5.0% of greatest amount bid. Bid Guarantee may be in the form of a Bid Bond or Certified Check. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

Bid Documents can be purchased from the Architect/Engineer at a cost of \$ 35.00 (non-refundable) per set, inclusive of mailing/delivery costs, or they may be viewed at various plan rooms. Payment checks for documents should be made payable to the Architect/Engineer : Parkhill, Smith & Cooper, Inc, 5214 Thomason Drive, Midland, Texas 79703; Contact: Jay Edwards, Phone: ( 915) 697-1447; FAX: (915) 697-9758.

A Pre-Bid conference will be held at 10:00 am on April 19,2001, at the West Texas State School, in Pyote, Texas, followed by a site-visit. ATTENDANCE IS NOT MANDATORY.

Bids will be publicly opened and read at 2:00 pm on May 8,2001, At The Office of Parkhill, Smith & Cooper, Inc. 5214 Thomason Drive, Midland, Texas.

The Texas Youth Commission requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUB's) in at least 57.2% of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-200101858  
Carl Reynolds  
General Counsel  
Texas Department of Criminal Justice  
Filed: March 29, 2001

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Request for Qualifications

Request for Qualifications - 696-FD-1-Q021

The Texas Department of Criminal Justice (TDCJ) announces that it requires professional design services in connection with new operations and other maintenance activities at various locations throughout the state, pursuant to the provisions in the Government Code, Chapter 2254, Subchapter A. TDCJ intends to contract with one or more firms to provide such services on an as needed basis throughout December 31, 2003. Documents are available March 23, 2001.

Please fill out completely. "Description" should contain a brief description of the goods or services to be procured. Minimum Contractor (business entity) qualifications should be listed. Please make your description complete but concise.

Contact information: Connie M. West -- Contract Administrator, Two Financial Plaza, Suite 525, Huntsville, Texas 77340; Phone: 936-437-7137; Fax: 936-437-7088.

TRD-200101854

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Filed: March 29, 2001



## Texas Council for Developmental Disabilities

Intent to Award Funds

### Background

The Enterprise Foundation submitted a proposal in response to a Request for Proposals (RFP) for Best Practices Conferences posted in the *Texas Register* in March 2000. That RFP invited proposals for a grant project that would provide opportunities for self-advocates, family members, direct care staff and a variety of agencies and organization to network and share current knowledge and skills regarding issues of state, local and national significance with persons with disabilities. The Enterprise Foundation was awarded funds under this RFP beginning October 2000 and plans to coordinate the first conference in November 2001.

The Texas Council subsequently offered to host the annual conference of the Consortium of Developmental Disabilities Councils (CDDC), a national association representing state developmental disabilities councils of which it is a member. The CDDC conference will be conducted jointly with the TCDD Best Practices Conference coordinated by the Enterprise Foundation. Additional funds will therefore be awarded to the Enterprise Foundation for the additional support activities now required.

### Terms of Funding

Funding for the grant to the Enterprise Foundation for the project to conduct best practices conferences will be increased by an amount not to exceed \$12,000 above the amount announced in the RFP for activities during the current funding period.

For further information, contact Carl Risinger, TCDD Grants Management Director, Texas Council for Developmental Disabilities, 4900 North Lamar, Austin, Texas, 78751, (512) 424-4084.

TRD-200101963

Roger A. Webb

Executive Director

Texas Council for Developmental Disabilities

Filed: April 4, 2001



### Request for Proposals

The Texas Council for Developmental Disabilities announces the availability of funds for one grant project. The Council is established by and funded under state and federal law and is responsible to promote the development of supports and services necessary for individuals with developmental disabilities to be fully included in their communities. The Council is responsible for developing a State Plan and approving grant projects to carry out objectives and activities in the State Plan. The Council has a commitment to support projects that will be carried out by organizations that share the Council's vision and values.

Request for Proposals Family-Based Alternatives Model Project

This announces the availability of funds of not more than \$83,000 to be awarded by the Texas Council for Developmental Disabilities (TCDD) to establish, provide administrative support for, and facilitate the activities of a broad-based coalition that will develop a workable model for a system of family based alternatives for children currently living in institutions or at risk of being placed in institutions. Funds are available for one award for a project period of 12-15 months.

### Project Activities:

The grantee will coordinate research and provide technical assistance to the Coalition regarding identification and removal of barriers to developing and supporting a system of family based alternatives in Texas.

The grantee will ensure the model addresses recruitment, training, and ongoing support of foster families as well as appropriate interventions with birth families.

The grantee will coordinate research to establish a model to identify, recruit, train, and provide ongoing support to foster families for children with disabilities.

The grantee will identify and/or develop resources that can provide appropriate training and technical assistance to child placement agencies, foster families, birth families where appropriate.

The grantee will provide technical assistance as requested by state agencies regarding family based alternatives.

The grantee will establish coordination with a network of local agencies and/or local coalitions interested in developing family-based alternatives for children who are medically fragile and/or who have disabilities.

### Additional Terms:

Funds may not be used for organizational development or for direct services. Non-federal match of 25% is requested for the first year. Project activities located in counties designated, as federal poverty areas require a minimum of 10% matching resources. In-kind matching resources are allowable.

To receive an application packet containing the full request for proposals, application form and instructions, please submit a written, fax or e-mail request to: Carl Risinger, Grants Management Director, Texas Council for Developmental Disabilities, 4900 North Lamar Boulevard, Austin, Texas 78751-2399. (512) 424-4084 (voice) or (512) 424-4097 (fax). E-mail TXDD@rehab.state.tx.us. The application packet can be mailed via regular mail or obtained at TCDD's web site: TXDDC@txddc.state.tx.us. Application packet cannot be faxed.

### Deadline:

Proposals will be accepted, by mail or in person, at the Texas Council for Developmental Disabilities office, 4900 North Lamar Blvd., Office #4435, 4th Floor, Austin, Texas, until 4:00 p.m. on June 4, 2001. Faxed copies will not be accepted.

TRD-200101962

Roger A. Webb

Executive Director

Texas Council for Developmental Disabilities

Filed: April 4, 2001



## Texas Education Agency

Notice of Cancellation of Request for Applications Concerning Open-Enrollment Charter Guidelines and Application

The Texas Education Agency (TEA) published Request for Applications (RFA) #701-01-005 concerning Open-Enrollment Charter Guidelines and Application in the March 23, 2001, issue of the *Texas Register* (26 TexReg 2423). The TEA hereby gives notice of the cancellation of RFA #701-01-005.

Further Information. For further information, contact Mary Perry, Division of Charter Schools, TEA, at (512) 463-9575, or by e-mail at mperry@tea.state.tx.us.

TRD-200101966

Criss Cloudt

Associate Commissioner, Accountability Reporting and Research

Texas Education Agency

Filed: April 4, 2001



### Notice of Public Hearing Concerning Proposed Amendments to 19 TAC Chapter 176, Driver Training Schools, Subchapter BB, Commissioner's Rules on Minimum Standards of Operation of Texas Driving Safety Schools and Course Providers

The Texas Education Agency will hold a public hearing to solicit testimony and input from the public on proposed amendments to 19 TAC Chapter 176, Driver Training Schools, Subchapter BB, Commissioner's Rules on Minimum Standards of Operation of Texas Driving Safety Schools and Course Providers, and the Proposed Technical Standards for Driving Safety Courses Taught by an Alternative Delivery Method that are incorporated by reference into the proposed amendments to 19 TAC Chapter 176, Subchapter BB. The Texas Government Code, §2001.029, requires that a state agency grant an opportunity for a public hearing before it adopts a substantive rule if a public hearing is requested by at least 25 persons. The hearing on proposed amendments to 19 TAC Chapter 176, Subchapter BB, will be held at the written request of 32 persons.

The hearing will be held on Monday, April 23, 2001, from 9:00 a.m. to 1:00 p.m., unless testimony concludes prior to that time, in Room 1-100 of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

Individuals who wish to testify at the hearing should sign in at the hearing site; however, no prior registration is necessary. Speakers are encouraged, but not required, to provide written copies of their testimony. Five copies are sufficient. Depending on the number of individuals who sign up to testify, testimony may be limited to five minutes per speaker.

Individuals needing translation services or other special accommodations should notify the Division of Driver Training at (512) 997-6500 by 5:00 p.m. on Wednesday, April 18, 2001.

Individuals who are unable to attend the hearing may send written comments to: Proposed Commissioner's Rules on Driving Safety and Course Providers, c/o Driver Training Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494.

Individuals may contact Kathy Kenerson at (512) 997-6507 for additional information.

TRD-200101964

Criss Cloudt

Associate Commissioner, Accountability Reporting and Research

Texas Education Agency

Filed: April 4, 2001



### Request for Proposals Concerning Developing an Accounting Policy and Procedure Manual

Eligible Proposers. The Texas Education Agency (TEA) is requesting proposals under Request for Proposals (RFP) #701-01-018 from nonprofit organizations, institutions of higher education, private companies, and individuals to develop the initial accounting policy and procedure manual documenting the expenditure processing requirements in TEA's Integrated Statewide Administrative System (ISAS), which is a modified version of PeopleSoft's Public Sector Financial Applications (version 7.02), including general ledger, accounts payable, and purchasing. Historically underutilized businesses (HUBs) are encouraged to submit proposals.

Description. The vendor will be required to interview accounting and other fiscal staff to produce a written accounting policy and procedure manual. The manual must include screen prints with step-by-step instructions for on-line entry and processing. The manual must be produced in a hard copy and an electronic format that allows for future updates and maintenance by TEA and that is available electronically for end users to access.

Dates of Project. All services and activities related to this proposal will be conducted within specified dates. Proposers should plan for a starting date of no earlier than June 1, 2001, and an ending date of no later than August 31, 2001.

Project Amount. One contractor will be selected to receive a maximum of \$110,000 during the contract period. Subsequent project funding will be based on satisfactory progress of first-year objectives and activities by the contractor and on general budget approval making funds available.

Selection Criteria. Proposals will be selected based on the ability of each proposer to carry out all requirements contained in this RFP. The TEA will base its selection on, among other things, the demonstrated competence and qualifications of the proposer and upon the reasonableness of the proposed fee. The TEA reserves the right to select from the highest ranking proposals those that address all requirements in the RFP and that are most advantageous to the project.

The TEA is not obligated to execute a resulting contract, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit TEA to pay any costs incurred before a contract is executed. The issuance of this RFP does not obligate TEA to award a contract or pay any costs incurred in preparing a response.

Requesting the Proposal. A complete copy of RFP #701-01-018 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, by calling (512) 463-9304, or e-mailing dcc@tea.state.tx.us. Please refer to the RFP number in your request.

Further Information. For clarifying information about this RFP, contact Shirley Beaulieu, Division of Accounting, TEA, (512) 475-3773.

Deadline for Receipt of Proposals. Proposals must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Thursday, May 17, 2001, to be considered.

TRD-200101965

Criss Cloudt

Associate Commissioner, Accountability Reporting and Research

Texas Education Agency

Filed: April 4, 2001



**Texas Department of Health**



**Designation of Cameron Clinic of Central Counties Center for Mental Health Mental Retardation Services 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: Cameron Clinic of Central Counties Center for Mental Health Mental Retardation Services, 206 South Central Avenue, Cameron, Texas 76520. 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; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200101911  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: April 3, 2001



**Designation of Gatesville Clinic of Central Counties Center for Mental Health Mental Retardation Services 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: Gatesville Clinic of Central Counties Center for Mental Health Mental Retardation Services, 211 Lutterloh, Gatesville, Texas 76528. 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; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200101912  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: April 3, 2001



**Designation of Hamilton Clinic of Central Counties Center for Mental Health Mental Retardation Services 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: Hamilton Clinic of Central Counties Center for Mental Health Mental Retardation Services, 101 Park Hill Drive, Hamilton, Texas 76531. 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; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200101913  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: April 3, 2001



**Designation of Killeen Clinic of Central Counties Center for Mental Health Mental Retardation Services 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: Killeen Clinic of Central Counties Center for Mental Health Mental Retardation Services, 100 East Avenue A, Killeen, Texas 76541. 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; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200101914  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: April 3, 2001



**Designation of University of Houston-Clear Lake Health Center 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: University of Houston-Clear Lake Health Center, 2700 Bay Area Boulevard, Houston, Texas 77058. 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; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200101915  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: April 3, 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	Amend-ment #	Date of Action
Dallas	TX Hematology/Oncology Center PA	L05397	Dallas	00	3/19/01
Houston	Pet Net Pharmaceutical Services Inc	L05342	Houston	00	3/23/01
Port Arthur	SK Rao MD PA	L05415	Port Arthur	00	3/16/01
Sherman	North Texas Cardiology	L05395	Sherman	00	3/15/01
Throughout TX	Pet Scans of America Corp	L05406	Coldspring	00	03/31/01
Throughout TX	RJR Engineering LTD LLP	L05416	Katy	00	3/30/01

### AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Amarillo	Northwest TX Healthcare System Inc	L02054	Amarillo	60	3/27/01
Amarillo	Baptist St Anthony's Health System	L01259	Amarillo	62	4/2/01
Austin	Daughters of Charity Health Services of Austin	L00268	Austin	68	3/19/01
Austin	Seton Medical Center	L02896	Austin	57	3/20/01
Baytown	Baycoast Medical Center	L02462	Baytown	35	3/22/01
Corpus Christi	Riverside Hospital Inc	L02977	Corpus Christi	30	3/16/01
Corpus Christi	Corpus Christi Radiology Center	L04493	Corpus Christi	10	3/26/01
Cuero	Cuero Community Hospital	L02448	Cuero	19	3/16/01
Dallas	Presbyterian Hospital of Dallas	L01586	Dallas	75	3/28/01
Decatur	Wise Regional Health System	L02382	Decatur	16	3/27/01
Denton	University of North Texas Physics Department	L00101	Denton	67	3/19/01
Denton	Metro North Clinic	L05235	Denton	05	3/19/01
Denton	Network Cancer Care of Denton	L05348	Denton	03	4/2/01
El Paso	Providence Memorial Hospital	L02353	El Paso	66	3/26/01
Ft Worth	All Saints Episcopal Hospital	L02212	Ft Worth	52	3/19/01
Ft Worth	21 <sup>st</sup> Century Technologies Inc	L05013	Ft Worth	03	3/15/01
Ft Worth	Ft Worth Osteopathic Hospital	L00730	Ft Worth	49	3/26/01
Ft Worth	Harris Methodist Ft Worth	L01837	Ft Worth	78	3/27/01
Glen Rose	Somervell County Health Care Authority	L03225	Glen Rose	14	3/16/01
Harlingen	Valley Baptist Medical Center	L01909	Harlingen	48	3/16/01
Houston	Memorial Hermann Hospital System	L01168	Houston	58	3/16/01
Houston	Industrial Nuclear Company	L04508	Houston	02	3/15/01
Houston	Proportional Technologies Inc	L04747	Houston	11	3/23/01
Houston	Shaw Fabricators	L05169	Houston	04	3/26/01
Houston	Houston Northwest Radiotherapy Center	L02416	Houston	21	3/27/01
Lubbock	University Medical Center	L04719	Lubbock	40	3/19/01
Midland	Midland Certified Reagent	L03497	Midland	11	3/26/01
Orange	Printpack Inc	L01081	Orange	27	3/23/01
Plano	Columbia Medical Center of Plano	L02032	Plano	50	3/19/01
Port Arthur	ATOFINA Petrochemicals Inc	L03498	Port Arthur	18	3/26/01

## (CONT) AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
San Antonio	K O Steel Company	L04480	San Antonio	14	3/22/01
San Antonio	Santa Rosa Health Care	L02237	San Antonio	63	3/23/01
San Antonio	University of TX at San Antonio	L01962	San Antonio	42	3/27/01
San Antonio	K O Steel Company	L04480	San Antonio	15	3/29/01
San Antonio	Baptist Health System	L00455	San Antonio	99	3/29/01
Throughout TX	Global X-Ray & Testing Corp	L03663	Aransas Pass	87	3/15/01
Throughout TX	Troxler Electronic Laboratories	L01296	Arlington	35	3/28/01
Throughout TX	Rainhart Company	L05325	Austin	01	3/28/01
Throughout TX	Exxonmobil Chemical Company	L01135	Baytown	60	3/29/01
Throughout TX	Fugro South Inc	L04322	Channelview	50	3/20/01
Throughout TX	Catch A Fault	L02725	Denton	15	3/21/01
Throughout TX	AMEC Earth & Environmental Inc	L03622	El Paso	14	3/28/01
Throughout TX	ION Beam Applications Inc	L03851	Ft Worth	25	3/28/01
Throughout TX	CB&I Constructors Inc	L01902	Houston	46	3/21/01
Throughout TX	Longview Inspection Inc	L01774	Houston	162	3/16/01
Throughout TX	Professional Service Industries Inc	L00203	Houston	111	3/16/01
Throughout TX	Professional Service Industries Inc	L04942	Houston	09	3/16/01
Throughout TX	Continental Airlines Inc	L02718	Houston	33	3/20/01
Throughout TX	Secor International Inc	L05258	Houston	02	3/23/01
Throughout TX	Petroleum Industry Inspectors	L04081	Houston	72	3/29/01
Throughout TX	Mandes Inspection & Testing Services Inc	L05220	Houston	20	3/29/01
Throughout TX	A & R Engineering and Testing Inc	L05318	Houston	02	3/30/01
Throughout TX	Non Destructive Inspection Corp	L02712	Lake Jackson	88	3/29/01
Throughout TX	Deep Well Tubular Service Inc	L04462	Midland	04	3/20/01
Throughout TX	Tracer-Tech Services	L05375	Midland	01	3/29/01
Throughout TX	ANATEC Inc	L04865	Nederland	39	3/16/01
Throughout TX	ANATEC Inc	L04865	Nederland	40	3/29/01
Throughout TX	Technical Logging Systems LLC	L05103	Pearland	02	3/23/01
Throughout TX	ASTEX Inc	L05071	San Antonio	02	3/23/01
Throughout TX	Applied Industrial Materials Corp	L04051	Texas City	05	3/26/01
Throughout TX	American Eagle Well Logging Inc	L04133	Wichita Falls	05	3/23/01
Wichita Falls	Saint-Gobain Vetrotex America Inc	L02269	Wichita Falls	30	3/29/01

## RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Austin White Lime Company	L02941	Austin	07	3/24/01
Austin	Motorola Semiconductor Products	L04952	Austin	02	3/30/01
Corpus Christi	Coastal Refining and Marketing Inc	L01268	Corpus Christi	22	3/29/01
El Paso	El Paso Healthcare System Ltd	L02715	El Paso	44	3/20/01
Houston	Saint-Gobain Ceramics & Plastics	L04895	Houston	02	3/30/01
Irving	Baylor Medical Center at Irving	L02444	Irving	34	3/22/01
Jourdanton	Tri City Community Hospital LTD	L04966	Jourdanton	05	3/27/01
Throughout TX	ERM Southwest Inc	L02936	Houston	15	3/23/01
Throughout TX	APEX Geoscience Inc	L04929	Tyler	08	3/19/01

**TERMINATIONS OF LICENSES ISSUED:**

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Columbia/St David's Healthcare System LP	L01086	Austin	23	3/27/01
Brownville	Microbac Laboratories Inc	L04993	Brownsville	02	3/30/01
Huntsville	Sam Houston State University	L00496	Huntsville	25	3/30/01
Throughout TX	Murray Thomas and Griffin Inc	L04481	Texarkana	04	3/30/01

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 49<sup>th</sup> Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200101952  
 Susan K. Steeg  
 General Counsel  
 Texas Department of Health  
 Filed: April 3, 2001



**Notice of Change to Request for Proposals for Family and Community Health Services**

**INTRODUCTION**

The Texas Department of Health (department) announces the following two changes in Attachment E, the Primary Health Care attachment of the FY2002 Request for Proposal (RFP). The change is effective immediately and has been incorporated in the RFP at [www.tdh.state.tx.us/chrd-contracts/phc.htm](http://www.tdh.state.tx.us/chrd-contracts/phc.htm). The notice of the RFP was published in the February 9, 2001 issue of the *Texas Register* (26 TexReg 1423).

**DESCRIPTION OF CHANGE**

The following two sections of Attachment E, Primary Health Care (PHC), are amended as follows:

**I. Co-Pays.**

Per the Texas Administrative Code, Title 25, Health Services, eligible individuals whose annual gross family income is below 100% of the FPIL may be charged a nominal fee for services rendered in accordance with their income and approved by the department in the contracting process. Eligible individuals whose annual gross family income is between 100% and 150% of the FPIL guidelines will be charged a co-payment on a sliding fee scale basis as determined by the provider and in accordance with the contract provisions. Contractors will be required to submit a co-pay schedule to PHC program staff for approval. Agencies that receive PHC funds may not deny services to any eligible PHC recipient based on inability to pay a co-pay.

**J. Community Advisory Committee.**

**Membership:** Each PHC contractor is to have a functional Community Advisory Committee (CAC) which is representative of the community, including the cultural, racial/ethnic, gender, economic and linguistic diversities. The CAC membership should include PHC clients as well as other community members selected for their areas of expertise. Those applicants with consumer-based governing boards whose majority is clients may use the board of directors to satisfy the CAC criteria as long as the duties, listed below, are fulfilled.

The PHC staff should serve as ex officio members and support staff to the committee, but may not serve in an official capacity.

**Duties:** Working with the PHC provider, the CAC is responsible for: using available data to identify and prioritize the specific health-care needs of the population;

conducting a needs and capacities assessment;

identifying gaps in service;

identifying and designing specific interventions to address these issues; and

ensuring that the CAC has relevant by-laws or written policies.

#### **DEADLINE**

Proposals prepared according to instructions in the RFP package must be received on or before 5:00 P.M. Central Daylight Savings Time (CDT) on April 17, 2001. If an application is mailed, it will be considered as meeting the deadline if it is received on or before the due date.

#### **TO OBTAIN A COPY OF THE REVISED REQUEST FOR PROPOSALS**

To request a copy of these changes, contact the Contract Management Section, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, E-mail address [contractmgt@tdh.state.tx.us](mailto:contractmgt@tdh.state.tx.us), or fax (512) 458-7446.

#### **OR**

The revised RFP, downloadable forms, and information about contract requirements is available at [www.tdh.state.tx.us/chrd-contracts/phc.htm](http://www.tdh.state.tx.us/chrd-contracts/phc.htm).

TRD-200101969

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: April 4, 2001



#### **Notice of Request for Proposals for Hospital Systems Development Grant Program**

#### **PURPOSE:**

Trauma can occur anywhere, at any time. To help prevent death or disability, critical trauma victims must reach definitive care within a short period of time, often called the "golden hour". A set of resources must be in place and immediately accessible at all times to ensure that critical trauma victims are treated within this "golden hour". These resources include informed citizens, communications systems, pre-hospital care providers, and multidisciplinary trauma teams in emergency departments. With the inclusion of public information, prevention activities, and rehabilitation, this coordination of resources is called a trauma system. Studies have shown that coordination of the emergency medical resources available in an area can result in a major decrease in preventable trauma deaths.

This program is administered by the Bureau of Emergency Management (Bureau) of the Texas Department of Health (department). The program provides reimbursement for approved costs incurred for a specific project completed during a specified contract period, between October 1, 2001 - August 31, 2002.

#### **DESCRIPTION:**

The department is accepting proposals for projects to increase the availability and quality of hospital trauma care. Applicable projects are those that, upon completion, can demonstrate a positive impact on the delivery of trauma care in the facility, increased coordination of regional systems, and/or decreased incidence of trauma. Eligible projects include durable medical and computer equipment, education and training, injury prevention activities, and participation in regional and state trauma system activities required to achieve or maintain trauma designation.

#### **PERFORMANCE REQUIREMENT:**

Contracts will be developed between the department and successful applicants. The contract will be for a specified period of time and will detail items such as budget, reporting requirements, department general provisions, and any other specifics that might apply to the award. Hospitals designated as a trauma facility as of June 1, 2001, facilities actively seeking designation (having shown a commitment to become designated by having a survey, submitting a survey report, or submitting a complete level I, II, III, or IV trauma facility designation application between 6/1/00 and 6/1/01), and organizations representing department designated trauma facilities and those facilities actively seeking designation will be considered. The grant provides reimbursement for an approved project and associated costs which are reasonable and necessary and which are incurred after the grant award is made and during the stated contract period only. Reimbursement may be withheld and a request for return of funds may be necessary if any of the stated requirements of this grant are not met. It will be the responsibility of the grant recipient to maintain a record of all costs and activities related to the administration of the project. Projects must start on or after effective date of contract and must be completed prior to August 31, 2002.

Awards will be a maximum of \$25,000.

Any project involving the purchase of computers and computer related items, including accessories and software, must be thoroughly described within the proposal. An appropriate description would be "300 MHz Pentium Processor, 64 MG RAM, 6.0 GB hard drive, 56K modem, 24X CD ROM." Also, a similar description of make and model for the printer, monitor, and any software is essential.

The program only provides reimbursement for approved costs associated with the implementation of the approved project. Projects will be funded until funds have been exhausted or preset limits reached. Eligible grant requests consist of durable medical and computer equipment, education and training, injury prevention activities, and participation in regional and state trauma system activities required to achieve or maintain trauma designation.

Examples of costs that are not applicable for funding include items such as salaries, fringe benefits, indirect costs, disposable supplies, and day-to-day operating expenses (e.g. insurance, loan payments, rent, etc.). Land purchases or building funds do not qualify as applicable projects under this program.

Should a project not be completed or the full allocation of funding not be used, the department may redistribute funds at its discretion. The department reserves the right to fund projects at any level considered appropriate, according to the availability of funds and justification for need. Any costs incurred prior to the contract start date will not be eligible for reimbursement.

**ELIGIBLE APPLICANTS:**

Grant applications from the following organizations will be considered: hospitals that have accomplished any of the following steps toward trauma facility designation by June 1, 2001: designated Level I, II, III, or IV trauma facilities; hospitals that have submitted a complete level I, II, III, or IV trauma facility designation application 6/1/00 and 6/1/01; hospitals that have completed a trauma facility survey and are awaiting designation; and organizations, such as Regional Advisory Councils (RACs) representing the department's designated trauma facilities and those facilities actively seeking designation. Applicant must meet their RAC's participation requirements.

**CONTACT:**

Information concerning the Request for Proposals (RFP) may be obtained from Ed Loomis, Grants Program Manager, Bureau of Emergency Management, Texas Department of Health, 1100 West 49th Street, Austin Texas 78756, Telephone (512) 834-6700, extension 2376, Fax (512) 834-6611 or Email ed.loomis@tdh.state.tx.us.

**LIMITATIONS:**

The department reserves the right to reject any or all applications and is not liable for costs incurred by the applicant in the development, submission, or review of the application. Costs incurred in the preparation of the application shall be borne by the applicant and are not allowable in the RFP.

The department reserves the right to alter, amend, or modify any provisions of this RFP, or to withdraw this RFP, at any time prior to the award of a contract pursuant thereto, if in the best interest of the department or the State of Texas to do so. The decision of the department will be administratively final in this regard.

**DEADLINE:**

The deadline for submitting the application, original proposal, applicable forms, plus one copy of each will be midnight, July 13, 2001. Only those original proposals and copies, which are postmarked or received by midnight, on or before July 13, 2001 will be reviewed regardless of the circumstances. Applications may be mailed, or hand delivered. If delivered by hand, the proposal must be taken to the Exchange Building, Bureau of Emergency Management, 8407 Wall Street, Suite S220, Austin, Texas, no later than 5:00 p.m. Central Daylight Saving Time, July 13, 2001.

The original and one copy of the completed application, applicable forms, and proposal should be mailed to Kathryn C. Perkins, Bureau Chief, Attention: Hospital System Development Grant Program, Bureau of Emergency Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.

**EVALUATION AND SELECTION:**

Grant applications from the following organizations will be considered. Hospitals designated as a trauma facility as of June 1, 2001, facilities actively seeking designation (having shown a commitment to become designated by having a survey, submitting a survey report, or submitting a complete level I, II, III, or IV trauma facility designation application between 6/1/00 and 6/1/01), and organizations representing the department's designated trauma facilities and those facilities actively seeking designation will be considered, and organizations (such as RACs) representing department designated trauma facilities and those facilities actively seeking designation. Applicants must meet their RAC's participation requirements to be considered for funding.

Proposals will be reviewed and evaluated based on information provided by the applicant. Eligibility criteria includes, but is not limited

to: proposal received or postmarked by midnight, July 13, 2001; all signatures included; project can be completed by August 31, 2002; agency has not made any purchases prior to October 1, 2001; proposal does not exceed ten pages, including attachments; proposal is typed or computer generated (does not apply to department attachments). In addition, applications between multiple organizations (three or more organizations) will be allowed five additional pages per organization.

Evaluation criteria:

Level of Trauma Designation;

Only Trauma Designated Facility in county;

"Lead" Designated Facility;

Level of Regional Advisory Council participation (letter of endorsement recommended); and

Number of agencies benefiting from proposal;

Letters of support:

Emergency Department patient population vs. population served;

Average length of stay in Emergency Department for trauma patients;

Average transport distance to a higher-level trauma designated facility;

Detailed project budget included;

Detailed project timeline included;

Type of county (frontier, rural, or urban);

Method of project evaluation;

Current, pending, or past complaints; and

Commitment to trauma education.

Multi-entity proposals include: (three or more organizations)

Name of hospital(s);

Justification of hospitals' need; and

Detail description of each project for each hospital.

Proposals will be reviewed to ensure all budget items requested are applicable and appropriate, and that implementation of the proposed project is possible. Tentative approval will be given by the Chief of the Bureau of Emergency Management and the Associate Commissioner for Health Care Quality and Standards. Final approval will be given by the Commissioner of Health or the Commissioner's appointed agent. All projects not funded will remain active until the end of the funding cycle for consideration in the event funding becomes available.

The department strongly supports the concept of cooperative applications between multiple providers, and applications that clearly demonstrate and document regional projects involving multiple service organizations. In the event of a cooperative application between multiple entities being submitted, an itemized proposal must be provided to clearly identify equipment/training allocation. Though not a prerequisite for this grant, TDH encourages all applicants to pursue such cooperative agreements. Additionally, preference will be given to proposals that are most economical. For additional information contact Ed Loomis, Grants Program Manager, 1100 W. 49th Street, Austin, Texas 78756, telephone (512) 834-6700 or email ed.loomis@tdh.state.tx.us.

TRD-200101968

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: April 4, 2001

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**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 00-07, Amendment Number 572.

The amendment revises the payment methodology for nursing home services. Nursing homes may now participate in a program that provides additional funding for increases in staffing levels for registered nurses, licensed vocational nurses, medication aides, and nurse aides. The amendment is effective May 1, 2000.

If additional information is needed, please contact Pamela McDonald, Texas Department of Human Services at (512) 438-4086.

TRD-200101861

Marina S. Henderson

Executive Deputy Commissioner

Texas Health and Human Services Commission

Filed: March 29, 2001

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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 00-19, Amendment Number 584.

The amendment reflects the current operational procedures of the Texas Medicaid managed care program as they relate to guaranteed eligibility and disenrollment rights. The amendment is effective November 1, 2000.

If additional information is needed, please contact Alison Smith, Texas Department of Health, at (512) 794-6852.

TRD-200101862

Marina S. Henderson

Executive Deputy Commissioner

Texas Health and Human Services Commission

Filed: March 29, 2001

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**Texas Department of Housing and Community Affairs**

Request for Proposal to Provide Technical Assistance Educational Services

**REQUEST FOR PROPOSALS TO PROVIDE TECHNICAL ASSISTANCE EDUCATIONAL SERVICES TO A THIRTY-TWO COUNTY AREA IN THE ALAMO AREA, COASTAL BEND, CONCHO VALLEY, LOWER RIO GRANDE VALLEY, MIDDLE RIO GRANDE, PERMIAN BASIN, RIO GRANDE, SOUTH TEXAS DEVELOPMENT, AND THE WEST CENTRAL TEXAS**

The Texas Department of Housing and Community Affairs (TDHCA), Office of Colonia Initiatives (OCI), is accepting proposals for a one-year contract with a competent entity or individual to provide contract for deed consumer education workshops in designated counties located within 200 miles of the Texas-Mexico border. The entity or individual

will provide contract for deed consumer education workshops on the provisions of the contract for deed legislation and the rights of a buyer who purchases residential land with a contract for deed.

1. Andrews
2. Brooks
3. Cameron
4. Coleman
5. Culberson
6. Dimmit
7. Duval
8. El Paso
9. Frio
10. Hidalgo
11. Jim Hogg
12. Jim Wells
13. Kinney
14. Kleberg
15. La Salle
16. Maverick
17. Mitchell
18. Nolan
19. Pecos
20. Presidio
21. Reagan
22. Reeves
23. San Patricio
24. Starr
25. Uvalde
26. Val Verde
27. Ward
28. Webb
29. Willacy
30. Winkler
31. Zapata
32. Zavala

The successful candidate will provide contract for deed consumer education as outlined in the workshop curriculum: Contract For Deed; Negative Aspects of the Contract For Deed; Determination & Notice of Applicability; Spanish Language Requirement; Seller's Disclosure of Condition of the Property; Seller's Disclosure of Financial Terms; Contract Terms Prohibited; Annual Accounting Statement; Buyer's Right to Cancel Contract Without Cause; Forfeiture and Acceleration or of Rescission; Notice of Forfeiture and Acceleration or of Rescission; Equity Protection: Sale of Property, Placement of Lien for Utility Service; The Buyer's Right to Pledge Interest In Property On Contracts Entered Into Before September 1, 1995; Recording Requirements; and Title Transfer.



Interested parties should have experience in executing educational workshops, considerable experience working with colonia residents and/or low income populations, experience teaching workshops in Spanish, have geographical knowledge of colonias and/or substandard living conditions in the designated counties, experience in affordable housing, real estate, or home ownership counseling programs, knowledge of the basic process of a contract for deed transaction, knowledge of or previous experience with state government or related entities, and experience with marketing to colonia residents or low income populations.

Proposals must be received at TDHCA headquarters no later than 5 p.m. on Friday, April 27, 2001. To obtain an application and/or additional information, please contact Juan Palacios or Susana Garza with the OCI at 1-800-462-4251.

TRD-200101865  
Daisy A. Stiner  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: March 29, 2001

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## Texas Department of Insurance

### Insurer Services

Application for admission to the State of Texas by SAFETY FIRST INSURANCE COMPANY, a foreign fire and casualty company. The home office is in St. Louis, Missouri.

Application for admission to the State of Texas by OKLAHOMA FARM BUREAU MUTUAL INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Oklahoma City, Oklahoma.

Application to change the name of TITLEAMERICA INSURANCE CORPORATION to NORTH AMERICAN TITLE INSURANCE COMPANY, a foreign title company. The home office is in Miami, Florida.

Application for admission to the State of Texas by LANDCAR LIFE INSURANCE COMPANY, a foreign life company. The home office is in Sandy, Utah.

Application for admission to the State of Texas by LANDCAR CASUALTY COMPANY, a foreign fire and casualty company. The home office is in Sandy, Utah.

Application to change the name of UNDERWRITERS LLOYDS OF TEXAS COMPANY to AXA CORPORATE SOLUTIONS LLOYDS INSURANCE COMPANY OF TEXAS, a domestic Lloyds company. The home office is in Houston, Texas.

Application to change the name of ANTHEM LIFE INSURANCE COMPANY OF INDIANA to ANTHEM LIFE INSURANCE COMPANY, a foreign life company. The home office is in Indianapolis, Indiana.

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-200101821  
Judy Woolley  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: March 28, 2001

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### Insurer Services

Application for admission to the State of Texas by LONE STAR NATIONAL INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Metamora, Illinois.

Application for admission to the State of Texas by NATIONAL BUILDING MATERIAL ASSURANCE COMPANY, a foreign fire and casualty company. The home office is in Metamora, Illinois.

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-200101960  
Judy Woolley  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: April 4, 2001

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### Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of New England Benefit Companies, a foreign third party administrator. The home office is Warwick, Rhode Island.

Application for admission to Texas of McCamish Systems, LLC, a foreign third party administrator. The home office is Atlanta, Georgia.

Application for incorporation in Texas of LifeRe Administrators, Inc., a domestic third party administrator. The home office is San Antonio, 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-200101903  
Judy Woolley  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: April 2, 2001

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## Texas Lottery Commission

### Instant Game No. 239 - "Deep Sea Doubler"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 239 is "DEEP SEA DOUBLER". The play style is a match three (3) of six (6) with a doubler".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 239 shall be \$1.00 per ticket.

#### 1.2 Definitions in Instant Game No. 239.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols

are: \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500, \$2,000, and FISH SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and

each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 of this section Figure 1:16 TAC GAME NO. 239 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$8.00	EIGHT\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$2,000	TWO THOU
FISH SYMBOL	DOUBLE

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Table 2 of this section. Figure 2:16 TAC GAME NO. 239 - 1.2E

<b>CODE</b>	<b>PRIZE</b>
\$1.00	ONE
\$2.00	TWO
\$4.00	FOR
\$5.00	FIV
\$10.00	TEN
\$20.00	TWN

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100, or \$500.

I. High-Tier Prize - A prize of \$2,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A thirteen (13) digit number consisting of the three (3) digit game number (239), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be : 239-0000001-000.

L. Pack - A pack of "DEEP SEA DOUBLER" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 000 to 004 will be on the top page; tickets 005 to 009 will be on the next page and so on; tickets 245 to 249 will be on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "DEEP SEA DOUBLER" Instant Game No. 239 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "DEEP SEA DOUBLER" Instant Game is determined once the latex on the ticket is scratched off to expose 11 (eleven) play symbols. If the player gets three (3) like amounts, the player wins that prize. If the player gets two (2) like amounts and a FISH symbol, the player will win double the prize amount. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly six (6) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly six (6) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the six (6) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 6 (six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. There will be no four (4) or more like play symbols on a ticket.

C. The doubler symbol will never appear on a ticket which contains three (3) like play symbols.

D. There will be no more than one (1) doubler symbol on a ticket.

E. No more than one (1) pair will appear on a ticket containing a doubler symbol.

F. No more than two (2) pairs of like play symbols on a ticket which does not contain a doubler symbol.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "DEEP SEA DOUBLER" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, or \$500, a claimant

shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "DEEP SEA DOUBLER" Instant Game prize of \$2,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "DEEP SEA DOUBLER" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "DEEP SEA DOUBLER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "DEEP SEA DOUBLER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

**Table 3**

**Figure 3:16 TAC GAME NO. 239 – 4.0**

<b>Prize Amount</b>	<b>Approximate Number of Prizes*</b>	<b>Approximate Odds are 1 in **</b>
\$1.00	2,594,867	1:11.91
\$2.00	2,472,040	1:12.50
\$4.00	865,180	1:35.71
\$5.00	247,201	1:124.99
\$10.00	247,152	1:125.01
\$20.00	61,783	1:500.09
\$40.00	25,759	1:1,199.46
\$50.00	7,696	1:4,014.68
\$100	4,518	1:6,838.65
\$500	1,167	1:26,475.58
\$2,000	92	1:335,836.96

\*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.73. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 30,000,000 tickets in the Instant Game No. 239. The approximate number and value of prizes in the game are as follows:

Table 3 of this section Figure 3:16 TAC GAME NO. 239- 4.0

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 239 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 239, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200101876  
 Ridgely C. Bennett  
 Deputy General Counsel  
 Texas Lottery Commission  
 Filed: March 30, 2001

◆ ◆ ◆  
**Instant Game No. 204 - "Moolah Magic"**

**1.0 Name and Style of Game.**

A. The name of Instant Game No. 204 is "MOOLAH MAGIC". The play style is a "key symbol match with doubler".

**1.1 Price of Instant Ticket.**

A. Tickets for Instant Game No. 204 shall be \$1.00 per ticket.

**1.2 Definitions in Instant Game No. 204.**

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: \$1.00, \$2.00, \$4.00, \$5.00, \$8.00, \$10.00, \$20.00, \$40.00, \$50.00, \$80.00, \$100, \$200, \$4,000, MONEY BAG SYMBOL, STAR SYMBOL, WAND SYMBOL, and HAT SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 Figure 1:16 TAC GAME NO. 204 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
X	(position)X(ticket number)
0	(position)0(ticket number)
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$8.00	EIGHT\$
\$10.00	TEN\$
\$20.00	TWENTY
\$40.00	FORTY
\$50.00	FIFTY
\$80.00	EIGHTY
\$100	ONE HUND
\$200	TWO HUND
\$4,000	FOUR THOU
MONEYBAG SYMBOL	MONEY BAG
STAR SYMBOL	STAR
WAND SYMBOL	WAND
HAT SYMBOL	HAT

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Table 2 of this section. Figure 2:16 TAC GAME NO. 204 - 1.2E

CODE	PRIZE
\$1.00	ONE
\$2.00	TWO
\$4.00	FOR
\$5.00	FIV
\$8.00	EGT
\$10.00	TEN
\$20.00	TWN

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of &emptyØ, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$8.00, \$10.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$40.00, \$50.00, \$80.00, \$100, or \$200.

I. High-Tier Prize - A prize of \$4,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A thirteen (13) digit number consisting of the three (3) digit game number (204), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be : 204-0000001-000.

L. Pack - A pack of "MOOLAH MAGIC" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 000 to 004 will be on the top page; tickets

245 to 249 will be on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MOOLAH MAGIC" Instant Game No. 204 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MOOLAH MAGIC" Instant Game is determined once the latex on the ticket is scratched off to expose 11 (eleven) play symbols. If the player gets three (3) "X" symbols or three (3) "0" symbols in any row, column or diagonal, the player wins the prize shown. If the player gets three (3) "X" symbols or three (3) "0" symbols in any row, column or diagonal and a MONEY BAG symbol, under the Bonus Area, the player will win double the prize amount shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 11 (eleven) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 11 (eleven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 11 (eleven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Non-winning tickets will never contain a MONEY BAG symbol in the Bonus area.

C. The non-winning symbols in the Bonus area will be used an approximately even number of times on non-winning tickets.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "MOOLAH MAGIC" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$8.00, \$10.00, \$20.00, \$40.00, \$50.00, \$80.00, \$100, or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$80.00, \$100 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "MOOLAH MAGIC" Instant Game prize of \$4,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for



that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MOOLAH MAGIC" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "MOOLAH MAGIC" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "MOOLAH MAGIC" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 30,000,000 tickets in the Instant Game No. 204. The approximate number and value of prizes in the game are as follows:

Table 3 of this section Figure 3:16 TAC GAME NO. 204- 4.0

<b>Prize Amount</b>	<b>Approximate Number of Prizes*</b>	<b>Approximate Odds are 1 in **</b>
\$1.00	4,788,562	1:6.45
\$2.00	2,347,817	1:13.16
\$4.00	123,429	1:250.29
\$5.00	30,875	1:1,000.57
\$8.00	61,808	1:499.82
\$10.00	61,866	1:499.35
\$20.00	61,763	1:500.18
\$40.00	41,798	1:739.10
\$50.00	25,773	1:1,198.65
\$80.00	25,803	1:1,197.25
\$100	12,325	1:2,506.51
\$200	5,148	1:6,000.92
\$4,000	75	1:411,903.33

\*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.07. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 204 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 204, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200101874

Ridgely C. Bennett

Deputy General Counsel

Texas Lottery Commission

Filed: March 30, 2001

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Instant Game No. 240 - "Wild Money"

1.0 Name and Style of Game.

A. The name of Instant Game No. 240 is "WILD MONEY". The play style is a "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 240 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 240.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are:

1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$25.00, \$50.00, \$100, \$4,000, and WILD SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one

of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 of this section Figure 1:16 TAC GAME NO. 240 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$25.00	TWY FIV
\$50.00	FIFTY
\$100	ONE HUND
\$4,000	FOR THOU
<b>WILD SYMBOL</b>	<b>WIN</b>

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Table 2 of this section. Figure 2:16 TAC GAME NO. 240 - 1.2E

<b>CODE</b>	<b>PRIZE</b>
\$1.00	ONE
\$2.00	TWO
\$4.00	FOR
\$5.00	FIV
\$10.00	TEN

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00.

H. Mid-Tier Prize - A prize of \$25.00, \$50.00, or \$100.

I. High-Tier Prize - A prize of \$4,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A thirteen (13) digit number consisting of the three (3) digit game number (240), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be : 240-0000001-000.

L. Pack - A pack of "WILD MONEY" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 000 to 004 will be on the top page; tickets 005 to 009 will be on the next page and so on; tickets 245 to 249 will be on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WILD MONEY" Instant Game No. 240 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "WILD MONEY" Instant Game is determined once the latex on the ticket is scratched off to expose 13 (thirteen) play symbols. If the player matches any of YOUR NUMBERS to the Winning Number, the player will win the prize shown. If the player gets a WILD symbol, the player will win that prize automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 13 (thirteen) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 13 (thirteen) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 13 (thirteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 13 (thirteen) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. There will be no duplicate non-winning YOUR WINNING numbers on a ticket.

C. There will be no duplicate non-winning prize symbols on a ticket.

D. Non-winning prize symbols will not match a winning prize symbol on a ticket.

E. The auto win symbol will never appear more than once on a ticket.

F. The auto win symbol will only appear on intended winning tickets.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "WILD MONEY" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$25.00, \$50.00, or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of

proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "WILD MONEY" Instant Game prize of \$4,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "WILD MONEY" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "WILD MONEY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "WILD MONEY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall

be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,000,000 tickets in the Instant Game No. 240. The approximate number and value of prizes in the game are as follows:

Table 3 of this section Figure 3:16 TAC GAME NO. 240- 4.0

<b>Prize Amount</b>	<b>Approximate Number of Prizes*</b>	<b>Approximate Odds are 1 in **</b>
\$1.00	2,284,119	1:8.93
\$2.00	1,060,760	1:19.23
\$4.00	407,835	1:50.01
\$5.00	244,819	1:83.31
\$10.00	203,916	1:100.02
\$25.00	53,177	1:383.54
\$50.00	22,883	1:891.28
\$100	1,702	1:11,983.11
\$500	128	1:159,337.89
\$2,000	61	1:334,384.36

\*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.77. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 240 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 240, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director. 4

TRD-200101875  
Ridgely C. Bennett  
Deputy General Counsel  
Texas Lottery Commission  
Filed: March 30, 2001

◆ ◆ ◆  
**Texas Department of Mental Health and Mental Retardation**

**Notice of Availability of Texas Community Mental Health Services State Plan (Federal Community Mental Health Block Grant)**

The Federal Community Mental Health Block Grant statute (42 USC 300x-51) requires that the Texas Department of Mental Health and Mental Retardation (TDMHMR) make the Texas Community Mental Health Services State Plan available for public comment during its development.

TDMHMR is currently revising the plan for Fiscal Year (FY) 2001 to describe the intended use of additional funds recently allocated through the federal FY 2001 budget. These funds must be utilized by TDMHMR to develop new initiatives and/or enhance already existing service delivery systems for adults with serious mental illness and children with serious emotional disturbance.

Copies of the 2001 Texas Community Mental Health Services State Plan and previous state plans submitted to the federal government may be obtained on the TDMHMR web site at <http://www.mhmr.state.tx.us/CentralOffice/ProgramStatisticsPlanning/BGrants.html> or by contacting Sam Shore, Director, Behavioral Health Services, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668.

Comments regarding revisions to the 2001 Texas Community Mental Health Services State Plan should be directed to Sam Shore, Director, Behavioral Health Services, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668. Comments must be received by 5:00 p.m., Friday, April 28, 2001.

TRD-200101926  
Andrew Hardin  
Chairman Texas MHMR Board  
Texas Department of Mental Health and Mental Retardation  
Filed: April 3, 2001

◆ ◆ ◆  
**Texas Natural Resource Conservation Commission**

**Enforcement Orders**

An agreed order was entered regarding DAL-TILE CORPORATION, Docket No. 2000-0571-AIR-E on March 12, 2001 assessing \$30,000 in administrative penalties with \$6,000 deferred.

Information concerning any aspect of this order may be obtained by contacting SUZANNE WALRATH, Enforcement Coordinator at (512)239-2134, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RALPH SELLERS DBA COUNTRY CARS #3, Docket No. 2000-0554-AIR-E on March 12, 2001 assessing \$500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting DE'SHAUNE BLAKE, Enforcement Coordinator at

(512)239-5839, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EXPRO ENGINEERING INCORPORATED, Docket No. 2000-0454-AIR-E on March 12, 2001 assessing \$6,750 in administrative penalties with \$1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512)239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEXAS DEPARTMENT OF TRANSPORTATION, Docket No. 1998-1497-AIR-E on March 12, 2001 assessing \$1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting BOOKER HARRISON, Staff Attorney at (512)239-4113, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding REYNOLDS METALS COMPANY, Docket No. 2000-0631-AIR-E on March 12, 2001 assessing \$206,060 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512)239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KIVA OIL COMPANY, Docket No. 2000-0840-AIR-E on March 12, 2001 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting REBECCA CERVANTES, Enforcement Coordinator at (915)834-4965, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BOB HENDERSON DBA DISCOUNT AUTO, Docket No. 2000-0860-AIR-E on March 12, 2001 assessing \$375 in administrative penalties with \$75 deferred.

Information concerning any aspect of this order may be obtained by contacting MELINDA HOULIHAN, Enforcement Coordinator at (817)469-6750, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEXAS DEPARTMENT OF TRANSPORTATION, Docket No. 1998-0352-EAQ-E on March 12, 2001 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting BOOKER HARRISON, Staff Attorney at (512)239-4113, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEXAS DEPARTMENT OF TRANSPORTATION, Docket No. 1998-0748-IHW-E on March 12, 2001 assessing \$8,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting BOOKER HARRISON, Staff Attorney at (512)239-4113, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEXAS DEPARTMENT OF TRANSPORTATION, Docket No. 1999-1518-PST-E on March 12, 2001 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting BOOKER HARRISON, Staff Attorney at (512)239-4113,



Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SPEEDI-MART CONVENIENCE STORE, INC., Docket No. 2000-1070-PST-E on March 12, 2001 assessing \$900 in administrative penalties with \$180 deferred.

Information concerning any aspect of this order may be obtained by contacting SHAWN HESS, Enforcement Coordinator at (806)468-0502, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DEEP WATER WATER ASSOCIATION, Docket No. 2000-1053-PWS-E on March 12, 2001 assessing \$313 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SUBHASH JAIN, Enforcement Coordinator at (512)239-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HOUSTON POLY BAG 1, LIMITED AND HOUSTON POLY BAG 2, LIMITED DBA HOUSTON POLY BAG, Docket No. 2000-1055-PWS-E on March 12, 2001 assessing \$625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SUBHASH JAIN, Enforcement Coordinator at (512)239-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEXAS DEPARTMENT OF TRANSPORTATION, Docket No. 1999-0520-PWS-E on March 12, 2001 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting BOOKER HARRISON, Staff Attorney at (512)239-4113, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BILL BREZINA & TERRY TACKETT DBA A-OK SEPTIC SERVICE, Docket No. 2000-0552-SLG-E on March 12, 2001 assessing \$3,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting BILL DAVIS, Enforcement Coordinator at (512)239-2359, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200101820

LaDonna Castañuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: March 28, 2001



#### Enforcement Orders

An agreed order was entered regarding SOUTHWEST UTILITIES, INC., Docket Number 1999-0807-MWD-E on March 26, 2001 assessing \$3,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JOSHUA OLSZEWSKI, Staff Attorney at (512) 239-3645, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF TENAHA, Docket Number 2000-0384-MWD-E on March 26, 2001 assessing \$6,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512) 239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PREFERRED STAMPINGS OF TEXAS, INCORPORATED, Docket Number 2000-0670-PWS-E on March 26, 2001 assessing \$750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting LAWRENCE KING, Enforcement Coordinator at (512) 339-2929, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FIELDER BURNETT DBA PONDEROSA MOBILE HOME COMPLEX, Docket Number 2000-0811-PWS-E on March 26, 2001 assessing \$1,313 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SHAWN HESS, Enforcement Coordinator at (806) 468-0502, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NEW MILLENNIUM HOMES, INC., Docket Number 2000-0741-MLM-E on March 26, 2001 assessing \$10,250 in administrative penalties with \$2,050 deferred.

Information concerning any aspect of this order may be obtained by contacting DAVID VAN SOEST, Enforcement Coordinator at (512) 239-0468, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BERRIDGE MANUFACTURING COMPANY, Docket Number 2000-0676-MLM-E on March 26, 2001 assessing \$43,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512) 239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FAIR ROAD PROPERTIES, INC. DBA LIGHT RANCH ESTATES, Docket Number 2000-0803-PWS-E on March 26, 2001 assessing \$4,813 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting WENDY COOPER, Enforcement Coordinator at (817) 588-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ELLIS BRUMBELOE DBA ELLIS CABINETS, Docket Number 2000-0912-MLM-E on March 26, 2001 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting LAURA CLARK, Enforcement Coordinator at (409) 899-8760, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MESA VIEW WATER SERVICE, INC., Docket Number 2000-1212-PWS-E on March 26, 2001 assessing \$375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SHAWN STEWART, Enforcement Coordinator at (512) 239-6684, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TERRA SOUTHWEST, INC. DBA EAST PONDER ESTATES, Docket Number 2000-0594-PWS-E on March 26, 2001 assessing \$1,063 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. CRAIG FLEMING, Enforcement Coordinator at (512) 239-5806, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UPPER VALLEY MATERIAL, LTD., Docket Number 2000-0897-AIR-E on March 26, 2001 assessing \$13,000 in administrative penalties with \$2,600 deferred.

Information concerning any aspect of this order may be obtained by contacting MERRILEE GERBERDING, Enforcement Coordinator at (512) 239-4490, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MOHAMMAD SULTAN DBA EASTGATE WATER SUPPLY, Docket Number 1998-0662-PWS-E on March 26, 2001 assessing \$13,156 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting REYNALDO DE LOS SANTOS, Staff Attorney at (210) 403-4016, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding IRMA MILLER DBA TEX MOTOR COMPANY, Docket Number 2000-0730-AIR-E on March 26, 2001 assessing \$500 in administrative penalties with \$100 deferred.

Information concerning any aspect of this order may be obtained by contacting DARREN REAM, Staff Attorney at (817) 588-5877, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding JAMES GOIN DBA GOIN IRRIGATION, Docket Number 1999-0693-LII-E on March 26, 2001 assessing \$3,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting DWIGHT MARTIN, Staff Attorney at (512) 239-0683, Enforcement Coordinator at , Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding RAYMOND MCBRIDE, Docket Number 1999-1368-OSI-E on March 26, 2001 assessing \$1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting REBECCA PETTY, Staff Attorney at (512) 239-1738, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding LONNY BURNAMAN DBA RIVER RUN WATER SYSTEM, Docket Number 2000-0172-PWS-E on March 26, 2001 assessing \$900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting LAURENCIA FASOYIRO, Staff Attorney at (713) 422-8914, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. ROY CULLISON DBA R C S, Docket Number 2000-0900-AIR-E on March 26, 2001 assessing \$500 in administrative penalties with \$100 deferred.

Information concerning any aspect of this order may be obtained by contacting WENDY COOPER, Enforcement Coordinator at (817) 588-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding FRED MORRIS DBA MORRIS TRASH SERVICE, Docket Number 1999-0733-MSW-E on March 23, 2001 assessing \$7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting KELLY MARGO, Staff Attorney at (512) 239-3434, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200101956

LaDonna Castañuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: April 4, 2001



### Notice of Application for Approval of a Plan of Reclamation

Application No. RE-0309; Fort Bend County Levee Improvement District No. 15 (the district) has applied to the Commission for approval of the district's proposed plan of reclamation, pursuant to Texas Water Code §57.154 and §57.156 and 30 TAC §§301.21-301.23. The application was submitted on February 7, 2001. The project is located at 29° N latitude, 33° W longitude, in north central Fort Bend County, Texas within the extraterritorial jurisdictions of the cities of Sugar Land and Missouri City. The site is generally bounded by the First Colony Levee Improvement District and the First Colony Levee Improvement District No. 2 and the Fort Bend County Municipal Utility District No. 46 on the north, Steepbank Creek on the east, Hagerson Road on the south, and the Brazos River on the west. The proposed project will provide flood protection and outfall drainage to accommodate the anticipated single family residential, commercial/retail, and multi-family development within the district. Financing of the construction of the facilities will be through the levying of a tax rate of \$0.4954 per \$100.00 of assessed value.

The project consists of reclaiming 2,235 acres of land comprising the district, located within the 100-year floodplain of the Brazos River, by constructing a levee approximately 36,000 feet long with a top width of 10 feet, side slopes of 3 to 1 for levee heights up to 8 feet and 3.5:1 for heights up to 20 feet, and the top of the levee 3.5 feet above the 100-year Brazos River flood elevation. The interior drainage system will consist of storing the stormwater in a series of interconnected detention/amenity lakes, interior channels, and then pumping the stormwater over the levee into the Brazos River. The external drainage system will consist of channel improvements to Alcorn Bayou, Snake Slough, and Steepbank Creek from the levee to the Brazos River, with erosion control structures at the confluences of Snake Slough and Alcorn Bayou with the Brazos River.

The TNRCC has reviewed this proposed action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the proposed action is consistent with the applicable CMP goals and policies.

The district will commence construction immediately upon Commission approval and complete construction within three years. Prior to the beginning of construction on any part of the project, the district will be required to submit its construction plans and specifications for approval by the Executive Director of TNRCC.

The Executive Director may approve this application within 10 days of this *Texas Register* posting. If you need more information about this permit application, contact James Mirabal, P.E., at the Texas Natural Resource Conservation Commissions's Water Rights Permitting and Availability Section at (512) 239-4771.

TRD-200101957  
LaDonna Castañuela  
Chief Clerk  
Texas Natural Resource Conservation Commission  
Filed: April 4, 2001



### Notice of Minor Amendment

For The Period of March 21, 2001

#### APPLICATION.

The City of Weatherford, P.O. Box 255, Weatherford, Texas 76086, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a minor permit amendment to Permit No. MSW- 47 which would authorize the revision to the Site Operating Plan to allow blowing of the landfill equipment's radiators to clean away any dust and debris from the radiators by spraying with a high pressure, low volume water sprayer in an area of the landfill that has a landfill liner system and a leachate collection system. This spraying activity is recommended by the equipment manufacturers as preventive maintenance.

The municipal solid waste landfill for the City of Weatherford is located on a 111.52 acre site approximately 2.0 miles southwest of Weatherford on the South side of the Old Brock Road in Parker County, Texas.

The Executive Director of the TNRCC has prepared a draft permit which, if approved, will authorize a minor amendment to this permit under the terms described above.

#### PUBLIC COMMENT.

Written comments concerning this minor amendment may be submitted to the TNRCC, Chief Clerk's Office, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 telephone (512) 239- 3300. Comments must be received no later than 10 days from the date this notice is mailed. Written comments must include the following: (1) your name (or for a group or association, the name of an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; and (3) the location of your property relative to the applicant's operations.

#### INFORMATION.

Individual members of the public who wish to inquire about the information contained in this notice may contact the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

TRD-200101819  
LaDonna Castañuela  
Chief Clerk  
Texas Natural Resource and Conservation Commission  
Filed: March 28, 2001



### Notice of Opportunity to Comment on Default Orders 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 Default Orders (DOs). The TNRCC staff proposes a DO when the staff has sent an executive director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPR. Similar to the procedure followed with respect to Agreed Orders entered into

by the executive director of the TNRCC pursuant to Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 14, 2001**. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed DOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 14, 2001**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: Augustin Valenciana dba Don Balta's Restaurant; DOCKET NUMBER: 1998- 0981-PWS-E; TNRCC ID NUMBER: 0710176; LOCATION: 14650 Montana Avenue, El Paso, El Paso County, Texas; TYPE OF FACILITY: public water system (the facility); RULES VIOLATED: §290.106 and §290.103(5), and Texas Health and Safety Code, §341.33(d), by failing to submit water samples from the facility for bacteriological analysis to a laboratory approved by the Texas Department of Health and provide public notice of the failure to sample; §290.46(f)(1)(A) and (f)(2), by failing to maintain a minimum free chlorine residual of 0.2 milligrams/liter (mg/l) and obtain a chlorine test kit which uses the diethyl-p-phenylenediamine method to ensure proper chlorine residual was being maintained; §290.43(c)(2) and (4) and §290.43(e), by failing to protect the potable water storage tank with an intruder-resistant fence, keep the roof hatch on the ground water storage tank locked at all times and equip the ground storage tank with a liquid level indicator; §290.45(d)(2)(A)(ii), by failing to provide a minimum pressure tank capacity of 220 gallons; PENALTY: \$4,343; STAFF ATTORNEY: Victor Simonds, Litigation Division, MC 175, (512) 239-6201; REGIONAL OFFICE: El Paso Regional Office, 401 E. Franklin Ave., Ste. 560, El Paso, Texas 79901-1206, (915) 834- 4949.

(2) COMPANY: Daisy Godbey dba Creative Kids Express Child Care; DOCKET NUMBER: 1999- 0808-PWS-E; TNRCC ID NUMBER: 0840222; LOCATION: 19314 East Highway 6, Alvin, Galveston County, Texas; TYPE OF FACILITY: public water supply (PWS); RULES VIOLATED: §290.106(a), and TWC, §341.033, by failing to collect and submit the appropriate number of routine water samples for bacteriological analysis; §290.106(b)(1) and (b)(5), by failing to collect and submit the appropriate number of repeat water samples for bacteriological analysis following a coliform- positive result; §290.105, by exceeding the maximum contaminant level (MCL) for total coliform bacteria; §290.106(e), by failing to provide public notification for failure to submit repeat water samples, by failing to submit additional routine water samples, and by exceeding the MCL for total coliform bacteria; PENALTY: \$4,063; STAFF ATTORNEY: Scott McDonald, Litigation Division, MC R-4, (817) 588-5888; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Ste. H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Douglas J. Smith Sr.; DOCKET NUMBER: 2000-0624-OSI-E; TNRCC ID NUMBER: OS4458; LOCATION: Matargorda County, Texas; TYPE OF FACILITY: on-site sewage facilities (OSSF); RULES VIOLATED: §285.50(b) and (c), and TWC, §366.071, by installing an OSSF without a current valid OSSF installer's license; PENALTY: \$250; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Ste. H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Fred Palacios dba Fred's Gas Depot; DOCKET NUMBER: 1999-0895-PST-E; TNRCC ID NUMBER: 33816; LOCATION: 2527 South Highway 281 in Edinburg, Hidalgo County, Texas; TYPE OF FACILITY: underground storage tanks (UST); RULES VIOLATED: §334.50(b)(1)(A), and TWC, §26.3475, by failing to have an acceptable method of release detection; §334.50(b)(2), and TWC, §26.3475, by failing to perform tightness test for suction piping; §334.93(a) and (b), by failing to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental release arising from the operation of the petroleum USTs; §334.49(a), and TWC, §26.3475, by failing to have corrosion protection; PENALTY: \$9,000; STAFF ATTORNEY: Rebecca Nash Petty, Litigation Division, MC 175, (512) 239-1738; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Ave., Harlingen, Texas 78550-5247, (956) 425-6010.

(5) COMPANY: G. B. N. C. Incorporated; DOCKET NUMBER: 1999-1502-AIR-E; TNRCC ID NUMBER: EE-1909-T; LOCATION: 7569 Alameda, El Paso, El Paso County, Texas; TYPE OF FACILITY: unauthorized auto body refinishing facility and used car dealership (the dealership); RULES VIOLATED: §116.110(a), and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain a permit or satisfy the conditions of an exemption from permitting prior to the construction and initiation of a vehicle spray painting operation; §101.4 and THSC, §382.085(a) and (b), by discharging air contaminants at the dealership in such concentration and duration as to adversely affect human health and welfare and interfere with the normal use and enjoyment of property; PENALTY: \$2,500; STAFF ATTORNEY: Kelly W. Mego, Litigation Division, MC R12, (713) 422-8916; REGIONAL OFFICE: El Paso Regional Office, 401 E. Franklin Ave., Ste. 560, El Paso, Texas 79901-1206, (915) 834-4949.

(6) COMPANY: Harry Garbar dba S & J Stores; DOCKET NUMBER: 1999-0538-PST-E; TNRCC ID NUMBER: 11757; LOCATION: 401 South Santa Fe, El Paso, El Paso County, Texas; TYPE OF FACILITY: motor vehicle fuel dispensing facility; RULES VIOLATED: §115.241, and TWC, §382.085(b), by failing to install an approved Stage II vapor recovery system; PENALTY: \$4,500; STAFF ATTORNEY: Elisa Roberts, Litigation Division, MC R-4, (817) 588-5877; REGIONAL OFFICE: El Paso Regional Office, 401 E. Franklin Ave., Ste. 560, El Paso, Texas 79901-1206, (915) 834-4949

(7) COMPANY: LaGary Dixon dba Express Auto Kare; DOCKET NUMBER: 2000-0161-AIR-E; TNRCC ID NUMBER: DB-5146-G; LOCATION: 3732 West Walnut, Garland, Dallas County, Texas; TYPE OF FACILITY: vehicle inspection station (the Station); RULES VIOLATED: §114.50(e)(1) and THSC, §382.085(b), by issuing or allowing the issuance of a vehicle inspection report without conducting all of the required emissions tests on a Texas Department of Public Safety covert vehicle; PENALTY: \$625; STAFF ATTORNEY: Kelly W. Mego, Litigation Division, MC R12, (713) 422-8916; REGIONAL OFFICE: Arlington Regional Office, 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(8) COMPANY: Startex Gasoline & Oil Distributors, Inc.; DOCKET NUMBER: 2000-0294-PST-E; TNRCC ID NUMBER: 14715,

14716; LOCATION: 5416 Leopard Street (Facility #1), 5420 Leopard Street, Corpus Christi, Nueces County, Texas (Facility #2); TYPE OF: wholesale fuel distributor and retail gasoline sales; RULES VIOLATED: §334.7(d)(3), by failing to provide written notice of any change or additional information within 30 days from date of occurrence of the change at Facility #1; §334.105(b), by failing to maintain an updated copy of certification of financial responsibility for Facility #1; §334.10(b)(1)(B), by failing to maintain copies of all required records pertaining to a UST system in a secure location on the premises of the UST Facility #1; §334.10(b)(1)(B), by failing to maintain copies of all required records pertaining to a UST system in a secure location on the premises of the UST Facility #2; §334.105(b), by failing to maintain an updated copy of certification of financial responsibility for Facility #2; PENALTY: \$6,200; STAFF ATTORNEY: Elisa Roberts, Litigation Division, MC R-4, (817) 588-5877; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Dr., Ste. 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(9) COMPANY: Than Mai Chau dba Handi Plus #47; DOCKET NUMBER: 2000-0009-PWS-E; TNRCC ID NUMBER: 1012929; LOCATION: 24930 Aldine Westfield, Spring, Harris County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: §290.109(c) and (g)(4), and THSC, §341.033(d), by failing to collect and submit routine monthly bacteriological samples and failed to provide public notice of the sampling deficiency; §290.109(c)(3) and (g)(4), by failing to collect and submit repeat bacteriological samples following a coliform-positive sample and failed to provide notice related to his failure to collect and submit repeat bacteriological samples; §290.109(c)(2)(f), and (g)(4), by failing to collect and submit additional routine bacteriological samples following a coliform-positive sample and to provide public notice related to his failure to collect and submit additional routine bacteriological samples; §290.41(c)(1)(F), by failing to secure a sanitary control easement covering all property within 150 feet of the well; §290.41(c)(3)(O), by failing to keep the well house locked; §290.41(c)(3)(K), by failing to provide a properly constructed sealing block; PENALTY: \$4,250; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Ste. H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200101917

Paul C. Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: April 3, 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 (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 14, 2001**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within

the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Comments about the AOs should be sent to the attorney designated for the AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 14, 2001**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: Aladdin Car Wash, Inc., Genico Distributors, Inc., and Village Car Wash, Inc.; DOCKET NUMBER: 1999-0178-PST-E; TNRCC ID NUMBER: 0027362; LOCATION: 2205 Airport Freeway, Euless, Tarrant County, Texas; TYPE OF FACILITY: underground storage tanks (UST); RULES VIOLATED: §334.7(d)(3), by failing to provide written notice to the Executive Director of any changes or additional information concerning the UST system within 30 days after the date of the occurrence of the change or addition; §334.49(a), and TWC, §26.3475, by failing to install a method of corrosion protection; §334.93, by failing to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases; PENALTY: \$27,500; STAFF ATTORNEY: Josh Olszewski, Litigation Division, MC 175, (512) 239-3645; REGIONAL OFFICE: Arlington Regional Office, 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(2) COMPANY: Craig Kooda dba Kooda Exteriors; DOCKET NUMBER: 1999-1233-LII-E; TNRCC ID NUMBER: LI0006911; LOCATION: 4720 Dozier Road, Carrollton, Dallas County, Texas; TYPE OF FACILITY: installs landscape irrigation systems (the Operation); RULES VIOLATED: §344.58(b), and TWC, §34.007(a), by acting as a licensed irrigator and installer without a valid certificate of registration; PENALTY: \$2,500; STAFF ATTORNEY: Kelly W. Mego, Litigation Division, MC R12, (713) 422-8916; REGIONAL OFFICE: Arlington Regional Office, 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(3) COMPANY: Genico Distributors, Inc., dba Jumpin John's; DOCKET NUMBER: 1999-1049- PST-E; TNRCC ID NUMBER: 0027367; LOCATION: 105 Westpark Way, Euless, Tarrant County, Texas; TYPE OF FACILITY: underground storage tanks (USTs); RULES VIOLATED: §115.245(2), and TWC, §382.085(b), by failing to conduct an annual pressure decay test on the Stage II vapor recovery system; §115.248(1), and TWC, §382.085(b), by failing to ensure that at least one Station representative received training and instruction regarding the operation and maintenance of the Stage II vapor recovery system; §334.7(d)(3), by failing to provide written notice to the Executive Director of any changes or additional information concerning the UST system within 30 days after the date of the occurrence of the change or addition; §334.50(a)(1)(A), and TWC, §26.3475, by failing to provide a method of release detection at the Station capable of detecting a release from any portion of the UST system; §334.93(a) and (b), by failing to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and/or property damage for accidental releases; PENALTY: \$44,375; STAFF ATTORNEY: Josh Olszewski, Litigation Division, MC 175, (512) 239-3645; REGIONAL OFFICE: Arlington Regional

Office, 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

TRD-200101916

Paul C. Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: April 3, 2001



### Notice of Water District Applications

BRUSHY CREEK MUNICIPAL UTILITY DISTRICT of Williamson County (The District) has filed an application with the Texas Natural Resource Conservation Commission (TNRCC) for authority to levy impact fees of \$1,821 per equivalent single family connection for new connections to the wastewater service within or near the service area of Brushy Creek Municipal Utility District. The District files this application under the authority of Chapter 395 of the Local Government Code, 30 Texas Administrative Code Chapter 293 and the procedural rules of the TNRCC. The purpose of impact fees is to generate revenue to recover the costs of capital improvements and facility expansions made necessary by and attributable to serving new development in the District's service area. At the direction of the District, a registered engineer has prepared a capital improvements plan for the system which identifies the capital improvements or facility expansions and their costs for which the impact fees will be assessed. The impact fee application and supporting information are available for inspection and copying during regular business hours in the District Administration Section of the Water Utilities Division, Third Floor of Building F (in the TNRCC Park 35 Office Complex located between Yager & Braker Lanes on North IH-35), 12100 Park 35 Circle, Austin, Texas 78753. A copy of the impact fee application and supporting information, as well as the capital improvement plan, is available for inspection and copying at the Brushy Creek Municipal Utility District's office during regular business hours.

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. 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 Internal Control Number;
- (3) the statement "I/we request a contested case hearing";
- (4) a brief description of how you would be affected by the petition in a way not common to the general public; and
- (5) the location of your property relative to the proposed district's boundaries. 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. The Executive Director 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. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. 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, Texas 78711-3087. For information concerning the hearing process, please

contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at [www.tnrcc.state.tx.us](http://www.tnrcc.state.tx.us).

TRD-200101958  
LaDonna Castañuela  
Chief Clerk  
Texas Natural Resource Conservation Commission  
Filed: April 4, 2001

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**Notice of Water Rights Applications**

Notice is given that JAMES D. STORY, 9102 Hudson Court, Houston, Texas 77024, and JIM L. STORY, 3135 Stonehaven, San Antonio, Texas 78230, applicants, seek a permit pursuant to Texas Water Code §11.121 and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq. James D. Story and Jim L. Story submitted Application No. 5733 on May 26, 2000. Additional information requested was received February 9, 2001, and the application was declared administratively complete March 13, 2001. The Executive Director recommends that public notice of the application be given pursuant to 30 TAC §295.152. Pursuant to 30 TAC §295.153, this notice is being mailed to all water right owners of record in the Guadalupe River Basin. Applicants seek authorization to construct an on-channel dam and reservoir on Elm Creek, tributary of Sandies Creek, tributary of the Guadalupe River, Guadalupe River Basin, approximately 23 miles east northeast of Floresville and 4 miles southwest of Nixon in Wilson County. The proposed reservoir will cover an area of approximately 200 surface acres and impound approximately 900 acre-feet of water at normal operating level. Station 1 on the mid-point of the dam will be located at Latitude 29.23° N, Longitude 97.79° W, also bearing S 52° E, 5147 feet from the northwest corner of the Valentine Bennett Survey No. 25, Abstract No. 39. Applicants further seek to divert 400 acre-feet of water per annum from the reservoir to irrigate 200 acres of land out of a 2563.40 acre tract in the James Roden Survey, Abstract 265. Diversion will be from a point on Elm Creek at Latitude 29.22° N, longitude 97.78° W, also described as bearing S 42° E, 2750 feet from the northwest corner of the Valentine Bennett Survey No. 25, Abstract No. 39. Diversion will be at a maximum rate of 2.05 cfs (1,000 gpm). Water diverted but not consumed (estimated at less than 5 acre-feet per annum) will be returned to Elm Creek.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice. To request a contested case hearing, you must submit the following:

- (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any;
- (2) applicant's name and permit number;
- (3) the statement "[I/we] request a contested case hearing;"

(4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and

(5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions to the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the permit and will 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, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at [www.tnrcc.state.tx.us](http://www.tnrcc.state.tx.us).

K & B POWELL FAMILY LIMITED PARTNERSHIP, 704 W 12th, Brady, Texas, 76825, applicant, seeks to amend Certificate of Adjudication No. 14-2488, pursuant to Texas Water Code (TWC) §11.122, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq. Applicant owns Certificate of Adjudication No. 14-2488, which authorizes the diversion and use of not to exceed 100 acre-feet of water per annum from Bull Creek, tributary of the Colorado River, and from the Colorado River, Colorado River Basin in Coleman County for irrigation of 50 acres of land out of a 222 acre tract in Coleman County. Applicant has obtained ownership of a portion of Certificate of Adjudication No. 14-2479, as amended, which authorizes the owner to divert and use not to exceed 239 acre-feet of water per annum from the Colorado River, Colorado River Basin for irrigation purposes in McCulloch county. Applicant seeks to sever a portion of their water rights, 122 acre-feet, from Certificate No. 14-2479, as amended, combine it with Certificate No. 14-2488, and amend Certificate No. 14-2488 to reflect the following changes:

1. Diversion of the 122 acre-feet of irrigation water moved downstream to the currently authorized Colorado River diversion point in the Simon Garcia Survey 359, Abstract 216, Coleman County.
2. Place of use of the 122 acre-feet of irrigation water moved to the currently authorized place of use in the aforesaid survey.
3. Increase the land to be irrigated to a maximum of 150 acres out of a 222 acre tract located in the aforesaid survey.
4. Maximum Combined Diversion Rate: Not to exceed 4.3 cfs (1930 gpm) in combination with any diversion made from diversion point authorized in Certificate of Adjudication No. 14-2479.

UPPER TRINITY REGIONAL WATER DISTRICT, applicant, 396 W. Main Street, Suite 102, Lewisville, Texas, 75067, seeks a Water Use Permit pursuant to §11.121 and §11.042 of the Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq and §297.18. Applicant seeks authorization to use the bed and banks of Doe Branch, tributary of the Elm Fork Trinity River, tributary of the Trinity River, and Lewisville Lake, Trinity River Basin in Denton County to convey water diverted from Lake Chapman in the Sulphur River Basin to applicant's diversion facilities on the perimeter of Lewisville Lake. Certificate of Adjudication No. 03-4797 authorizes the Sulphur River Municipal Water District (SRMWD) to impound in the U. S. Army Corps of Engineer's Lake Chapman (formerly referred to as Cooper Reservoir) on the South Sulphur River, tributary of the Sulphur River, Sulphur River Basin, Delta and Hopkins Counties, between elevation 415.5 msl and 440.0 msl, not to exceed 71,750

acre-feet of water and below elevation 415.5 msl, an amount not to exceed 9,720 acre-feet of water for a total impoundment of 81,470 acre-feet of water. The certificate also authorizes the certificate owner, with a time priority of November 19, 1965, to divert and use not to exceed 26,960 acre-feet of water per annum for municipal purposes and 11,560 acre-feet of water per annum for industrial purposes within SRMWD's service area in the Sulphur River Basin. Pursuant to a contract between SRMWD and the City of Commerce, Texas, the certificate, as amended, authorizes the interbasin transfer of 11,274 acre-feet of water per annum for municipal use and 4,832 acre-feet of water per annum for municipal and industrial use (the Lake Chapman water) to the Trinity River Basin, and allows all water diverted but not consumed to be returned to the Trinity River Basin. Pursuant to a Water Sales Contract between the City of Commerce and the Upper Trinity Regional Water District (UTRWD) dated July 5, 1990, the City of Commerce agreed to supply its portion of the water purchased from the SRMWD to the UTRWD for use within the boundaries of the UTRWD's service area for a period of fifty (50) years, with certain options to extend the term, as specified therein. Pursuant to a water transportation contract dated May 20, 1999, UTRWD will utilize a pipeline owned by the City of Irving to deliver the Lake Chapman water to a point on Doe Branch, upstream of Lewisville Lake located N 61° E, 1,075 feet from the southwest corner of the Phillip Barns Survey, Abstract No. 179, Denton County, also being 33.219ñ N Latitude and 96.889° W Latitude. Pursuant to a "pass through" agreement with the Cities of Denton and Lewisville dated August 24, 1998, applicant will then pass this water through Lewisville Lake for subsequent diversion at UTRWD's raw water diversion facility on the perimeter of Lewisville Lake. The rate of discharge of the Lake Chapman water into Doe Branch will be 170.2 cfs and the amount of water discharged will not exceed the 16,106 acre-feet per annum authorized under the certificate. The rate of diversion from Lewisville Lake will not exceed 170.2 cfs. The estimated amount of water that will be lost to transportation, evaporation, seepage, channel or other associated carriage losses from the point of discharge into Doe Branch to the point of diversion from the perimeter of Lewisville Lake at UTRWD water treatment plant intake structure is specified in the Pass-Through Agreement dated August 24, 1998 between the Cities of Denton and Lewisville and UTRWD. The quality of the Lake Chapman water discharged into Doe Branch and conveyed through Lewisville Lake will meet or exceed the Commission's water quality stream standards for Segment No. 0823. The interbasin transfer of UTRWD's Lake Chapman water originating in the Sulphur River Basin and discharged into the Trinity River Basin is an existing authorized interbasin transfer. As such, this application for a bed and banks authorization to convey and subsequently divert UTRWD's Lake Chapman water does not require the TNRCC to find additional water available for appropriation. This notice is being sent to you as a water right holder of record in the Trinity River Basin downstream of the discharge point into Doe Branch of UTRWD's Lake Chapman water and upstream of UTRWD's raw water diversion facility on the perimeter of Lewisville Lake.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below by April 19, 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 April 19, 2001. The Executive Director may approve the application unless a written request for a contested case hearing is filed by April 19, 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 proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the permit and will 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, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at [www.tnrcc.state.tx.us](http://www.tnrcc.state.tx.us).

TRD-200101959

LaDonna Castañuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: April 4, 2001

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## Texas Parks and Wildlife Department

### Request for Public Comment

#### NOTICE OF AVAILABILITY AND REQUEST FOR COMMENTS

#### PROPOSED RESTORATION PLAN AND ENVIRONMENTAL ASSESSMENT

**AGENCIES:** Texas Parks and Wildlife Department (TPWD), Texas Natural Resource Conservation Commission (TNRCC), Texas General Land Office (GLO) and the United States Fish and Wildlife Service (USFWS) of the U.S. Department of the Interior (DOI) (hereafter, Natural Resource Trustees).

**ACTION:** Notice of availability of a proposed Draft Restoration Plan and Environmental Assessment (Draft Plan), the Federal Consistency Determination for this Plan under the Texas Coastal Management Program, and a thirty (30) day period for public comment on the Plan and the Federal Consistency Determination beginning the date of publication of this notice.

**SUMMARY:** Notice is hereby given that the Natural Resource Trustees propose a Draft Plan that describes injuries to estuarine natural resources resulting from the April 20, 1993, oil spill at the Smith Bluff Cutoff UNOCAL Corporation facility located in Port Neches on the Lower Neches River. The document also describes the process followed by the Trustees to evaluate appropriate restoration alternatives and select the preferred alternative identified in the plan. This preferred alternative is proposed for implementation using funds recovered by the Trustees as part of a November 1997 settlement of natural resource damages claims associated with the oil spill. The Trustees propose to utilize the \$200,000 received from UNOCAL to settle natural resource damages liability for the spill to provide for the construction

of a minimum of three acres of vegetated terraces within the Bessie Height Marsh on the Nelda Stark Unit of the Lower Neches Wildlife Management Area that is owned and managed by TPWD.

The proposed document entitled "DRAFT - Natural Resource Restoration Plan/Environmental Analysis - Unocal Oil Spill, Port Neches, Texas", and the Federal Consistency Determination with the Texas Coastal Management Program (CMP) related to the activities outlined in the Draft Plan are hereby made available for public review and comment for a period of thirty (30) days.

The opportunity for public review and comment on the proposed Restoration Plan announced in this notice is required under the Oil Pollution Act 33 U.S.C. 2706(c)(5), and parallels provisions of 15 CFR 990.14 (d) and 990.55 of the federal Natural Resource Damage Assessment regulations.

The Federal Consistency Determination for this Draft Plan outlines the basis for DOI's determinations that the restoration actions described in the Draft Plan are consistent to the maximum extent possible, and will be undertaken in a manner consistent with, the applicable policies of the CMP. Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the goals and policies of the CMP identified in 31 Texas Administrative Code (TAC) Chapter 501. Under 31 TAC Section 506.2(c), a determination of consistency with the CMP must be made by the federal trustees for natural resource damage assessment and restoration plans that are the product of a joint cooperative natural resource damage assessment by state and federal trustees. Review of the Federal Consistency Determination is delegated to the State Trustee agencies (TPWD, TNRCC and the GLO). The State Trustees will consider all comments received during the public comment period in their evaluation of the Federal Consistency Determination for the Draft Restoration Plan and Environmental Analysis and will, depending on the comments received, submit a letter of concurrence to the Federal Trustees.

To receive a copy of the proposed Draft Plan and/or the Federal Consistency Determination with the CMP contact Don Pitts of the Texas Parks and Wildlife Department, Resource Protection Division, 4200 Smith School Road, Austin, Texas 78744, (512) 912-7156.

**DATES:** Comments must be submitted in writing within 30 days of the date of this publication to Don Pitts of the Texas Parks and Wildlife Department, Resource Protection Division, 4200 Smith School Road, Austin, Texas 78744, (512) 912-7156. The Natural Resource Trustees will consider all written comments prior to finalizing the Draft Plan and completing their review of the Federal Consistency Determination.

**SUPPLEMENTARY INFORMATION:** On April 20, 1993, at the Smith Bluff Cutoff UNOCAL facility located in Port Neches on the Lower Neches River, UNOCAL was transferring Saudi Arabian crude oil from their terminal through a pipeline to a Sun Oil Co. refinery on the adjacent property. Due to human error, oil was transferred to a closed line resulting in over-pressurization and failure of the line. The oil was discharged into the river through the sump pump at the terminal, affecting two miles of the river and adjacent wetland marsh. Approximately 2100 barrels (88,200 gallons) of oil were discharged into the Neches River when the sump overflowed.

A combination of wind and tidal currents drove the oil across the Neches River and into Grays Bayou, Grays Cut and Bessie Heights Channel. The shoreline of the Neches River was also oiled, between Grays Bayou and the Bessie Heights Channel. The discharge resulted in the oiling of vegetation, sediments, soils, birds, and other biota including crustaceans and infaunal invertebrates.

The Natural Resource Trustees have the authority under OPA (33 U.S.C. Section 2701 et seq.) to assess the natural resource injuries

resulting from this incident. The TPWD, TNRCC, TGLO and USFWD are trustees of the natural resources injured by the discharge from the UNOCAL Oil Spill Port Neches, Texas pursuant to OPA33 U.S.C. Section 2706 (b).

In November 1997, the Trustees and the responsible parties reached a joint settlement of all Natural Resource Damages claims associated with this oil spill. The settlement included funds to compensate the public for natural resource injuries resulting from the spill. These funds were placed into a Court Registry Account established with the Registry of the Federal District Court, Southern District of Texas, pending joint planning and decisions by the Trustees as to the appropriate use of the funds to implement actions to restore, replace, rehabilitate or acquire the equivalent of natural resources injured by the spill.

The Draft Restoration Plan announced today presents the actions which the Trustees propose to undertake to effect restoration, rehabilitation, replacement, or acquisition of resources or resource services that were injured by the spill. An Environmental Assessment of the proposed restoration action is fully integrated into the plan to allow Federal Trustees to make findings required by the National Environmental Policy Act 42 U.S.C. 4321, et seq., in making decisions on a final restoration plan.

TRD-200101932  
Gene McCarty  
Chief of Staff  
Texas Parks and Wildlife Department  
Filed: April 3, 2001

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## Public Utility Commission of Texas

### Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on March 28, 2001, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

**Docket Title and Number:** Application of Commonwealth Energy Corporation for Retail Electric Provider (REP) certification, Docket Number 23875 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than April 20, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200101864  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 29, 2001

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### Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on March 27, 2001,



for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Del Communications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 23871 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than April 18, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200101863  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 29, 2001



#### Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on March 29, 2001, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Apogee Telecom, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 23882 before the Public Utility Commission of Texas.

Applicant intends to provide plain old residential telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, long distance, and wireless services.

Applicant's requested SPCOA geographic area includes the geographic area of Texas currently served by the Austin and Bryan Local Access and Transport Areas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than April 18, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200101901  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 2, 2001



#### Notice of Filing of Request for Waiver

The Public Utility Commission of Texas (commission) has filed a petition seeking a waiver of certain rules of the Federal Energy Regulatory Commission (FERC) issued under the Public Utility Regulatory Policies Act. The petition has been assigned Docket Number EL01-60-000

by the FERC. The rules for which the commission seeks a waiver require public utilities to purchase power from qualifying facilities (QFs) and sell power to qualifying facilities and prescribe methods for establishing the cost of purchases by electric utilities from QFs. The commission seeks the waiver in connection with the implementation of legislation enacted in Texas to introduce retail competition beginning in January 2002.

The introduction of retail competition under this legislation, Senate Bill 7 (SB 7), 76th Legislative Session, will provide QFs broad opportunities to sell electricity. With the introduction of retail competition, QFs will have access, through retailers, to all electricity customers in the areas that are open to retail competition, at rates determined by competitive forces. They will also have the ability to buy from other producers at rates determined by competitive forces. For this reason, regulatory mandates to buy or sell electricity and pricing formulas for QFs have no place, and the commission is seeking a waiver of the FERC's rules.

TRD-200101927  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 3, 2001



#### Public Notice of Amendment to Interconnection Agreement

On March 29, 2001, Southwestern Bell Telephone Company and 360 Communications Company of Nevada Limited Partnership, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 23883. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 23883. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by April 27, 2001, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23883.

TRD-200101882  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 30, 2001



#### Public Notice of Amendment to Interconnection Agreement

On March 30, 2001, Southwestern Bell Telephone Company and United States Cellular Corporation, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 23889. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 23889. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 2, 2001, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23889.

TRD-200101906  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 2, 2001



#### Public Notice of Amendment to Interconnection Agreement

On March 30, 2001, Southwestern Bell Telephone Company and Pathway Com-Tel, Inc., collectively referred to as applicants, filed a joint application for approval of an amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 23890. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 23890. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 2, 2001, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:

- a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23890.

TRD-200101907  
 Rhonda Dempsey  
 Rules Coordinator  
 Public Utility Commission of Texas  
 Filed: April 2, 2001



### Public Notice of Interconnection Agreement

On March 30, 2001, Southwestern Bell Telephone Company and 1-800-Reconex, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 23888. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 23888. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 2, 2001, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

- 2) specific allegations that the agreement, or some portion thereof:

- a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23888.

TRD-200101905  
 Rhonda Dempsey  
 Rules Coordinator  
 Public Utility Commission of Texas  
 Filed: April 2, 2001



## Texas Department of Transportation

### Availability of Draft Environmental Impact Statement

Pursuant to Title 43, Texas Administrative Code, §2.43(e)(4)(B), the Texas Department of Transportation is advising the public of the availability of the approved Draft Environmental Impact Statement (DEIS) covering the proposed construction of Segment IV of the President George Bush Turnpike (PGBT), from IH 35E to IH 635 in the Cities of Irving, Carrollton, Coppell, Farmers Branch and Dallas in Dallas County, Texas. The proposed project is being developed jointly with the Federal Highway Administration and the North Texas Tollway Authority (NTTA).

The proposed project is approximately 5.5 miles in length and involves the proposed construction of a six-lane controlled access tollway. The purpose of the proposed project is to create a direct link between IH 35E and IH 635, which completes the northern and western sections of the PGBT. This link would relieve local and regional traffic congestion, improve local and regional mobility, increase the economic viability of the study area, and maintain the integrity of the Trinity River ecosystem. The social, economic, and environmental impacts of the proposed project have been analyzed in the DEIS.

A total of five primary build alternatives, in addition to the no-build alternative, are presented in the DEIS. The five build alternatives are Alternatives 7, 8, 10, 15 and 16.

The primary alternatives vary in the middle sections as they cross the east-west arterials of Sandy Lake Road, Belt Line Road, Valwood Parkway, and Valley View Lane. Primary alternative 7 is the alignment

closest to the Elm Fork of the Trinity River. The alignments of primary alternatives 8 and 16 travel along the existing Luna Road through an industrial development. Primary alternatives 10 and 15 are similar in their alignments from Valwood Parkway to the IH 635 interchange and differ in their alignments through the Sandy Lake Amusement Park and the Dallas Water Utilities sedimentation ponds.

Right-of-way requirements for the build alternatives range from approximately 196 to 232 acres and the width of additional right-of-way varies from 350 feet to 600 feet.

The proposed construction of Segment IV has the potential to impact land use, commercial displacements, noise effects, floodplains, wetlands and jurisdictional waters of the U.S., cultural resources, hazardous waste sites and dedicated parkland.

Comments regarding the DEIS should be submitted to Mr. Christopher Anderson at the North Texas Tollway Authority office located at 5900 W. Plano Parkway, Suite 100, Plano, TX 75093. The mailing address is P.O. Box 260729, Plano TX 75026. The deadline for receipt of comments is 5:00 p.m. on May 29, 2001. Copies of the DEIS and other information about the project may be obtained at the previously mentioned address.

Copies of the DEIS will also be available for review at the Carrollton Public Library, 2001 Jackson Road, Carrollton, Texas, 75006; the Farmers Branch Public Library, 13613 Webb Chapel Road, Farmers Branch, Texas, 75234; and the Irving Public Library, Valley Ranch Branch, 9940 W. Valley Ranch Parkway, Irving, Texas, 76063. For further information, please contact Mr. Anderson at (214) 461-2021 or e-mail at [Canderson@ntta.org](mailto:Canderson@ntta.org)

TRD-200101961  
Richard Monroe  
General Counsel  
Texas Department of Transportation  
Filed: April 4, 2001



#### Notice of Invitation - Highway Safety Plan

The Texas Department of Transportation (TxDOT) announces a Request for Proposal (RFP) for a multi-year project, designated in the Texas Highway Safety Plan as the Safe Communities Program Management Services (HSP 01-09-02 Task B). The project is expected to start in 2001, upon completion of the RFP award process, and continue through September 30, 2003. The project will be funded through the Texas Highway Traffic Safety Program and administered by the Traffic Safety Section of the Traffic Operations Division of TxDOT.

**Purpose:** The purpose of this request is to solicit proposals for management support of the Safe Communities Program. The Safe Communities Program represents a new vision of community-based traffic safety and injury prevention programming. TxDOT is promoting the concept of Safe Communities as an integral part of highway safety and injury prevention. The Safe Communities approach is defined by four characteristics: (1) an integrated and comprehensive injury control system; (2) expanded partnerships with health care providers; schools, courts, law enforcement agencies, emergency medical services, firefighters, public safety officials, media representatives, local government, health care providers, businesses and concerned citizens; (3) the use of multiple data sources to define an injury problem; and (4) citizen involvement and input.

**Eligible Applicants:** Eligible applicants include, but are not limited to, nonprofit agencies and organizations, governmental entities (including city, county, and state), other public and private entities, and institutions of higher learning.

**Availability of Funds:** Approximately \$300,000 is expected to be available to fund the management support of the Safe Communities Program starting in fiscal year 2001 through September of fiscal year 2003 (\$60,000 for FY 2001, \$120,000 for FY 2002, and \$120,000 for FY 2003). However, because funds are authorized on a fiscal year basis only, funds for fiscal years 2002 and 2003 are contingent upon the availability of funds.

**Safe Communities Program Goals:** Provide management support for Safe Communities Program. Funded services include: (1) provide overall coordination of the program; (2) contact and provide training and technical support to potential and existing program partners; (3) provide assistance to TxDOT Program Administrator, District Traffic Safety Specialists (TSS), communities, and other traffic safety program partners; (4) ensure satisfactory completion of the project phases for each participating safe community; (5) assist safe communities in achieving their goals of reducing injuries and fatalities in the communities they represent; (6) assist TxDOT Program Administrator in developing performance plans and evaluations for the Program; (7) ensure the Safe Communities grants are conducted according to the program management guidelines as outlined in the Traffic Operations Manual, Highway Traffic Safety Volume; (8) plan and coordinate the Safe Communities training workshop(s) in cooperation with TxDOT, and the National Highway Traffic Safety Administration; (9) act as spokesperson for the Safe Communities Program; (10) make presentations at media events; and (11) ensure implementation, expansion and continuation of each safe community.

**Review and Award Criteria:** Each application will first be screened for completeness and timeliness. Proposals that are deemed incomplete or arrive after the deadline will not be reviewed. A team of reviewers will score proposals. The proposals will be evaluated using the criteria and review process described in the RFP.

**Pre-RFP Submission Meeting:** To clarify and answer questions concerning the Highway Safety Plan Safe Communities Program, a meeting will be held on May 2, 2001, for all interested parties who have requested a RFP. Interested parties are urged to attend, but attendance is not mandatory.

**Deadlines:** Proposals prepared according to instructions in the RFP Package must be received by TxDOT by 5:00 p.m., Central Day Light Savings Time, on or before May 14, 2001.

**To Obtain a Copy of the RFP:** Request for a copy of the RFP should be submitted to Sam Mitchell, Texas Department of Transportation, Traffic Operations Division, Attn: TRF-TS, 125 East 11th Street, Austin, TX 78701-2483, Telephone (512) 416-3166, Fax (512) 416-3349, E-mail: [smitchel@dot.state.tx.us](mailto:smitchel@dot.state.tx.us)

TRD-200101894  
Bob Jackson  
Deputy General Counsel  
Texas Department of Transportation  
Filed: April 2, 2001



#### Texas Water Development Board

##### Applications Received

Pursuant to the Texas Water Code, Section 6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

Lavaca-Navidad River Authority, P.O. Box 429, Edna, Texas, 77957-0429, received October 12, 2000, application for financial assistance in

the total amount of \$26,000,000 from the Development Fund II - State Participation Account.

Sunbelt Fresh Water Supply District, 410 West Gulf Bank, Houston, Texas, 77037, received March 1, 2001, application for financial assistance in the amount of \$945,000 from the Clean Water State Revolving Fund.

City of Bridgeport, 812 Halsell Street, Bridgeport, Texas, 76426, received February 1, 2001, application for financial assistance in the amount of \$1,200,000 from the Clean Water State Revolving Fund.

City of Olney, 201 East Main Street, P.O. Box 546, Olney, Texas, 76374-0546, received March 1, 2001, application for financial assistance in the amount of \$1,250,000 from the Drinking Water State Revolving Fund.

City of City of San Benito, 485 North Sam Houston, San Benito, Texas, 78586, received March 6, 2001, application for additional financial assistance in the amount of \$205,000 from the Economically Distressed Areas Fund.

El Paso County Water Authority, 1539 Pawling Drive, El Paso, Texas, 79927-6915, received March 9, 2001, application for financial assistance in the amount of \$1,290,000 from the Texas Water Development Funds.

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.

Lower Rio Grande Valley Development Council, 311 North 15th Street, 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.

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.

City of Grand Prairie, 317 College Street, Grand Prairie, Texas, 75053-4045, received February 1, 2001, application for financial assistance in an amount not to exceed \$392,370 from the Flood Mitigation Assistance Planning Fund.

Harris County, 9900 Northwest Freeway, Suite 103, Houston, Texas, 77092-8615, received January 31, 2001, application for financial assistance in an amount not to exceed \$428,850 from the Flood Mitigation Assistance Planning Fund.

Liberty County, 1923 San Houston, Liberty, Texas, 77575, received January 31, 2001, application for financial assistance in an amount not to exceed \$150,000 from the Flood Mitigation Assistance Planning Fund.

TRD-200101970

Gail L. Allan

Director of Project-Related Leal Services

Texas Water Development Board

Filed: April 4, 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*

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