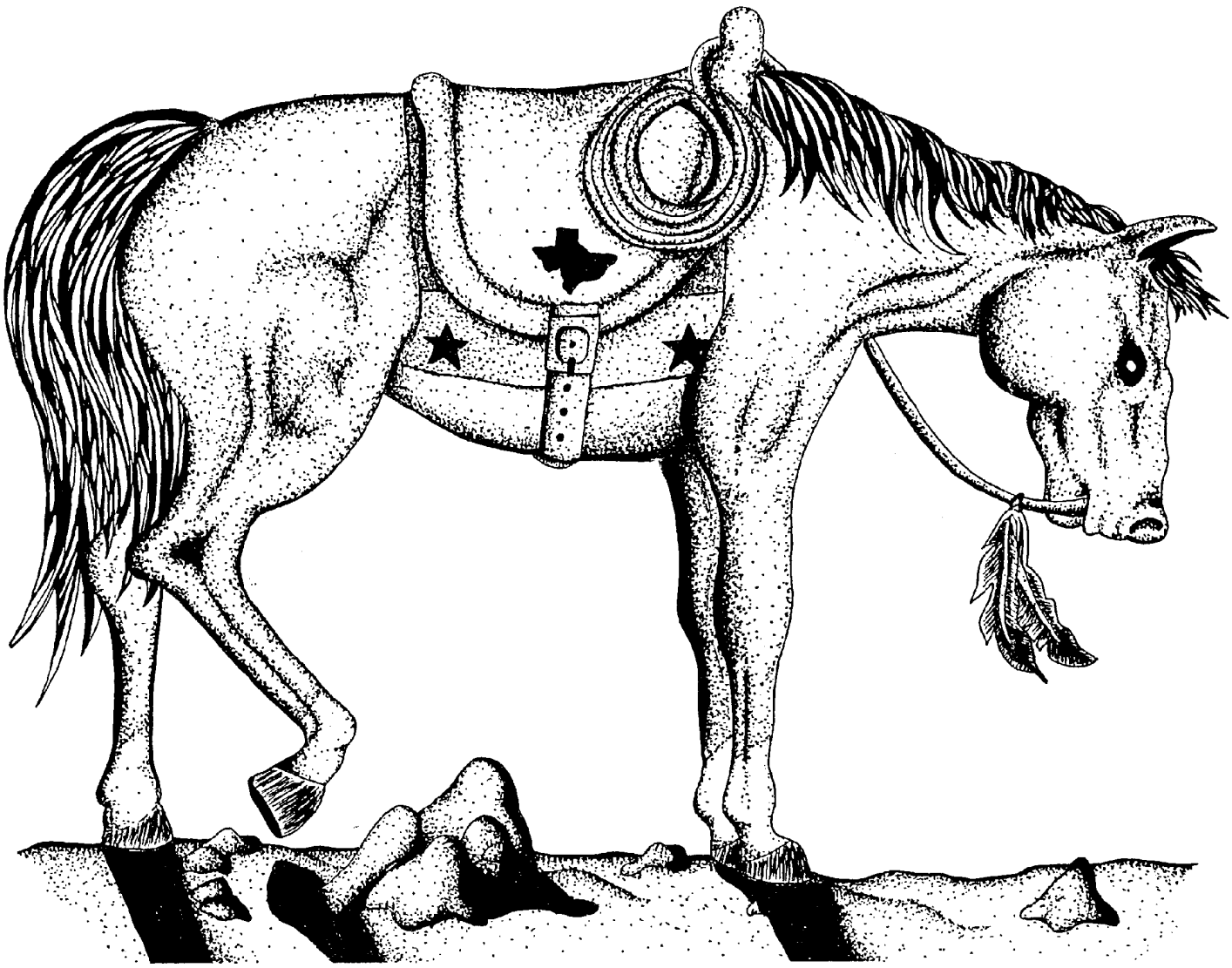
TEXAS REGISTER

Volume 27 Number 26 June 28, 2002 *Pages 5635-5892*



This month's front cover artwork:

Artist: *Crystal Iglecias*
11th Grade
Rockwall High School

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

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

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

***Texas Register,* (ISSN 0362-4781),** is published weekly, 52 times a year. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: printed, one year $200. First Class mail subscriptions are available at a cost of $300 per year. Single copies of most issues for the current year are available at $10 per copy in printed format.

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

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

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 226-7199
(512) 463-5561
FAX (512) 463-5569
http://www.sos.state.tx.us
Secretary of State - Gwyn Shea
Director - Dan Procter

Customer Relations
Blythe Cone
LaKiza Fowler-Sibley

Texas Administrative Code
Dana Blanton
Roberta Knight

Texas Register
Leti Benavides
Carla Carter
Melissa Dix
Kris Hogan
Diana Muniz-Franklin

Circulation/Marketing
Jill S. Ledbetter

PROPOSED RULES

WITHDRAWN RULES

ADOPTED RULES

RULE REVIEW

TABLES AND GRAPHICS

IN ADDITION

Open Meetings

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

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

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

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

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

•••

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

PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the ***Texas Register*** at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

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

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 87. NOTARY PUBLIC
SUBCHAPTER A. NOTARY PUBLIC QUALIFICATIONS

1 TAC §87.22, §87.25

The Office of the Secretary of State proposes amendments to Subchapter A, concerning notary public qualifications by amending §87.22 and adding new §87.25. The purpose of the sections is to prepare for the implementation of an amendment to Chapter 653 of the Government Code that was made by the 77th Texas Legislature in House Bill 1203, which will be effective on September 1, 2002. The proposed sections to Subchapter A, if adopted, will not become effective until September 1, 2002.

Guy Joyner, Chief, Legal Support Unit, Statutory Documents Section has determined that for the first five year period that the proposed sections are in effect the fiscal implication for state government as a result of enforcing the sections will be the elimination of the premium expense for notary public surety bonds. There is no effect on local government, large businesses, small businesses or micro-businesses. There is no anticipated additional economic cost to individuals who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

Mr. Joyner also has determined that for each year of the first five years that the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to clarify that, on or after September 1, 2002, officers and employees of a state agency who apply to be a notary public are not required to furnish notary public surety bonds.

Comments on the proposed sections may be submitted to Guy Joyner, Chief, Legal Support Unit, Statutory Documents Section, P.O. Box 12887, Austin, Texas 78711-2887.

The amendment and new section are proposed under the Texas Government Code, §2001.004(1) and §2001.006(b) and the Notary Public Act, Texas Government Code, §406.023(a) which provide the Secretary of State with the authority to prescribe and adopt rules.

The amendment and new section affects the Texas Government Code, §406.006 and §406.010.

§87.22. Completion and Execution of the Bond and Statement of Officer.

(a) The bond and statement of officer will be completed as follows.

(1) All information entered on the application will be legible.

(2) The name and social security number of the applicant will be entered in the space provided in the application.

(3) The complete name of the insurance or bonding company will be entered in the spaces provided in the bond.

(4) The name and address of the agent or agency will be entered in the space provided in the bond.

(5) The applicant will sign in the space provided for signature for the principal. The surety officer or an attorney-in-fact for an insurance or bonding company will sign in the space provided and give the surety company's Texas Department of Insurance license number.

(6) A bond form that is preprinted with a surety company's name may be used only by that surety for the issuance of a notary bond.

(7) The applicant's name to be used as a notary public will be entered in the space provided in the statement of officer.

(8) The applicant will execute the statement of officer before a notary public or other qualified officer and sign in the space provided for signature. Both the initial qualification as well as renewals require the referenced statement of officer.

(b) An applicant who is an officer or employee of a state agency is not required to complete the surety bond. Such applicants will follow the procedure described in §87.25 of this chapter.

(c) In this Chapter, "state agency" has the meaning assigned by §2052.101 of the Government Code.

§87.25. Qualification by an Officer or Employee of a State Agency who does not Furnish a Notary Public Bond.

(a) Application for Appointment

(1) The applicant will complete the notary public application entitled: "Application for Appointment as a Notary Public Without Bond."

(2) The State Agency that employs the applicant will submit the completed application to the State Office of Risk Management for verification by that Office.

(3) The State Office of Risk Management will complete the verification certificate on the application, and forward the completed application to the Office of the Secretary of State for processing.

(b) Change in employment status.

(1) If a notary public transfers to another state agency, the notary public's new agency shall notify the State Office of Risk Management and the Office of the Secretary of State of the transfer.

(2) If a notary public terminates state employment, the notary public shall:

(A) voluntarily surrender the notary public commission;

(B) purchase a notary public bond for the time-period remaining on the notary's current term of office; or

(C) apply for a new term of office and provide a notary public bond.

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 June 17, 2002.

TRD-200203741
Geoffrey S. Connor
Assistant Secretary of State
Office of the Secretary of State
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 475-0775

♦ ♦ ♦

PART 5. TEXAS BUILDING AND PROCUREMENT COMMISSION

CHAPTER 113. PROCUREMENT DIVISION SUBCHAPTER H. RECYCLING MARKET DEVELOPMENT BOARD

1 TAC §113.137

The Texas Building and Procurement Commission proposes amendment to Title 1, TAC, §113.137, concerning Identifying Recycled, Remanufactured or Environmentally Sensitive Commodities or Services for Procurements by State Agencies. The amendment designates additional First Choice designated commodities.

Ms. Cindy Reed, Deputy Executive Director of Administration and Procurement, has determined for the first five year period the rules are in effect there will be no fiscal implication for the state or local governments as a result of the additional First Choice designations.

Ms. Cindy Reed, Deputy Executive Director of Administration and Procurement, further determines that for each year of the first five-year period the amendment is in effect, the public benefit anticipated as a result of enforcing the amended rule is in compliance with the current statutory requirements of Texas Government Code, §2155.445 and §2155.448(a). There will be a positive environmental benefit, as the State of Texas will continue to increase the effect of closing the recycle loop (recycle, reduce and reuse). There are no anticipated economic costs to state agencies that are required to comply with this rule and there is no impact on local employment.

Comments on the proposals may be submitted to Juliet U. King, Legal Counsel, Texas Building and Procurement Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal to the *Texas Register.*

The amendments to §113.137 are proposed under the authority of the Health and Safety Code §361.423 and the Texas Government Code, §2155.445 and §2155.448(a).

The following codes are affected by these rules: Texas Administrative Code, Title 1, Chapter 113, Subchapter H, §113.137.

§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) Effective September 1, 2002, state agencies shall prefer the following commodities or services which have been designated as "first choice" products:

(1) Recycled-content plastic trash bags.

(2) Recycled-content plastic-covered binders.

(3) Recycled-content recycling containers.

(4) Energy Star labeled photocopiers.

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

(e) [~~(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.

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

(g) [~~(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.

Filed with the Office of the Secretary of State on June 14, 2002.

TRD-200203699
Juliet U. King
Legal Counsel
Texas Building and Procurement Commission
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 463-3583

♦ ♦ ♦

CHAPTER 113. CENTRAL PURCHASING DIVISION
SUBCHAPTER J. ELECTRONIC STATE BUSINESS DAILY

1 TAC §§113.201 - 113.216

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

The Texas Building and Procurement Commission proposes the repeal of Title 1, TAC, Chapter 113, Subchapter J--Electronic State Business Daily, §§113.201 - 113.216. The repeal of these rules is being proposed in order to delete obsolete language as a result of new requirements under Texas Government Code, Chapter 2155, Subchapter B (amended by Article 7, Senate Bill 311, 77th Legislature, 2001). Additionally, the repeal of Subchapter J, Chapter 113, allows for new rules to be proposed and published simultaneously in this publication of the *Texas Register*, that will reflect procedural changes that are the result of the transfer of the electronic business daily responsibilities from the Texas Department of Economic Development (TDED) to the Texas Building and Procurement Commission (TBPC).

Ms. Cindy Reed, Deputy Executive Director of Administration and Procurement, has determined for the first five-year period the repeal is in effect there will be no fiscal implications to the state or local governments as a result of enforcing this repeal.

Ms. Cindy Reed, Deputy Executive Director of Administration and Procurement, has determined that for the first five-year year period the proposed repeal is in effect, the public benefit will be the deletion of obsolete language that will allow for the creation of more efficient new rules under 1, TAC, Chapter 113, Subchapter J--Electronic State Business Daily. There will be no anticipated economic costs to persons who are required to comply with the rules and there is no impact on local employment.

Comments on the proposed repeal may be submitted to Ms. Juliet U. King, Legal Counsel, Texas Building and Procurement 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 in the *Texas Register.*

The repeal of §§113.201 - 113.216 are proposed under the authority of the Texas Government Code, Title 10, Subtitle D, §2155.083, which provides the Texas Building and Procurement Commission with the authority to promulgate rules necessary to implement the sections.

The following codes are affected by these rules: Texas Government Code, Title 10, Subchapter C, §2054.051 and Subchapter A, §2155.062, Subchapter C, §2155.132, Subchapter I, §2155.501 and §2155.509.

§113.201. Authority.
§113.202. Purpose.
§113.203. Definitions.
§113.204. General Provisions.
§113.205. Internet Access.
§113.206. Fees.
§113.207. General Posting Requirements.
§113.208. Posting Time Requirements.
§113.209. Emergency Procurements.
§113.210. Registered Agent Requirements.
§113.211. Procurement Opportunity Posting Procedures.
§113.212. Posting Follow-up and Record Keeping.
§113.213. Contract Award.
§113.214. Award Notification.
§113.215. Verification of Compliance.
§113.216. Exceptions and Exclusions.

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 June 14, 2002.

TRD-200203703
Juliet U. King
Legal Counsel
Texas Building and Procurement Commission
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 463-3583

♦ ♦ ♦

CHAPTER 113. PROCUREMENT DIVISION
SUBCHAPTER J. ELECTRONIC STATE BUSINESS DAILY

1 TAC §§113.201 - 113.218

The Texas Building and Procurement Commission proposes new sections to Title 1, TAC, §§113.201 - 113.218--Electronic State Business Daily. The new rules include changes and additions to the procedures and practices for complying with the statutory requirement for state agencies to give public notice regarding procurement initiatives that will exceed $25,000. The purpose

of the proposed new rules is twofold. First, they are needed to revise and provide clarity to existing rules to bring them into compliance with current statutes. Secondly, the proposed rules will reflect procedural changes that are the result of the transfer of the electronic business daily responsibilities from the Texas Department of Economic Development (TDED) to the Texas Building and Procurement Commission (TBPC).

Ms. Cindy Reed, Deputy Executive Director of Administration and Procurement, has determined for the first five-year period the rules are in effect there will be no fiscal implication for the state or local governments as a result of the revised and added rules. The revised text, added definitions and rules that facilitate the use and understanding of statutory requirements associated with the Electronic State Business Daily.

Ms. Cindy Reed, Deputy Executive Director of Administration and Procurement, further determines that for each year of the first five-years the new sections are in effect, the public benefit anticipated as a result of enforcing the revised and added rules will be positive with respect to the effect on large, small or micro-businesses that routinely participate in state business opportunities. There will be no anticipated economic costs to persons who are required to comply with the rules and there is no impact on local employment.

Comments on the proposals may be submitted to Juliet U. King, Legal Counsel, Texas Building and Procurement 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.*

The new §§113.201 - 113.218 are proposed under the authority of the Texas Government Code, Title 10, Subtitle D, §2155.083, which provides the Texas Building and Procurement Commission with the authority to promulgate rules necessary to implement the sections.

The following codes are affected by these rules: Texas Government Code, Title 10, Subchapter C, §2054.051 and Subchapter A, §2155.062, Subchapter C, §2155.132, Subchapter I §2155.501 and §2155.509.

§113.201. Authority.

Pursuant to the authority granted by the Texas Government Code, §2155.083, the commission sets forth the following rules regarding procedures and practice for posting procurement opportunities in the Electronic State Business Daily (ESBD).

§113.202. Purpose.

(a) The ESBD is established as a means for all state agencies to post notice directly and electronically in an electronic procurement marketplace on the Internet before making a procurement with a value that exceeds $25,000.

(b) The requirements of this subchapter are in addition to the requirements of other laws relating to the solicitation of bids, proposals, or other applicable expressions of interest for a procurement by a state agency. This subchapter does not affect whether a state agency is required to award a contract for procurement through competitive bidding, competitive sealed proposals, or another purchasing method.

§113.203. Definitions.

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

(1) Act--the State Purchasing and General Services Act, Texas Government Code, Subtitle D, §2151.001 et seq.

(2) Commission--the Texas Building and Procurement Commission.

(3) Consultant services--as defined at Texas Government Code §2254.021.

(4) Electronic State Business Daily (ESBD)--A business daily made available on the Internet at an electronic procurement marketplace established by the Department of Information Resources. State agencies are to cooperate with the commission by posting in the ESBD any procurement opportunities that will exceed $25,000 in value.

(5) Emergency Procurement--In procuring goods or services to qualify as an emergency procurement, the procurement must prevent a hazard to life, health, safety, welfare, property or avoid undue additional cost to the state.

(6) Goods and/or services--as defined in Texas Government Code, §2155.001.

(7) Internal Repair Procurements--A repair where the extent of the work cannot be determined until the equipment is disassembled. An internal repair must contain labor and may also include parts.

(8) Multiple award contract (as it applies to Multiple Award Schedule Contracts)--an award of a contract for an indefinite amount of one or more similar goods or services from a vendor.

(9) Potential bidders or offerors--those businesses or other entities that are interested in submitting a bid or proposal for state agency procurement opportunities.

(10) Prescribed form--the entry screens available in the ESBD.

(11) Procurement opportunity-- a bid, proposal, or other form of solicitation package or notice that includes all information necessary for each eligible procurement as defined at Government Code §2155.083(g), to be acquired by a state agency.

(12) Professional services--as defined at Texas Government Code §2254.002.

(13) Registered agent--a representative designated by each state agency responsible for posting eligible procurement opportunities in the electronic procurement marketplace.

(14) Reverse Auction--a real time bidding procedure that is Internet dependent and which is conducted at a pre-scheduled time and Internet location in which multiple suppliers, anonymous to each other, submit bids for designated goods or services.

(15) Schedule--a list of multiple award contracts from which agencies may purchase goods and services.

(16) State agency--as defined in Texas Government Code, §2151.002(2).

§113.204. Notice and Information Posting Requirements.

(a) The commission shall make the ESBD available on the Internet and World Wide Web through an electronic procurement marketplace maintained by the Texas Building and Procurement Commission (TBPC) located at www.tbpc.state.tx.us.

(b) Each state agency shall directly and electronically post its own notices or solicitation packages for eligible procurement opportunities using the ESBD. The commission and each state agency shall cooperate in making the ESBD available and accessible to all state agencies. Posting the entire bid or proposal solicitation package will reduce the posting time requirement as outlined in §113.208 of this title (relating to Posting Time Requirements).

(c) Each state agency that solicits a procurement contract estimated to exceed $25,000 in value shall post the following information on the ESBD:

(1) Either the entire bid or proposal solicitation package or a notice that includes all information necessary to make a successful bid, proposal, or other applicable expression of interest for the procurement contract, including the following minimum information required for each procurement as outlined in the Texas Government Code, §2155.083(g):

(A) a brief description of the goods or services to be procured and any applicable state product or service codes for the goods and services;

(B) the last date and time on which bids, proposals, or other applicable expressions of interest will be accepted;

(C) the estimated quantity of goods or services to be procured;

(D) if applicable, the previous price paid by the state agency for the same or similar goods or services;

(E) the estimated date on which the goods or services to be procured will be needed; and

(F) the name, business mailing address, e-mail address, and business telephone number of the state agency employee a person may contact to inquire about all necessary information related to making a bid or proposal or other applicable expression of interest for the procurement contract.

(2) A notice when the procurement contract has been awarded or when the state agency has decided not to make the procurement.

(3) An addendum to the original procurement opportunity can also be posted, at any time after posting the original notice.

(d) The commission shall post in the ESBD other information relating to the business activity of the state that the commission considers to be of interest to the public. The commission may develop a means for each state agency to post relevant information electronically. Until the electronic means is available, it is the responsibility of each state agency to provide any such relevant information, in a timely manner, to the attention of the TBPC Procurement Division. This information will also be accessible on the TBPC Web site.

(e) The commission will electronically transfer to the ESBD all procurements in excess of $25,000 that the commission processed on behalf of state agencies.

§113.205. Internet Access.

(a) It is the responsibility of each state agency to coordinate with the Department of Information Resources (DIR) to secure Internet service and computer hardware and software necessary for each registered agent to have daily access to the ESBD.

(b) To accommodate businesses seeking to become potential bidders or offerors that do not have the technical means to access the ESBD, governmental and non-governmental entities such as public libraries, chambers of commerce, trade associations, small business development centers, economic development departments of local governments, and state agencies may provide public access to the ESBD.

§113.206. Fees.

(a) A government agency may recover the direct cost of providing the public access only by charging a fee for downloading procurement notices and bid or proposal solicitation packages posted on the ESBD. For state agencies, these fees may not exceed the state agency's published rate for open records requests.

(b) The commission and other state agencies may not charge a fee designed to recover the cost of preparing and gathering the information that is published in the ESBD. These costs are considered part of a procuring agency's responsibility to publicly inform potential bidders or offerors of its procurement opportunities.

(c) A non-governmental entity may use information posted in the ESBD in providing a service that is more than only the downloading of information from the business daily, including a service by which appropriate bidders or offerors are matched with information that is relevant to those bidders or offerors, and may charge a lawful fee that the entity considers appropriate for the service.

§113.207. General Posting Requirements.

(a) Each state agency seeking to make an eligible procurement and award a procurement contract that will exceed $25,000 in value, without regard to the source of funds the agency will use for the procurement, must post the procurement opportunity on the Texas Marketplace system on the World Wide Web.

(b) Prior to making an award for any procurement, each state agency must post notice on the Texas Marketplace, including a procurement that:

(1) is otherwise exempt from Commission purchasing authority or the application of this subtitle;

(2) is made under delegated purchasing authority;

(3) is related to a construction project; or

(4) is a procurement of professional or consulting services.

(c) The Commission will electronically transfer to the Texas Marketplace all procurements in excess of $25,000 processed on behalf of state agencies by the Commission.

§113.208. Posting Time Requirements.

(a) NOTICES: If documents or attachments related to the procurement must be obtained from another source, a notice for eligible procurements must be posted for the latest of the following dates:

(1) 21 calendar days after the date the notice is first posted;

(2) the date the state agency will no longer accept bids, proposals, or other applicable expressions of interest for the procurement; or

(3) the date the state agency decides not to make the procurement. If the state agency decides not to make the procurement, the state agency must amend the posting to indicate the effective date of the cancellation within two business days of canceling the procurement.

(b) ENTIRE SOLICITATION: If the state agency posts the entire bid or proposal solicitation package, including attachments, for an eligible procurement, eligible procurements must be posted for the latest of the following dates:

(1) 14 calendar days after the date the bid or proposal solicitation package is first posted;

(2) the date the state agency will no longer accept bids, proposals, or other applicable expressions of interest for the procurement; or

(3) the date the state agency decides not to make the procurement. If the state agency decides not to make the procurement, the state agency must amend the posting to indicate the effective date of the cancellation within two business days of canceling the procurement.

§113.209. Emergency Procurements.

(a) Emergency procurements over $25,000 must be posted to the ESBD, but the minimum posting times in this subchapter do not apply.

(b) These posting requirements are in addition to existing commission procedures governing emergency procurements in §113.11 of this title.

§113.210. Internal Repair Procurements.

Internal repairs over $25,000 must be posted to the ESBD, but the minimum posting times in this subchapter do not apply.

§113.211. Multiple Award Schedule Contract Purchases Exceeding $25,000.

All multiple award schedule contract purchases with a total value exceeding $25,000 must be posted on the ESBD after the purchase order has been placed. The minimum posting times in this subchapter do not apply.

§113.212. Registered Agent Requirements.

(a) Each state agency must designate a minimum of one person to be the registered agent for posting all eligible procurement opportunities in the ESBD. State agencies with field or satellite offices may establish a registered agent at those offices or require that procurement opportunities be sent to the main office for posting in compliance with this chapter.

(b) To add a new state agency account, a written request signed by the agency head or designee must be submitted to TBPC to create a superuser account for the agency. All other registered users for that agency will be registered through the superuser account. The user/registered agent information will automatically be entered by the ESBD each time the registered agent accesses the ESBD to post new procurement opportunities.

§113.213. Procurement Opportunity Posting Procedures.

(a) Each state agency must comply with the procedures described herein when posting procurement notices on the ESBD. The commission will provide an ESBD User's Manual on line with written step-by-step instructions for accessing the ESBD.

(b) Information for each eligible procurement opportunity must be data entered directly and electronically by the registered agent, via Internet access, to the ESBD using the prescribed electronic format. The registered agent must enter the minimum required information as stated in §113.204 of this title (relating to Notice and Information Posting Requirements) using the on-line format provided by the commission in the ESBD.

(c) The prescribed format will contain data fields for each of the required information items listed above. Contact information for the posting will automatically default to the information provided on the registered agent's registration form, but can be manually changed to reflect contact information on procurement opportunities for which the registered agent is not the contact.

(d) The registered agent/user must select the "Add this listing" option to complete the posting process. All required information must be entered for the system to accept the posting.

(e) Each state agency is responsible for posting notices of any addendum, if applicable, to each procurement opportunity. The state agency is responsible for any addendum and/or cancellation notices to postings on the business daily.

(f) It is the responsibility of the potential bidder or offeror to contact the state agency prior to the bid or posting closing date to determine if an addendum has been issued.

§113.214. Posting Follow-up and Record Keeping.

(a) A copy of the procurement opportunity posting will automatically be sent electronically to the registered agent's e-mail address, if an e-mail address was provided on the user registration form. If the registered agent does not have e-mail access, it is the responsibility of the registered agent to use the print features of the Internet browser software to produce a hard copy of the posting for permanent record keeping as part of the contract file.

(b) The ESBD will automatically purge postings according to the bid opening date entered by the registered agent. Each state agency is responsible for ensuring the eligible procurement remains posted for the minimum number of days, as set forth in Texas Government Code, §2155.083 and §113.208 of this title (relating to Posting Time Requirements).

§113.215. Contract Award.

(a) A state agency may not award the procurement contract and shall continue to accept bids or proposals or other applicable expressions of interest for the procurement contract opportunities for at least 21 calendar days after the date the state agency first posted notice of the procurement or 14 calendar days after the date the state agency first posted the entire bid or proposal solicitation package.

(b) A contract or procurement award is void if made by a state agency in violation of the applicable minimum required posting time or if no ESBD posting was made.

§113.216. Award Notification.

(a) Each state agency's registered agent must record the action resulting from the posting of each eligible procurement into the ESBD using the prescribed form. This includes contracts awarded and procurement opportunities canceled by the state agency.

(b) The procurement or contract award notice shall include the following minimum information:

(1) agency name, mailing and physical address, and contact name;

(2) purchase requisition number for procurement opportunity;

(3) contract award recipient information to include company name, mailing address, and the commission's historically underutilized business certification status, if applicable; and

(4) dollar amount of award.

(c) Cancellation notices will include the following minimum information:

(1) agency name, business address, and contact name;

(2) purchase requisition number; and

(3) reason for cancellation.

(d) Upon posting of award notification information in the form, the registered agent will receive an e-mail notification of the posting.

§113.217. Verification of Compliance.

It is the responsibility of the state agency to maintain sufficient records and reports to verify compliance with Texas Government Code §2155.083 and this subchapter for audit purposes. Compliance with this subchapter will be audited as part of the commission's oversight process.

§113.218. Exceptions and Exclusions.

This chapter does not apply to a state agency to which Education Code §51.9335 or §73.115 applies. The commission does not have authority to grant exceptions to Texas Government Code §2155.083 of this chapter.

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 June 14, 2002.

TRD-200203700
Juliet U. King
Legal Counsel
Texas Building and Procurement Commission
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 463-3583

♦ ♦ ♦

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

1 TAC §§351.501, 351.503, 351.505

The Texas Health and Human Services Commission (HHSC) proposes new §§351.501, 351.503, and 351.505, which affect all state agencies that operate, license, certify, or register a facility in which a child resides, excluding the Texas Department of Criminal Justice, Texas Youth Commission, and Texas Juvenile Probation Commission. The proposed sections define abuse, neglect, and exploitation; set forth minimum standards for investigating and reporting suspected child abuse, neglect, and exploitation, including collection of evidence, burdens of proof, contents of investigative reports, referrals to other state and law enforcement agencies, and qualifications and training of investigators; and establish uniform procedures for collecting information on abuse, neglect, and exploitation investigations, including procedures for collecting information on deaths that occur in a facility. The purpose of the proposed sections is to implement Senate Bill 664, 77th Legislature, 2001, codified at §261.407, concerning minimum standards for investigations of suspected child abuse, neglect, and exploitation, and at §261.408, concerning the collection of information in the investigation of child abuse, neglect, and exploitation.

The proposed rules were developed in conjunction with a work group consisting of representatives of the health and human services agencies, the Texas School for the Blind and Visually Impaired (TSBVI), the Texas School for the Deaf (TSD), and Advocacy, Incorporated. In drafting the proposed rules, the work group considered each affected agency's administrative rules related to investigating and reporting child abuse, neglect, and exploitation and the child abuse, neglect, and exploitation laws and regulations in effect in other states.

Don Green, Chief Financial Officer for HHSC, has determined that for the first five years the proposed sections will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Green also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be increased protection of the physical and emotional safety of all children by reducing abuse, neglect, and exploitation, which will result in an overall savings to the State. The proposed rules also promote accountability by requiring agencies to maintain records regarding alleged incidents of abuse, neglect, and exploitation and deaths that occur in facilities.

Small and Micro-business Impact Analysis. The proposed rules will not result in additional costs to persons required to comply with them because the rules do not impose new requirements on the cost of doing business, do not require the purchase of any new equipment, and should not require any increased staff time in order to comply. The rules will not affect local employment.

Takings Impact Assessment. HHSC has determined that Chapter 2007 of the Government Code, concerning governmental actions affecting private property rights, does not apply to these rules and that, therefore, HHSC is not required to complete a takings impact assessment regarding these rules.

Public comment on the proposed rules may be submitted in writing to Stella Bryant, Legal and Legislative Affairs Division, Health and Human Services Commission, by mail addressed P.O. Box 13247, Austin, Texas 78711, or by facsimile to (512) 424-6587. Comments must be submitted within 30 days of publication in the *Texas Register*.

The new rules are proposed under §261.407 and §261.408 of the Family Code, which authorize HHSC to adopt minimum standards for investigating and uniform procedures for collecting information concerning child abuse, neglect, and exploitation investigations and under §531.033 of the Government Code, which gives HHSC the authority to adopt rules necessary to carry out HHSC's duties under Chapter 531.

The proposed sections implement §261.407 and §261.408 of the Family Code and §533.033 of the Government Code.

§351.501. Definitions relating to child abuse, neglect, and exploitation.

The following words and terms, when used in this section and §351.503 and §351.505, have the following meanings, unless the context clearly indicates otherwise:

(1) Abuse--any intentional, knowing, or reckless act or omission by an employee, volunteer, or other individual working under the auspices of a facility that causes or may cause emotional harm or physical injury, whether substantial or not, to or the death of a child the facility serves.

(2) Allegation--a report by a person who believes or has knowledge that a child has been or may be abused, neglected, or exploited in a facility.

(3) Child--a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

(4) Emotional harm--an injury to a child as evidenced by an observable physical, mental, or emotional impairment in the child's psychological growth, development, or functioning

(5) Exploitation--the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility.

(6) Facility--the management, administrator, or other person involved in the provision of care and services to a child.

(7) Individual who works under the auspices of a facility--a person who is responsible for a child's care, custody, or welfare, including:

(A) an employee, student, or volunteer of the facility;

(B) a person under contract with the facility;

(C) a director, owner, operator, or administrator of a facility;

(D) anyone who has responsibility for a child in a facility in his or her care;

(E) anyone who has unsupervised access to a child in a facility in his or her care;

(F) anyone who regularly or routinely lives at the facility; and

(G) any other person permitted by act or omission to have access to a child in his or her care.

(8) Intentional, knowing, or reckless--that the person who acts or fails to act:

(A) deliberately causes or may cause physical injury or emotional harm, whether substantial or not, to the child;

(B) knows or should know that physical injury or emotional harm, whether substantial or not, to the child is a likely result of the act or omission; or

(C) consciously disregards an unjustifiable risk of physical injury or emotional harm, whether substantial or not, to the child.

(9) Neglect--a negligent act or omission by an employee, volunteer, or other person working under the auspices of a facility, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or substantial physical injury to, or the death of, a child served by the facility.

(10) Observable physical, mental, or emotional impairment--discernible and substantial damage or deterioration.

(11) Omission--a failure to act.

(12) Physical injury--any bodily harm that is determined not to be serious by an examining physician. Physical injuries include, but are not limited to, scrapes, cuts, welts, and bruises.

(13) Professional--an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children.

(14) Preponderance of evidence--the greater weight of the evidence, evidence that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

(15) Report--a report that alleged or suspected abuse, neglect, or exploitation of a child has occurred or may occur.

(16) Reporter--a person filing a report of alleged abuse, neglect, or exploitation. The "Reporter" may be the victim of the alleged abuse, neglect, or exploitation, a third party filing a report on behalf of the alleged victim, or both.

(17) Sexual conduct harmful to a child's mental, emotional, or physical welfare includes:

(A) conduct that constitutes the offense of indecency with a child under §21.11 of the Penal Code, sexual assault under §22.011 of the Penal Code, or aggravated sexual assault under §22.021 of the Penal Code;

(B) failure to make a reasonable effort to prevent sexual conduct harmful to a child;

(C) compelling or encouraging the child to engage in sexual conduct, as defined in §43.01 of the Penal Code;

(D) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child, if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene, as defined in §43.21 of the Penal Code, or pornographic;

(E) the current use by a person of a controlled substance, as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;

(F) causing, expressly permitting, or encouraging a child to use a controlled substance, as defined by Chapter 481, Health and Safety Code; or

(G) causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child, as defined in §43.25 of the Penal Code.

(18) State agency--an agency that operates, licenses, certifies, or registers a facility in which a child is located, including the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf.

(19) Substantial emotional harm--an observable physical, mental, or emotional impairment in a child's psychological growth, development, or functioning that is significant enough to require treatment by a medical or mental health professional.

(20) Substantial physical injury--bodily harm or damage to a child such that a prudent person could conclude that the injury required professional medical attention. These injuries include, but are not limited to, dislocated, fractured, or broken bones; brain damage; subdural hematoma; internal injuries; lacerations requiring stitches; second and third degree burns; poisoning; and concussions.

(21) Substantial risk--a real and significant possibility or likelihood.

§351.503. Minimum Standards for Investigations.

(a) Applicability. This section applies to reports made under §261.401 of the Family Code by any person who has cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse, neglect, or exploitation.

(b) Formal investigation. On receiving an oral or written allegation or report, a state agency must immediately (preferably within 24 hours, but not later than 48 hours) initiate a formal investigation to determine the accuracy of the report and to evaluate the need for protective services for the child. A state agency should consider the following steps (which may vary according to circumstances) in conducting its investigation:

(1) a face-to-face interview with the alleged victim to evaluate immediate and long-term risk. The investigator must make every

effort to establish face-to-face contact with the alleged victim, including a diligent search to locate the alleged victim, if the child's whereabouts are unknown.

(2) a face-to-face interview with the person(s) thought to have knowledge of the circumstances.

(3) collecting relevant information such as:

(A) the nature, extent, and cause of the abuse, neglect, or exploitation;

(B) the identity of the person responsible for the abuse, neglect, or exploitation;

(C) the names and conditions of the other individual(s) in the home;

(D) an evaluation of the parent(s) or person(s) responsible for the care of the alleged victim;

(E) the adequacy of the environment; and

(F) the relationship of the alleged victim to the person(s) responsible.

(4) assigning a priority based on the information received and the degree of severity and immediacy of the alleged harm to the child.

(c) Priorities for investigations. A state agency should assign priorities and prescribe investigative procedures based on the severity and immediacy of the alleged possible harm to the child. The criteria listed below provide a basic framework and direction for priority assignments; they are neither definitive nor all-inclusive. Each allegation of abuse, neglect, or exploitation must be evaluated on its own circumstances and priorities assigned accordingly. In determining the appropriate priorities, a state agency should consider the following:

(1) Highest priority investigation. The investigation must begin promptly (preferably within 24 hours of receipt of a report) when:

(A) the alleged victim is believed to be in immediate danger of physical harm; and

(B) there is a significant risk that relevant evidence may be lost if the investigator does not see the alleged victim within 24 hours.

(2) Other investigations.

(A) a state agency should establish a priority system that evaluates the amount of time that has elapsed from the date of the incident to the date of the report for other abuse, neglect, and exploitation reports not requiring an immediate on-site investigation. The investigation must, to the greatest extent possible, be completed within 14 to 21 calendar days of receipt of the report, depending on the designated priority. Extensions may be granted with an explanation and documentation of the reason(s) for the delay.

(B) the state agency may determine that a report is frivolous or patently without a factual basis or does not concern abuse, neglect, or exploitation early in the investigation, and close the investigation and retain immunity.

(C) the state agency is not required to investigate an allegation that clearly does not involve abuse, neglect, or exploitation of a child in its facility. The agency should refer the allegation to the appropriate state agency for assistance.

(d) Collection of evidence. The collection of evidence should include, but is not limited to:

(1) a full statement of the allegation(s);

(2) interview(s) with the victim, alleged perpetrator, and all witnesses or persons who may provide collateral information:

(A) interviews must be conducted as quickly as possible after receipt of the initial report;

(B) any person authorized to conduct an investigation of abuse, neglect, or exploitation should coordinate investigative activities and share information with other appropriate agencies, if any, in order to minimize the number of interviews of the victim;

(3) signed and dated written statements of collateral witnesses (the victim, alleged perpetrator, or persons who may provide information) that have been signed and dated by the investigator;

(4) documentation of a physical examination of the victim and medical treatment rendered, as needed;

(5) photographs, which must be taken whenever there are allegations of physical injuries;

(6) diagrams, as needed;

(7) the original notes, videotapes, and audiotapes, in order to preserve and document the chain of evidence; and

(8) any other physical evidence that is relevant to the investigation.

(e) Burden of proof. After the evidence has been collected and evaluated, the investigative staff must determine whether the allegation has been confirmed, is unconfirmed, inconclusive, or unfounded. To confirm an allegation of abuse or neglect, the investigative staff must find a preponderance of the evidence. The following four classifications describe the various types of investigative findings and the weight of evidence required for each:

(1) Confirmed means a finding that an allegation of abuse, neglect, or exploitation is supported by a preponderance of the evidence.

(2) Unconfirmed means it is reasonable to conclude that abuse, neglect, or exploitation did not occur or is unlikely to occur.

(3) Inconclusive means there is insufficient evidence to support or refute an allegation. A finding that an allegation of abuse, neglect, or exploitation leads to no conclusion or definite result due to a lack of witnesses or other relevant evidence.

(4) Unfounded means that an allegation of abuse, neglect, or exploitation is spurious or patently without factual basis, as described in §261.106(c) and §261.107(a) of the Family Code.

(f) Content of the investigative report. An investigative report must, to the greatest extent possible, be written concisely, clearly, factually, and objectively. The following elements should be included in the report:

(1) a brief description of the allegation that identifies the victim, alleged perpetrator(s), and any witnesses;

(2) date and time the incident occurred and when it was reported;

(3) a summary of investigative procedures; and

(4) a summary and analysis of the evidence, a determination of whether the allegation was confirmed or is unconfirmed, inconclusive or unfounded, and recommendations; A state agency must submit the report, together with recommendations, to the district attorney and the appropriate law enforcement agency, if further legal action is warranted.

(g) Referrals to appropriate agencies. A state agency that receives a report of abuse, neglect, or exploitation that is not within the agency's jurisdiction must refer the matter to the agencies listed below, as appropriate:

(1) to the Texas Department of Protective and Regulatory Services, if the alleged or suspected abuse, neglect, or exploitation involves a person responsible for the care, custody, or welfare of the alleged victim;

(2) to the appropriate law enforcement agency, if the allegation does not involve a caretaker or an incident that appears to violate the Penal Code; the state agency must send its final report to law enforcement, if the investigation indicates a crime has been committed;

(3) to the state agency that operates, licenses, certifies, or registers the facility in which the alleged abuse, neglect, or exploitation occurred.

(h) Administrative review of investigation findings. A state agency should develop and implement policies and procedures to resolve complaints in accordance with §261.309 of the Family Code.

(i) Confidentiality of Reports. A state agency may disclose the allegation, report, records, communications, and working papers used or developed in the investigative process, including the resulting final report regarding abuse, neglect, or exploitation, only as provided by §261.201 of the Family Code, concerning the confidentiality of information. Investigations under Chapter 42 of the Human Resources Code, concerning licensed child-care facilities, homes, and agencies, must comply with all applicable federal and state confidentiality laws and regulations.

(j) Qualifications and training of investigator(s).

(1) Qualifications. A state agency must establish minimum qualifications for all abuse, neglect, and exploitation investigators. In determining the appropriate qualifications, a state agency should consider including a minimum number of hours of annual professional training for investigators of suspected child abuse, neglect, or exploitation.

(A) The professional training curriculum must include information concerning, but not limited to:

(i) physical abuse and neglect, including distinguishing physical abuse from ordinary injuries;

(ii) psychological and emotional abuse and neglect;

(iii) exploitation;

(iv) available treatment resources; and

(v) the incidence and types of reports of victim abuse, neglect, or exploitation that are received by the investigating agencies, including information concerning false reports.

(B) The investigator must have knowledge of Penal Code sections that relate to abuse, neglect, and exploitation.

(C) The investigator must know how to develop written statements and other documentary records related to the interview process and how to handle evidence, for example, collection and preservation of physical evidence.

(2) Training standards. These standards must encourage professionalism and consistency in the investigation of suspected child abuse, neglect, or exploitation. The training standards must include at least the following:

(A) videotaped and audiotaped interviews with a suspected victim must be uninterrupted;

(B) establishing a maximum number of interviews with and examinations of a suspected victim;

(C) procedures to preserve evidence, including the original notes, video-tapes, and audiotapes; and

(D) an investigator of suspected child abuse, neglect, or exploitation must make a reasonable effort to locate and inform each parent of a child of any report of abuse, neglect, or exploitation relating to the child.

§351.505. Information Collection; Uniform Data Collection Procedures.

Each state agency must prepare and keep on file a complete written report of each investigation the agency conducts under Chapter 261 of the Family Code. Each state agency must compile, maintain, and make available statistics on the incidence of child abuse, neglect, and exploitation in each facility it investigates. The rules and policies adopted and implemented by a state agency must, to the greatest extent practicable, provide a uniform method of collecting and analyzing data on suspected child abuse, neglect, or exploitation in a facility. A state agency must consider using the following procedures when analyzing data on abuse, neglect, and exploitation investigations:

(1) Sort by program classification the number of investigations completed. Examples of program classification include state hospitals, private psychiatric facilities, and maternity homes.

(2) Sort by program classification the number of confirmed investigations that are completed.

(3) Sort all completed investigations according to disposition: confirmed, unconfirmed, inconclusive, or unfounded.

(4) Sort all completed confirmed investigations by whether the identity of the perpetrator is known or unknown.

(5) Develop a confirmation rate by dividing the sum of all confirmed investigations by the sum of all completed investigations with dispositions of confirmed, unconfirmed, inconclusive and confirmed. Unfounded cases are not included in this calculation.

(6) Calculate the average number of days to complete investigations and sort by program.

(7) Calculate the number of investigations referred to law enforcement.

(8) Calculate the number of investigations pending at the end of the report period.

(9) Calculate the number of disciplinary actions resulting from confirmed findings.

(10) Calculate the number of deaths that occur as a result of child abuse or neglect in the affected facilities

(11) Calculate the number of appeals and the number of cases appealed that are overturned.

(12) Investigations with multiple allegations are to be counted once, based on the highest level of injury. For example, if a single incident involves one allegation of physical abuse that resulted in serious physical injury and a second allegation of verbal abuse, the investigation should be counted only once, as an instance of physical abuse resulting in serious physical injury. In other words, the sum of completed investigations involving serious injuries, non-serious injuries, verbal/emotional abuse and neglect, and exploitation should not exceed the total number of cases completed.

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 June 17, 2002.

TRD-200203750
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 424-6576

♦ ♦ ♦

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL

The Texas Department of Agriculture (the department) proposes amendments to §§20.1, 20.3, 20.20, 20.22 all concerning general provisions, definitions and stalk destruction, and the repeal of §20.23, concerning exceptions for no-till cotton production methods. The department has conducted a review of the Cotton Stalk Destruction Program and due to changes in the cotton industry, such as improved production techniques, boll weevil eradication, and other related issues, the department is proposing an update to regulations affecting cotton producers. Many of the proposed changes are the result of input received at Cotton Producer Advisory Committee meetings held across the state. The amendments are proposed to provide definitions needed for clarification of existing sections and to provide additional detail due to changing the policy on extension requests and when stalk destruction monitoring has ceased. The repeal is proposed to allow more flexibility toward the destruction date as long as cotton remains non-hostable.

Section 20.1 defines terms used in Chapter 20 and is amended to include revised definitions of the terms "destroyed or destruction, protection plan and volunteer cotton." The definition of the term "no-till cotton field" is being deleted due to the proposed repeal of §20.23. The amendment to §20.3 is being proposed to clarify a violation of the cotton stalk destruction program. The amendments to §20.20 are being proposed to divide Zone 8 into Area 1 and Area 2, which groups counties into northern and southern areas with more similar growing conditions and harvest dates. This change was recommended by the Zone 8 Cotton Producer Advisory Committee. The amendments to §20.22 (a) are being proposed to change the stalk destruction requirement for cotton in Zones 1-8 from "destroyed" to "rendered non-hostable" (as boll weevils do not reproduce in non-hostable cotton. In Zones 9 and 10, cotton plants must still be destroyed by shredding and plowing or burying the stalks. §20.22 (b)(1) allows producers to use alternative methods for destruction but no longer requires producers to notify the department before the deadline. §20.22(b)(2) removes the notification requirement for alternative methods in Zones 1-8 after the deadline. §20.22 (c)(1) allows producers in Zone 1 to apply for individual extensions, which has been allowed in Zones 2-10. Concerning requests for extensions due to research after the deadline date, the research must now be conducted within a sealed greenhouse or lab to prevent boll weevils from escaping and re-infesting a field. §20.22 (c)(3) allows the department to implement blanket extensions in a zone or area if a serious, unforeseen condition results that prevents the department from surveying fields or makes compliance by a majority of producers impossible. §20.22 (c)(6) allows a producer to obtain an extension after the deadline if wet weather prevents cotton producers from destroying volunteer cotton. §20.22 (d) specifies when stalk destruction requirements for a given crop year end and when penalties for violations shall cease to accrue.

The repeal of §20.23 is being proposed to allow no-till cotton growers and conventional cotton growers an equal time period for stalk destruction requirements and is no longer necessary. No-till cotton production is still encouraged in those areas where it is still beneficial. The current practice of using no-till methods already required the cotton to be non- hostable, however, this change will provide opportunity for growers to manage cotton in their area while achieving greater consistency of stalk destruction requirements across the state.

Ed Gage, coordinator for pest management programs, has determined that for the first five-year period the proposed amendments and repeal are in effect, there is no anticipated fiscal impact on state or local governments as a result of administration and enforcement of the sections.

Mr. Gage has also determined that for each year of the first five years the proposed amendments and repeal are in effect, the public benefit anticipated as a result of administering and enforcing the repeal and amended sections is consistent and equitable cotton stalk destruction rules that supports boll weevil eradication and still allows maximum flexibility in achieving crop termination. There are no additional anticipated costs to microbusinesses, small businesses or individuals required to comply with the proposal.

Comments on the proposal may be submitted to Ed Gage, Coordinator for Pest Management, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days after the date of the publication of the proposal in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §20.1, §20.3

The amendments to §20.1 and §20.3 are proposed in accordance with the Texas Agriculture Code (the Code), §74.006 which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74 and §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests.

The code that is affected by the proposal is Texas Agriculture Code, Chapter 12 and Chapter 74, Subchapter A.

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

(1) - (9) (No change.)

(10) Destroyed, or destruction--Killed by cutting or dislodging the roots, burying the entire plant, or by an alternative method which completely kills the leaves, stems, flowers, fruit, and roots of the plant. Applicable to Zones 9 and 10. [~~In zones with a shred and/or plow destruction requirement, shredded cotton will be considered destroyed.~~]

(11) - (19) (No change.)

(20) Non-hostable cotton--Cotton that is free of fruiting structures such as buds, squares, flowers or bolls in Zones 1 - 8.

[(21) No-till cotton field--A field in which the soil is left undisturbed from the time the cotton crop is harvested until the new crop is planted in narrow slots and weed control is accomplished using herbicides.]

(21) [(22)] Oil mill waste--Waste products, including linters, derived from the milling of cottonseed.

(22) [(23)] Plow--To dislodge or sever the roots of plants in a manner which prevents further growth. Equipment used to accomplish this could include a stalk puller, any type of plow, or similar implement.

(23) [(24)]Protection plan--A plan developed for the purpose of mitigating, with the goal of preventing, boll weevil infestation and establishment in an area. Mitigating measures may include, but are not limited to, the following:

(A) the [approved insecticide] field treatment of cotton and cotton products prior to delivery to an area or a gin by an approved insecticide;

(B) requirements for moving, handling, storage and treatment or use of approved insecticide applications to regulated articles; and

(C) monitoring of boll weevils at a specified site(s) as approved by the department.

(24) [(25)] Regrowth cotton--Cotton that has not been completely destroyed in such a way as to absolutely prevent further growth.

(25) [(26)] Restricted Area--An area designated as suppressed, functionally eradicated, or eradicated of boll weevils, as those terms are defined in this section.

(26) [(27)] Seed cotton--All forms of un-ginned cotton from which the seed has not been separated.

(27) [(28)] Stalk puller--An implement which dislodges the roots of cotton plants by pulling up the stalks.

(28) [(29)] Standing stalks--Original, undestroyed cotton plants growing in a field before or after harvesting.

(29) [(30)] Suppressed area--An area in which some boll weevil reproduction may be present in the area or a portion thereof, and in which the movement of regulated articles presents a threat to the success of the boll weevil eradication program The boll weevil population must be equal to or less than 0.025 boll weevils per trap per week for the cotton- growing season as measured by boll weevil pheromone traps operated by the Texas Boll Weevil Eradication Foundation or other governmental agency.

(30) [(31)] Trap--type of adult boll weevil pheromone trap approved by the Texas Boll Weevil Eradication Foundation.

(31) [(32)] Treatment--The act of eliminating possible cotton pest infestation(s) by means of cleaning, spraying or fumigation to eliminate the infestation.

(32) [(33)] Volunteer cotton--For purposes of this chapter, cotton [Cotton] developing from incidental seeds after the growing season between harvest and planting the next year's crop [from incidental seeds].

§20.3. Violations and Enforcement Actions.

(a) Violations. In addition to any other violations that may arise under requirements of the Texas Agriculture Code, Chapter 74, or regulations adopted pursuant to the Texas Agriculture Code, Chapter 71 or Chapter 74:

(1) Failure to comply with cotton stalk destruction requirements outlined in Subchapter C of this chapter (relating to Stalk Destruction Program) constitutes a violation.

(2) Cotton that is allowed to develop fruiting structures after the destruction deadline constitutes a violation. [Failure to submit a notification of alternative stalk destruction methods when required constitutes a violation.]

(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 June 17, 2002.

TRD-200203768
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 463-4075

♦ ♦ ♦

SUBCHAPTER C. STALK DESTRUCTION PROGRAM

4 TAC §20.20, §20.22

The amendments to §20.20 and §20.22 are proposed in accordance with the Texas Agriculture Code (the Code), §74.006 which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74 and §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests.

The code that is affected by the proposal is Texas Agriculture Code, Chapter 74, Subchapter A.

§20.20. Pest Management Zones.

(a) (No change.)

(b) Zones. Established zones include the following counties:

(1) - (11) (No change.)

(12) Zone 8 Area (1). Bell, Bosque, Coryell, [Ellis,] Falls, Freestone, Hamilton, [Henderson,] Hill, [Hood, Johnson,] Lampasas, Limestone, and McLennan[, Navarro and Somervell].

(13) Zone 8 Area (2). Ellis, Henderson, Hood, Johnson, Navarro and Somervell.

(14) [(13)] Zone 9. Pecos, Reeves and Ward.

(15) [(14)] Zone 10. El Paso County and that portion of Hudspeth County bounded by Interstate Highway 10 on the north, the El Paso County line on the west, the Rio Grande River on the south and a line from old Fort Quitman, north along Highway 34 to Interstate 10 on the east.

§20.22. Stalk Destruction Requirements.

(a) Deadlines and methods. All cotton plants in [~~a~~] pest management zones 1-8 [~~zone~~] shall be rendered non- hostable [~~destroyed, regardless of the method used,~~] by the stalk destruction dates indicated for the zone. Destruction shall periodically be performed to prevent the presence of fruiting structures. Destruction of all cotton plants in Zones 9 and 10 shall be accomplished by shredding and plowing and completely burying the stalk. Soil should be tilled to a depth of 2 or more inches in Zone 9 and to a depth of 6 or more inches in Zone 10. [~~the methods described as follows:~~]
Figure: 4 TAC §20.22(a)

(b) Alternative destruction.

[~~(1)~~] Alternative [~~Prior to the deadline, alternative~~] methods of destruction are allowed except in Zones 9 and 10 without notifying the department. Exceptions to the standard destruction method in Zones 9 and 10 will be considered by the Cotton Producer Advisory Committee for those zones on a case by case basis.

[~~(2) After the deadline, alternative methods of destruction may be used to destroy volunteer cotton in Zones 1-8. provided that the farm owner and/or operator notifies the department in writing, on a notification form prescribed by the department, of his or her intent to utilize an alternative destruction method.~~]

[~~(3) Notification forms may be obtained from any of the following locations within a cotton pest management zone:~~]

[~~(A) County Extension office;~~]

[~~(B) Farm Service Agency office; or~~]

[~~(C) Texas Department of Agriculture.~~]

[~~(4) Conditions.~~]

[~~(A) For volunteer cotton in all zones, or regrowth cotton in, where shredding and/or plowing is required, destruction shall be achieved by the 14th day after notifying the department of the intent to use an alternative method; and~~]

[~~(B) If fruiting structures are present, the host plants shall be shredded immediately, in addition to performing the alternative destruction method; and~~]

[~~(C) If destruction of all host plants is not achieved by the 14th day after notification to the department, then mechanical destruction will be required to remove the remaining plants immediately, and the field will be considered in violation for the preceding 14 day period and any day thereafter, until destruction is complete; and~~]

[~~(D) Once the field has been declared a public nuisance by the department, the field is in violation regardless of notification of an alternative method of destruction.~~]

(c) Deadline extensions [~~extension requests~~].

(1) The department may, on written request by a farm owner and/or operator, grant an extension of the cotton destruction deadline in any pest management zone. [~~except Zone 1. At the request of the Zone 1 Producer Advisory Committee, individual deadline extension requests will not be considered in Zone 1.~~] Requests for extensions in any [~~other~~] zone may be granted for the reasons listed in subparagraphs (A)-(E) of this paragraph:

(A) research conducted inside a sealed greenhouse or lab;

(B) - (E) (No change.)

(2) (No change.)

(3) A blanket extension may be implemented at the department's own initiative if a zone or other area experiences a serious unforeseen condition that prevents the department from surveying fields for compliance or which clearly makes compliance by a substantial majority of producers impossible.

(4) [~~(3)~~] Request forms may be obtained from any of the following locations within a cotton pest management zone:

(A) County Extension office;

(B) Farm Service Agency office;

(C) Texas Department of Agriculture.

(5) [~~(4)~~] Failure to complete the form entirely may result in denial of the request.

(6) [~~(5)~~] All requests for extensions shall be postmarked on or prior to the cotton destruction deadline. However, if a field is in compliance with destruction requirements on the deadline, but later is in violation due to [~~regrowth or~~] volunteer cotton with fruiting structures as a result of extended periods of wet weather that does not allow for mechanical destruction [~~establishment~~], an extension request may be submitted after the deadline. Once a field has been declared a public nuisance by the department, no extension requests will be granted.

(d) Once a new cotton crop is planted in a zone and has emerged, the requirement to destroy original growth, regrowth, or volunteer cotton from the previous crop year shall end until after the next harvest. Violations arising prior to the date of planting of a new crop in a zone will be pursued, but penalties shall cease to accrue on that date.

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 June 17, 2002.

TRD-200203767
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 463-4075

♦ ♦ ♦

4 TAC §20.23

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

The repeal of §20.23 is proposed in accordance with the Texas Agriculture Code (the Code), §12.016, which provides the department with the authority to adopt rules as necessary for administration of the Code; and §74.006, which provides the department with the authority to adopt rules as necessary for enforcement of boll weevil eradication.

The code that is affected by the proposal is the Texas Agriculture Code, Chapter 74, Subchapter A.

§20.23. Exceptions For No Till Cotton.

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 June 17, 2002.

TRD-200203765
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 463-4075

♦ ♦ ♦

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 40. CHRONIC WASTING DISEASE

4 TAC §40.1, §40.2

The Texas Animal Health Commission (Commission) proposes amendments to Chapter 40, concerning Chronic Wasting Disease. This proposal amends §40.1 regarding Definitions and §40.2, regarding, General Requirements.

Chronic Wasting Disease (CWD) is a transmissible spongiform encephalopathy of deer and elk. CWD was initially described as a clinical syndrome in native mule deer and black-tailed deer held in a wildlife research facility in Colorado in 1967. The disease was later reported in additional research facilities in Colorado and Wyoming. By the early 1990s, the disease had been documented in free-ranging mule deer and elk in north-central Colorado and southeastern Wyoming. In December 1997, the disease was confirmed in two commercial elk operations in South Dakota. CWD has since been diagnosed in two additional commercial elk herds in South Dakota, one elk herd in Nebraska, and one elk herd in Oklahoma. Quarantines were placed on the affected commercial herds by the state animal health authorities.

Chronic Wasting Disease is known to affect mule deer, black-tailed deer, elk and white-tailed deer. The susceptibility of other species of native and exotic cervidae is unknown. Clinical signs include chronic weight loss, emaciation, excessive thirst, excessive frequency of urination, excessive salivation, and behavioral changes. The disease is progressive and always fatal. Based on the epidemiology of the disease, transmission is thought to be lateral and possibly maternal. Although not fully characterized, the causative agent is thought to be an infectious proteinaceous particle commonly referred to as a prion which is known to be extremely resistant to conventional heat and chemical disinfection procedures.

Recently, United States Department of Agriculture (USDA) issued an interim rule regarding the payment of indemnity for cervids exposed to CWD. That rule provides that "subject to the availability of funding, the amount of indemnity payments for eligible animals will be determined by appraisal, with the indemnity payment set at 95 percent of the appraised value, with a cap on payments of $3,000 per animal." CWD positive herds will be jointly appraised by an APHIS official appraiser and a State official appraiser, or if APHIS and State authorities agree that both appraisers are not needed for a given situation, then by either a State official appraiser or an APHIS official appraiser alone. The appraised value of the cervids will be their fair market value as determined by the meat or breeding value of the animals. Animals may be appraised in groups, provided that where appraisal is by the head, each animal in the group is the same value per head, and where appraisal is by the pound, each animal in the group is the same value per pound.

To make this indemnity program equitable for producers in all the States that might participate, we will reduce the Federal indemnity payment for an animal when indemnity payments for the same animal from non-Federal sources exceed five (5) percent of its appraised value. The reduction in the Federal payment will equal the amount by which the non-Federal payments exceed five (5) percent of the animal's appraised value.

This action by USDA limits the Commission's ability to participate in any indemnity in excess of five (5) percent. Therefore, the Commission is promulgating a regulation which limits its participation to five (5) percent.

Also, the Commission is lowering the age of cervids eligible for the CWD Monitoring program from sixteen (16) months to twelve (12) months. This is in response to the fact that cervids have shown signs of CWD at this age. Furthermore, this is an appropriate standard based on the fact that cervids generally have their fawns in early summer making it easier to identify when a cervid has reached this age level.

Mr. Bruce Hammond, Deputy Director of Administration and Finance, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rules. The agency currently processes indemnity requests for specific diseases. The Commission does not expect there to be a lot of eligible cervids and as such the proposed indemnification regulation is not expected to cause us to exceed funds budgeted for the biennium. There will be no effect to small or micro businesses.

Mr. Hammond also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be clear and concise regulations. The commission believes by participating in indemnifying producers for these animals we will improve detection and disposal of these high risk animals as well as help insure that Texas does not have an outbreak of a disease which could have a negative impact on the livestock industry in Texas.

In accordance with Government Code, §2001.022, this agency has determined that the adopted rule will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

The agency has determined that the proposed governmental action will not affect private real property. These adopted rules are an activity related to the handling of animals, including requirements concerning testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC, §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

Comments regarding the proposed amendments may be submitted to Edith Smith, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721, or by e-mail at "esmith@tahc.state.tx.us."

The amendments are proposed under the Texas Agriculture Code, Chapter 161, §161.041 (a) and (b), and §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Also, the amendments are adopted under the Texas Agriculture Code, Chapter 161, §161.058 which authorizes the commission to adopt rules related to indemnity for exposed or diseased livestock.

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

§40.1. Definitions.

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

(1) Chronic Wasting Disease (CWD)--A transmissible spongiform encephalopathy (TSE) of deer and elk.

(2) CWD Profile--A deer or elk 12 [~~16~~] months of age or older that is emaciated and exhibits some combination of clinical signs including abnormal behavior, increased salivation, tremors, stumbling, incoordination, difficulty in swallowing, excessive thirst, and excessive urination.

(3) Commission--The Texas Animal Health Commission.

(4) Herd--A group of deer or elk maintained on common ground, or two or more groups of deer or elk under common ownership or supervision that are geographically separated, but can have an interchange or movement without regard to health status.

(5) High Risk Animal--A deer or elk that has had direct contact with an animal which has been confirmed to be affected with CWD. In herds with evidence of transmission, as determined by an epidemiological investigation, high risk animals include all animals that have had contact with the affected animal(s) at any time during a 12 month period preceding the initial observation of clinical signs. In herds without evidence of transmission, as determined by an epidemiological investigation, high risk animals include all animals that have had contact with the affected animal at any time during a 12 month period preceding death of the affected animal.

(6) Official Eartag--An identification eartag that provides unique identification for each individual animal by conforming to the alphanumeric National Uniform Eartagging System.

(7) Official Laboratory--The National Veterinary Services Laboratory, United States Department of Agriculture, Ames, Iowa, is the reference laboratory for CWD diagnostic procedures.

(8) Positive Herd--A herd in which a diagnosis of CWD has been confirmed by the National Veterinary Services Laboratory.

(9) Suspicious Animal--A deer or elk which has clinical signs that resemble the CWD profile.

(10) Suspicious Herd--A herd in which one or more animals are observed with clinical signs that resemble the CWD profile.

(11) Trace Herd--The term includes both traceback and trace-forward herds. A traceback herd is any herd where an affected animal has resided during a 36 month period prior to death. A trace-forward herd is any herd which has received animals from a positive herd during a 30 month period prior to death of the affected animal.

§40.2. General Requirements.

(a) Procedures for issuing hold orders and quarantines.

(1) All herds suspicious of CWD, in which one or more animals are observed with signs which resemble the CWD profile, shall be reported to a representative of the Commission. The herd shall be restricted by hold order until the investigation and diagnosis have been completed.

(2) Trace herds shall be restricted by hold order until an epidemiologic investigation has been completed and the herd has met all requirements specified in a herd plan.

(3) CWD positive herds shall be restricted by quarantine until the herd has met all requirements specified in a herd plan.

(4) All suspicious, trace, and positive herds not complying with the requirements of an investigation or herd plan shall be restricted by quarantine.

(b) Procedures in suspicious, trace, and positive herds.

(1) CWD suspicious animals shall be presented to a representative of the Commission for the purpose of collection and submission of appropriate samples to an official laboratory for diagnosis.

(2) Disposition of a positive herd without evidence of transmission within the herd as determined by a TAHC or USDA epidemiologist following completion of the investigation. A herd plan will be developed by a TAHC or USDA epidemiologist in consultation with the herd owner, and their veterinarian (if requested by the owner). The herd plan shall include the following requirements for a period of five years:

(A) Routine visual inspection of all animals in the herd by a TAHC or USDA veterinarian for the purpose of early detection of CWD suspicious animals.

(B) Annual verification of herd inventory by a TAHC or USDA veterinarian.

(C) Mandatory reporting of all CWD suspicious animals and all death losses. Mortality in animals 12 [~~16~~] months of age or older shall be immediately reported to a TAHC or USDA veterinarian for the purpose of collection of appropriate samples for submission to an official laboratory for CWD surveillance.

(D) High risk animals must be removed from the herd and:

(i) Humanely destroyed, tested for CWD, and disposed of as specified in subsection (c) of this section, or

(ii) Maintained under hold order for 48 months from the last case of CWD.

(3) Disposition of a positive herd with evidence of transmission within the herd as determined by a TAHC or USDA epidemiologist following completion of the investigation. A herd plan will be developed by a TAHC or USDA epidemiologist in consultation with the owner, and their veterinarian (if requested by the owner). The herd plan shall include the following requirements for a period of five years:

(A) Routine visual inspection of all animals in the herd by a TAHC or USDA veterinarian for the purpose of early detection of CWD suspicious animals.

(B) Annual verification of herd inventory by a TAHC or USDA veterinarian.

(C) Mandatory reporting of all CWD suspicious animals and all death losses. Mortality in animals 12 [~~16~~] months of age or older shall be immediately reported to a TAHC or USDA veterinarian for the purpose of collection of appropriate samples for submission to an official laboratory for CWD surveillance.

(D) High risk animals must be removed from the herd and:

(i) Humanely destroyed, tested for CWD, and disposed of as specified in subsection (c) of this section, or

(ii) Maintained under hold order for 48 months from the last case of CWD.

(E) The herd shall remain under quarantine for 36 months from the last case of CWD.

(4) Disposition of trace herds. A herd plan will be developed by a TAHC or USDA epidemiologist in consultation with the owner, and their veterinarian (if requested by the owner). The herd plan shall include the following requirements for a period of three years:

(A) Routine visual inspection of all animals in the herd by a TAHC or USDA veterinarian for the purpose of early detection of CWD suspicious animals.

(B) Annual verification of herd inventory by a TAHC or USDA veterinarian.

(C) Mandatory reporting of all CWD suspicious animals and all death losses. Mortality in animals 12 [~~16~~] months of age or older shall be immediately reported to a TAHC or USDA veterinarian for the purpose of collection of appropriate samples for submission to an official laboratory for CWD surveillance.

(D) High risk animals must be removed from the herd and:

(i) Humanely destroyed, tested for CWD, and disposed of as specified in subsection (c) of this section, or

(ii) Maintained under hold order for 48 months from the last potential exposure.

(c) Destruction of suspicious and high risk animals. Animals destroyed due to a presumptive diagnosis of CWD, including high risk animals in positive and trace herds, shall be humanely euthanized, appropriate samples collected to confirm the diagnosis, and disposed of by deep burial or incineration, including all animal products, by-products, and contaminated materials:

(1) on the premises where disclosed, or

(2) at a facility approved by the executive director.

(d) Payment of indemnity. The Commission may participate in paying indemnity to purchase and destroy CWD positive animals, CWD exposed animals, and CWD suspect animals. Subject to available funding, the amount of the state payment for any such animals will be five (5) percent of the appraised value established in accordance with 9 CFR, Part 55, Section 55.3. This payment is in participation with any Federal payments made in accordance with 9 CFR, Part 55, §55.2.

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 June 17, 2002.

TRD-200203746
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 719-0714

♦ ♦ ♦

CHAPTER 48. RIDING STABLE REGISTRATION PROGRAM

4 TAC §48.2, §48.7

The Texas Animal Health Commission proposes amendments to Chapter 48, concerning Riding Stable Registration Program.

This proposal amends §48.2, regarding Definitions, and §48.7, regarding Registration and Renewal Fee.

During the 77th Texas Legislative Session, Senate Bill 685 was passed and signed by the Governor which amends Chapter 2053 of the Texas Occupations Code to transfer from the Texas Department of Health (TDH), the Texas Board of Health (board), and the commissioner of public health (commissioner) to the Texas Animal Health Commission (commission) all powers, duties, rights, and obligations relating to the regulation of riding stables. The bill sets forth procedures regarding the transfer of authority from TDH, the board, and the commissioner to the commission.

In reviewing and registering riding stables, the Commission has discovered that there are a number of riding facilities that utilize a variety of equine activity as treatment tools for people with disabilities or medical conditions. These are facilities that provide horses to the public for riding and/or driving in order to provide treatment or a benefit to a group of people. As the commission understands the intent of the legislation was to insure the well-being of equine utilized by the public, the registration program is applicable. This is further supported by the fact that it insures that the equine are in a healthy condition for the purpose of providing therapeutic lessons. However, in recognition of the fact that these facilities are providing an important service and in order to not add any additional fiscal impact to their program, the Commission is proposing to exempt them from the registration fee. This rule proposal will allow a facility that provides only this type of service to apply for a waiver of the fee based on that fact.

Mr. Bruce Hammond, Deputy Director for Administration and Finance, Texas Animal Health Commission, has determined for the first five year period the rules are in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rules. The TAHC is using the existing fee structure that was established by the TDH in administering the program. It is estimated that there are between ten to twenty such facilities. As such, the loss of fee revenue should not have a large impact on administering this program. An evaluation will be made at the end of the first two year period to determine if an adjustment in fees is necessary to recover the cost of administering the registration program and to employ agents to conduct inspections. There will be no effect to small or micro businesses.

Mr. Hammond also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated is that these facilities will register, insuring the healthy condition of their equine, without having to incur the fiscal cost of registering.

In accordance with Government Code, §2001.022, this agency has determined that the adopted rule will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

The agency has determined that the proposed governmental action will not affect private real property, and is, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

Comments regarding the proposed amendments may be submitted to Edith Smith, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "esmith@tahc.state.tx.us."

Senate Bill 685 amends Chapter 2053 of the Texas Occupations Code to transfer from the Texas Department of Health (TDH), the Texas Board of Health (board), and the commissioner of public health (commissioner) to the Texas Animal Health Commission (commission) all powers, duties, rights, and obligations relating to the regulation of riding stables. Rulemaking authority is expressly granted to the Texas Animal Health Commission in Section 3 (§2053.012, Occupations Code) of the bill. Sec. 2053.012 provides that the commission may adopt rules it considers necessary to carry out this chapter.

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

§48.2. Definitions.

The following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) Act--Senate Bill 685, 77th Legislature, 2001.

(2) Adequate food and water--Food and water which is sufficient in amount and appropriate for the particular type of animal to prevent starvation, dehydration, or significant risk to the animal's health from a lack of food or water.

(3) Adequate space--An area which is of sufficient length, width, and height to allow the equine to freely and comfortably move about, stand with all four feet on the ground, lie down, and get up without injury.

(4) Adequate ventilation--The provision of fresh air to an enclosure by means of windows, doors, vents, fans, or air-conditioning so as to minimize drafts, odors, and moisture condensation.

(5) Application--A written request to the commission for a registration, temporary registration, or renewal of registration. The application must be on the form prescribed by the commission.

(6) Body condition score--An assessment of equine body condition in accordance with the following:
Figure: 4 TAC §48.2(6) (No change.)

(7) Carriage--A two-or four-wheeled passenger vehicle pulled by an equine.

(8) Carriage equine--Any equine which is used by its owner or other person to pull any carriage, in exchange for a fee. An equine rented or leased by its owner to another person for any of the foregoing purposes shall be deemed to be a carriage equine for the purposes of this chapter.

(9) Commission--Texas Animal Health Commission.

(10) Equine--Any member of the Equidae family, including equine, mules, asses, donkeys, and ponies.

(11) Free-choice--Available in unlimited quantity for use or consumption by the equine at any time the equine elects.

(12) Humane care--Humane care is, but is not limited to, the provision of adequate ventilation, sanitary shelter, and adequate food and water, consistent with the normal requirements and feeding habits of the animal's size, species, and breed.

(13) Owner--The person who operates an establishment and who is responsible for the shelter and care of equine for hire.

(14) Registered establishment--Any facility, stable, or paddock where rented equine are kept that conforms to the requirements in these sections and is duly registered by the Texas Animal Health Commission.

(15) Rental equine--Any equine let for hire to be ridden or driven, either with or without the furnishing of riding or driving instruction.

(16) Riding stable--A facility where rental equine are housed, held, or maintained.

(17) Saddle equine--Any equine let for hire to be ridden, either with or without the furnishing of riding instruction.

(18) Shelter--Protection from severe weather conditions and direct hot sun.

(19) Stable--A structure having a permanent roof, stalls, and access ways used for quartering equine.

(20) Therapeutic Riding Stable--A facility where the only equine activities provided are to people with disabilities or medical conditions.

(21) [~~(20)~~] Veterinarian--A person licensed to practice veterinary medicine in the State of Texas.

(22) [~~(21)~~] Work--An equine is considered to be at work when it is out of its stable or paddock and presented to the public as being available for riding or pulling a carriage.

§48.7. Registration and Renewal Fee.

Each initial registration and renewal fee will be $100 for all riding stables with three or less equine and $200 for all riding stables with four or more equine. A Therapeutic Riding Stable may request a waiver of the registration and renewal fee based on documentation that the only services provided are for a therapeutic purpose.

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 June 17, 2002.

TRD-200203747
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 719-0714

♦ ♦ ♦

CHAPTER 51. ENTRY REQUIREMENTS

The Texas Animal Health Commission proposes two new requirements for cervids and poultry entering Texas. The TAHC proposes the repeal and replacement of §51.10 concerning entry requirements for cervids and Chronic Wasting Disease (CWD) and an amendment to §51.15, concerning entry requirements for Poultry.

CWD is a transmissible spongiform encephalopathy (TSE) of elk and deer and it is recognized as communicable by the veterinary profession and is considered to be is a serious threat to the Texas exotic wildlife industry and native Texas deer. There is no live animal test to determine the presence of the disease in living animals. In response to the number of reported cases found in other states the agency is currently reproposing the requirements for entry of cervids because of CWD.

The Commission has issued a quarantine prohibiting entry of the aforementioned animals. Until that quarantine is rescinded or modified all entry under the requirements of §51.10 is suspended. The Commission recently included a statement into the

entry requirement for Cervidae, §51.10, which denotes the fact that these requirements are not applicable if the commission has a quarantine in place which prohibits the entry of cervids or elk.

While the Quarantine is in place the commission is proposing new entry requirements related to CWD in order to provide for more protective standards for the Texas livestock, exotic livestock and wildlife industries. Those new proposed requirements are being put out for comments while the quarantine remains in effect. The proposal is being reviewed by a CWD Working Group made up of agency staff, a member of Texas Parks and Wildlife and members of various associations affected by the quarantine. The group's comments and suggested changes will be shared with all interested parties in order to try and develop the most effective rule for everyone involved.

The proposed entry requirements for CWD provide that all white-tailed deer, mule deer or black-tailed deer and elk (or other cervid species determined to be susceptible to CWD) shall obtain a entry permit from the Commission. All request for entry must be made in writing and accompanied with the information necessary to support import qualifications of the animal. This must be received by the TAHC at least ten working days prior to entry date. The applicant must identify the herd of origin and the herd of destination. The cervids, to be imported into this state, shall be individually identified. There shall be a certificate of veterinary inspection completed by a federally accredited veterinarian, who must certify that the cervid, to be imported, originate from a herd monitored for at least 5 years under a state-approved chronic wasting disease herd certification program and that there have been no clinical signs of chronic wasting disease in the herd. The Commission has provided minimum standards for what is an acceptable state-approved chronic wasting disease certification program and the animals intended for entry must be certified by the veterinarian as meeting those minimum standards. Those standards were taken from the draft model program that is currently being developed by USDA. Those standards the result of a series of discussions and reviews begun in 1998 with an initial program design put forward by the North American Elk Breeders Association and others. The United States Animal Health Association (USAHA) passed resolutions in 1998 and 1999 endorsing the development of a CWD program. In the latter part of 1999 through 2000, representatives of Veterinary Services of USDA's Animal and Plant Health Inspection Service (APHIS) met with State Departments of Agriculture, State Departments of Wildlife, Federal and State university diagnostic laboratories and research agencies, and producer associations to draft key elements of the program. Producer associations included the North American Elk Breeders Association, the Exotic Wildlife Association, the American Sheep Institute, and the North American Deer Farmers Association.

This proposal provides for new requirements for poultry entering Texas. Section 51.15 contains new entry requirements for Poultry based on national, as well as Texas, concern for Avian Influenza.

An infectious, contagious, but low pathogenic avian influenza virus, has been detected in recent months in several states could or might export live poultry and poultry products into Texas. Avian influenza subtypes H5 and H7 are of particular concern due to their potential for developing into highly pathogenic forms of the disease massive molting in the avian populations resulting in adverse trading sanctions for not only Texas but the entire United States poultry industry. Avian influenza is contagious and spreads rapidly. The normal movement of poultry and poultry products from any state in which avian influenza virus is present and spreading may pose a major and direct threat to Texas's poultry. Therefore the Commission proposed entry requirements for the importation of live poultry and poultry products into the state to substantially reduce the introduction of this contagious and infectious disease in this State.

Those requirements are established to manage the risk to the Texas poultry industry regarding Avian Influenza. Live domestic poultry, except those entering for slaughter and processing at a slaughter facility owned or operated by the shipper of the poultry entering, may enter Texas if they meet one of the three established set of criteria where by the origin flock has been shown to test negative for Avian Influenza. Live domestic poultry from states affected with Avian Influenza may enter Texas for slaughter and processing only where a minimum number of birds have tested serologically negative for Avian Influenza within 72 hours of entry, and specific written permission has been granted.

Bruce Hammond, Assistant Executive Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules. There will be no effect to small or micro businesses.

Mr. Hammond also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be clear and concise regulations which can be found in one chapter.

In accordance with Government Code, §2001.022, this agency has determined that the adopted rule will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

The agency has determined that the proposed governmental action will not affect private real property. These adopted rules are an activity related to the handling of animals, including requirements concerning testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

Comments regarding the proposed rules may be submitted to Edith Smith, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "esmith@tahc.state.tx.us."

4 TAC §51.10

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

Chapter 51 is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041 (a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, by §161041 (b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases,

the commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061.

Section 161.081, regarding the "Importation of Animals" provides that the commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country. Furthermore the commission by rule may provide the method for inspecting and testing animals before and after entry into this state.

Also the commission by rule may provide for the issuance and form of health certificates and entry permits. The rules may include standards for determining which veterinarians of this state, other states, and departments of the federal government are authorized to issue the certificates or permits.

As a control measure, the commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in §161.054. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.005 provides that the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice, signed under that authority has the same force and effect as if signed by the entire commission.

Section 161.061 provides that if the commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

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

§51.10. Cervidae.

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 June 17, 2002.

TRD-200203748
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 719-0714

♦ ♦ ♦

4 TAC §51.10, §51.15

Chapter 51 is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041 (a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, by §161041 (b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061.

Section 161.081, regarding the "Importation of Animals" provides that the commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country. Furthermore the commission by rule may provide the method for inspecting and testing animals before and after entry into this state.

Also the commission by rule may provide for the issuance and form of health certificates and entry permits. The rules may include standards for determining which veterinarians of this state, other states, and departments of the federal government are authorized to issue the certificates or permits.

As a control measure, the commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in §161.054. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.005 provides that the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice, signed under that authority has the same force and effect as if signed by the entire commission.

Section 161.061 provides that if the commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

No other statutes, articles, or codes are affected by the amendment and new rule.

§51.10. Cervidae.

(a) Chronic Wasting Disease (CWD): All white-tailed deer, mule deer or black-tailed deer and elk (or other cervid species determined to be susceptible to CWD) shall obtain a entry permit from the Commission prior to entering Texas. (A susceptible cervid species is

one where a member of that species is shown to be a positive for CWD). All request for entry must be made in writing and accompanied with the information necessary to support import qualifications of the animal. This must be received by the TAHC at least ten working days prior to entry date.

(b) Requirements for entry: The applicant must identify the herd of origin and the herd of destination. The cervids, to be imported into this state, shall be individually identified as to herd of origin by legible tattoo, ear tag, or other methods of permanent identification. There shall be a certificate of veterinary inspection completed by a federally accredited veterinarian, who must certify that the cervid, to be imported, originate from a herd monitored for at least 5 years under a state-approved chronic wasting disease herd certification program and that there have been no clinical signs of chronic wasting disease in the herd. A state-approved chronic wasting disease certification program must be certified by the veterinarian as having the following minimum standards.

(c) State CWD Certification Program Minimum Standards:

(1) State Program shall have perimeter fencing requirements adequate to prevent ingress or egress of cervids.

(2) Surveillance based on testing of all deaths over 16 months of age is required. This includes surveillance at slaughter and surveillance of animals killed in shooter bull operations.

(3) Good quality sampling where State and Federal Officials have the authority to adjust herd status if poor quality samples, particularly samples that are from the wrong portion of the brain, are routinely submitted from a premise.

(4) Physical herd inventory with annual verification reconciling animals and identifications with records by an accredited veterinarian or state or federal personnel is required. Inventory is to include a crosscheck of all animal identifications with the herd inventory and specific information on the disposition of all animals not present

(5) Each animal should have a minimum of two official/approved unique identifiers.

(6) Premise locations must be specifically identified by GPS or detailed description during the first herd inventory. A detailed description of the physical facilities also is required.

(7) Herd additions are allowed from herds with equal or greater time in an equivalent State CWD program with no negative impact on the certification status of the receiving herd. If herd additions are acquired from a herd with a later date of enrollment, the receiving herd reverts to the enrollment date of the sending herd. If a herd participating in the certification program acquires animals from a nonparticipating herd, the receiving herd must start over with a new enrollment date based upon the date of acquisition of the animal.

(8) If a positive animal is identified in a herd, the State will impose an immediate quarantine and the herd status is changed to positive. Development and implementation of a herd plan will determine future eligibility to reenroll in the program.

(9) Animal health officials in the state of origin have access to herd records for the past 5 years, including records of deaths and causes of death.

§51.15. Poultry.

(a) All poultry must meet the requirements the contained in §57.11, of this title (relating to Entry [~~General~~] Requirements.

(b) Live domestic poultry, except those entering for slaughter and processing at a slaughter facility owned or operated by the owner of the poultry entering, may enter Texas only under the following circumstances:

(1) The domestic poultry originate from a flock that is certified as Avian Influenza clean in accordance with the National Poultry Improvement Plan and the shipment is accompanied by a Certificate of Veterinary Inspection; or

(2) The domestic poultry is from an Avian Influenza negative flock that participates in an approved state-sponsored Avian Influenza monitoring program and the shipment is accompanied by a Certificate of Veterinary Inspection indicating participation and listing the general description of the birds, test date, test results, and name of testing laboratory; or

(3) The domestic poultry originate from a flock in which a minimum of 30 birds, 4 weeks of age or older, or the complete flock, if fewer than 30, are serologically negative to an Enzyme Linked Immunosorbent Assay (ELISA) or Agar Gel Immunodiffusion (AGID) test for Avian Influenza within 72 hours of entry and a minimum of 10 birds (e.g. two pools of 5 birds per house) are tested negative on trachea swabs to a Directigen (R) test within 72 hours of entry or negative to other tests approved by the Commission; the shipment shall be accompanied by a Certificate of Veterinary Inspection listing the general description of the birds, test date, test results, and name of testing laboratory.

(4) Live domestic poultry from states affected with Avian Influenza may enter Texas for slaughter and processing only under the following circumstances: A minimum of 30 birds per flock are serologically negative to an ELISA or AGID test for Avian Influenza within 72 hours of entry, and a minimum of 10 birds (e.g., two pools of 5 birds per house) are tested negative on tracheal swabs to a Directigen (R) test within 72 hours of entry or negative to other tests approved by the TAHC, and specific written permission has been granted.

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 June 17, 2002.

TRD-200203749
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 719-0714

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 27. RULES FOR ADMINISTRATIVE SERVICES

SUBCHAPTER D. VENDOR PROTESTS

16 TAC §27.161

The Public Utility Commission of Texas (commission) proposes new §27.161 relating to Procedures for Resolving Vendor Protests. Proposed §27.161 will provide procedures for resolving vendor protests relating to agency purchasing issues as required by the Texas Government Code Annotated 2155.076.

The proposed new section closely follows the rule on such protests promulgated by the Texas Building and Procurement Commission in the Texas Administrative Code, Title 1, Part 5, Chapter 111, Subchapter A, §111.3. Project Number 24803 is assigned to this proceeding.

Susan K. Durso, General Counsel, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Durso has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be to provide readily available written protest procedures for vendors who wish to dispute issues related to agency purchases. There will be no effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

Comments on the proposed new rule (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. All comments should refer to Project Number 24803.

This new rule is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998, Supplement 2002) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and specifically, Texas Government Code Annotated §2155.076 which requires the commission to develop and adopt protest procedures for vendors' protests concerning commission purchases that are consistent with the Texas Building and Procurement Commission rules on the same subject.

Cross Reference to Statutes: Texas Government Code Annotated §2155.076 and Public Utility Regulatory Act §14.002 and §14.052.

§27.161. Procedures for Resolving Vendor Protests.

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

(1) Commission--The Public Utility Commission of Texas.

(2) Purchasing officer--A commission employee who has received certification as a Texas Public Purchaser and who is responsible for assisting with commission purchases, and who has been designated the purchasing officer for the purchase in question.

(3) Interested parties--All vendors who have submitted bids or proposals for the provision of goods or services pursuant to a solicitation for a contract with the commission.

(b) Protest procedures. Any actual or prospective bidder, offerer, proposer or contractor who considers himself to have been aggrieved in connection with the commission's solicitation, evaluation, or award of a contract may formally protest to the purchasing officer. Such protests must be made in writing and received by the purchasing officer within ten working days after the protesting party knows, or should have known, of the occurrence of the action that is protested. Protests must conform to the requirements of this subsection and subsection (d) of this section, and shall be resolved through use of the procedures that are described in subsections (e) - (j) of this section. The protesting party shall mail or deliver copies of the protest to the purchasing officer and other interested parties.

(c) Stay of contract award. In the event of a timely protest under this section, the commission shall not proceed further with the solicitation or award of the contract unless the executive director, after consultation with the purchasing officer and the general counsel, makes a written determination that the contract must be awarded without delay, to protect the best interests of the commission.

(d) Protest requirements. A protest must be sworn and contain:

(1) a specific identification of the statutory or regulatory provision that the protesting party alleges has been violated;

(2) a specific description of each action by the commission that the protesting party alleges to be a violation of the statutory or regulatory provision that the protesting party has identified pursuant to paragraph (1) of this subsection;

(3) a precise statement of the relevant facts;

(4) a statement of any issues of law or fact that the protesting party contends must be resolved;

(5) a statement of the argument and authorities that the protesting party offers in support of the protest; and

(6) a statement that copies of the protest have been mailed or delivered to the commission and all other identifiable interested parties.

(e) Purchasing officer's role and responsibilities. The purchasing officer shall conduct a review of issues raised by the protesting parties and shall have the following role and responsibilities in resolving the protest issues among the parties:

(1) The purchasing officer may settle and resolve the dispute over the solicitation or award of a contract at any time before the matter is submitted on appeal to the executive director.

(2) The purchasing officer may solicit written responses to the protest from other interested parties.

(3) If the protest is not resolved by mutual agreement, the purchasing officer will issue a written determination on the protest. The purchasing officer will consult with the general counsel in preparing a written determination.

(4) If the purchasing officer determines that no violation of statutory or regulatory provisions has occurred, then the purchasing officer shall inform the protesting party, the executive director, and other interested parties by letter that states the reasons for the determination.

(5) If the purchasing officer determines that a violation of any statutory or regulatory provisions may have occurred in a situation in which a contract has not been awarded, then the purchasing officer shall inform the protesting party, the executive director, and other interested parties of that determination by letter that states the reasons for the determination and the appropriate remedy.

(6) If the purchasing officer determines that a violation of any statutory or regulatory provisions may have occurred in a situation in which a contract has been awarded, then the purchasing officer shall inform the protesting party, the executive director, and other interested parties of that determination by letter that states the reasons for the

determination. This letter may include a declaration that the contract is void.

(f) Appeal from purchasing officer determination. The protesting party may appeal a determination of a protest by the purchasing officer to the executive director of the commission. An appeal of the purchasing officer's determination must be in writing and received in the executive director's office no later than ten working days after the date on which the purchasing officer has sent written notice of his determination. The scope of the appeal shall be limited to a review of the purchasing officer's determination. The protesting party shall mail or deliver to the purchasing officer and all other interested parties a copy of the appeal, which must contain a certified statement that such copies have been provided.

(g) Executive director review or reference of appeal. The executive director shall confer with general counsel in the review of the matter appealed. The executive director may consider any documents that the commission staff or interested parties may have submitted. At the discretion of the executive director, the matter may be referred to the commissioners for their consideration in a regularly scheduled open meeting or the executive director may issue a written decision on the protest.

(h) Appeals referred to commission. The following requirements shall apply to a protest that the executive director has referred to the commissioners:

(1) The executive director shall deliver copies of the appeal and any responses by interested parties to the commissioners.

(2) The commissioners may consider any documents that commission staff or interested parties have submitted.

(3) The commissioners may confer with general counsel in their review of the matter appealed.

(4) The commissioners' determination of the appeal shall be made on the record and reflected in the minutes of the open meeting, and shall be final.

(i) Written determination of appeal. A determination issued either by the commissioners in open meeting, or in writing by the executive director, shall be the final administrative action of the commission.

(j) Protest/appeal not timely filed. A protest or appeal that is not filed timely shall not be considered unless good cause for delay is shown or the executive director determines that an appeal raises issues that are significant to commission procurement practices or procedures in general.

(k) Document retention. The commission shall maintain all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the commission's retention schedule.

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 June 10, 2002.

TRD-200203636
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 936-7306

♦ ♦ ♦

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 69. REGULATION OF CERTAIN TRANSPORTATION SERVICE PROVIDERS

16 TAC §69.80

The Texas Department of Licensing and Regulation ("Department") proposes an amendment to §69.80, concerning the fees for the Regulation of Certain Transportation Service Providers program.

The amendment to §69.80 proposes to decrease the application processing and renewal fee for a Certificate of Registration as a Transportation Service Provider or Freight Forwarder from $320 to $200 for each application.

The Department is required by the Texas Occupations Code, Chapter 51, §51.202 to set fees in amounts reasonable and necessary to cover the costs of administering programs, which include the Regulation of Certain Transportation Service Providers program. The fees currently in place are above the amounts needed to cover program costs in current and future periods. The decrease would not adversely affect the administration or enforcement of the Regulation of Certain Transportation Service Providers program.

William H. Kuntz, Jr., Executive Director of the Texas Department of Licensing and Regulation, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional cost to state or local governments as a result of administering or enforcing the fee change. There will be no effect on local government.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendment is in effect, the public benefit will be enhanced public welfare and consumer protection. There will be an economic effect on small businesses and persons who are required to comply with the section as proposed. The cost of compliance will be a decrease of $120 for each application processed or renewed.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-2874, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Texas Occupations Code, Chapter 51, §51.202 which authorizes the Texas Commission of Licensing and Regulation to set fees in amounts reasonable and necessary to cover the costs of administering the programs and activities under its jurisdiction which includes the Regulation of Certain Transportation Service Providers program.

The statutory provisions affected by the proposal are those set forth in Texas Civil Statutes, Article 6675(e) and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§69.80. Fees.

(a) The application processing and renewal fee for a Certificate of Registration as a Transportation Service Provider or Freight Forwarder is $200 [~~$320~~] for each application.

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

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

Filed with the Office of the Secretary of State on June 17, 2002.

TRD-200203772
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 463-7348

♦ ♦ ♦

CHAPTER 72. STAFF LEASING SERVICES

16 TAC §72.81, §72.83

The Texas Department of Licensing and Regulation ("Department") proposes amendments to §72.81 and §72.83, concerning the fees for the Staff Leasing Services program.

The amendment to §72.81 proposes to decrease the fees in the tiered structure for the two year license and two year renewal licensing fees from $3,000 to $2,000 for 0 to 249 assigned employees; from $4,000 to $3,000 for 250 to 750 assigned employees; and, from $5,000 to $4,000 for more than 750 assigned employees. The amendment to §72.81(b) is also being proposed to decrease the limited staff leasing service license fee from $1,000 to $750.

The amendment to §72.83 proposes to decrease the fee for a duplicate license or name change from $50 to $25 and to delete the $10 fee for adding more than one trademark to a license.

The Department is required by the Texas Occupations Code, Chapter 51, §51.202 to set fees in amounts reasonable and necessary to cover the costs of administering programs, which include the Staff Leasing Services program. The fees currently in place are above the amounts needed to cover program costs in current and future periods. The decrease would not adversely affect the administration or enforcement of the Staff Leasing Services program.

William H. Kuntz, Jr., Executive Director of the Texas Department of Licensing and Regulation, has determined that for the first five-year period the proposed amendments are in effect, there will be no additional cost to state or local governments as a result of administering or enforcing the fee changes. There will be no effect on local government.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be enhanced public welfare and consumer protection. There will be an economic effect on small businesses and persons who are required to comply with the sections as proposed. The cost of compliance will be a decrease of $1,000 for the two year license and two year renewal licensing fee, a decrease of $250 for a limited staff leasing services license fee, and a reduction of $25 in the fee for issuing a duplicate license or name change.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-2874, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Chapter 51, §51.202 which authorizes the Texas Commission of Licensing and Regulation to set fees in amounts reasonable and necessary to cover the costs of administering the programs and activities under its jurisdiction which includes the Staff Leasing Services program.

The statutory provisions affected by the proposal are those set forth in the Texas Labor Code, Chapter 91 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§72.81. Fees--Licensing.

(a) The two year license and two year renewal licensing fee shall be:

(1) $2,000 [~~$3,000~~] for 0 to 249 assigned employees;

(2) $3,000 [~~$4,000~~] for 250 to 750 assigned employees; and,

(3) $4,000 [~~$5,000~~] for more than 750 assigned employees.

(b) The limited staff leasing services license shall be $750 [~~$1,000~~].

§72.83. Fees--Duplicate Licensing/Name Change.

The fee shall be $25 [~~$50~~] for issuing a duplicate license or for a license name change. [~~If adding more than one trademark an additional $10 per trademark shall be required.~~]

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 June 17, 2002.

TRD-200203771
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 463-7348

♦ ♦ ♦

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES

DIVISION 3. MEMORANDA OF UNDERSTANDING AFFECTING SPECIAL EDUCATION STUDENTS

The Texas Education Agency (TEA) proposes the repeal of and new §89.1110, concerning a memorandum of understanding (MOU) related to individual transition planning for students receiving special education services. The section addresses respective roles and responsibilities of participating agencies in the sharing of information about, and coordination of services to, eligible students with disabilities receiving transition services.

The proposed repeal and new section will update and clarify the Memorandum of Understanding on Individual Transition Planning for Students Receiving Special Education Services. The new section will more clearly establish the respective responsibilities of each agency for the provision of services necessary to prepare students enrolled in special education programs for a successful transition to life outside of the public school system.

Texas Education Code (TEC), §29.011, requires that the TEA, the Texas Department of Mental Health and Mental Retardation (TDMHMR), and the Texas Rehabilitation Commission (TRC), by a cooperative effort, develop and by rule adopt an MOU. TEC, §29.011, specifies that the TEA shall coordinate the development of the MOU and that the TEA, the TDMHMR, and the TRC may request other appropriate agencies to participate in the development of the MOU. Accordingly, the proposed MOU includes the participation of the following agencies: Texas Commission for the Blind, Texas Commission for the Deaf and Hard of Hearing, Texas Department of Health, Texas Department of Housing and Community Affairs, Texas Department of Human Services, Texas Department of Mental Health and Mental Retardation, Texas Department of Protective and Regulatory Services, Texas Education Agency, Texas Higher Education Coordinating Board, Texas Juvenile Probation Commission, Texas Rehabilitation Commission, Texas Workforce Commission, and Texas Youth Commission.

The proposed new MOU (codified as 19 TAC §89.1110) addresses respective roles and responsibilities of participating agencies in the sharing of information about, and coordination of services to, eligible students with disabilities receiving transition services. The proposed MOU establishes definitions; better addresses information sharing and agency participation; and clarifies and adds provisions relating to regional and local collaboration, cross-agency training, and dispute resolution. Other terms of the proposed MOU provide for the MOU to be reviewed and considered for expansion, modification, or amendment at any time the executive officers of the parties agree or at least every four years.

Nora Hancock, Associate cCommissioner for Education of Special Populations, has determined that for the first five-year period the repeal and new section are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Hancock has determined that for each year of the first five years the repeal and new section are in effect the public benefit anticipated as a result of enforcing the section will be that successful transition of students with disabilities to post-secondary adult life endeavors are facilitated when all appropriate agencies which may be responsible for providing and/or paying for transition services coordinate efforts. It is critical that delivery of transition services is a coordinated set of activities, focused on identified individual outcomes, that includes all appropriate adult service agencies and stakeholders. Better coordinated transition service delivery systems result in increased opportunities for students to achieve their post-secondary goals for adult life benefiting the individual, his or her family, and the community. Additionally, better coordinated services are more cost effective for the state by reducing costly duplicative efforts by multiple agencies. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeal and new section.

Public hearings are scheduled for August and September using the Texas Education Telecommunications Network (TETN) Videoconference Network for the purpose of obtaining public comment on this MOU. Additionally, the TEA will mail the rule packet statewide to all school districts and parent/advocacy organizations to solicit public comments and to provide specific details pertaining to the public hearings. The TEA will also post the rule packet to its web site and will accept public comment by e-mail.

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

19 TAC §89.1110

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

The repeal is proposed under Texas Education Code, §29.011, which authorizes the Texas Education Agency, the Texas Department of Mental Health and Mental Retardation, and the Texas Rehabilitation Commission to develop, agree to, and by rule adopt a memorandum of understanding that establishes the respective responsibilities of each agency for the provision of services necessary to prepare students enrolled in special education programs for a successful transition to life outside of the public school system.

The repeal implements Texas Education Code, §29.011.

§89.1110. Memorandum of Understanding on Transition Planning for Students Receiving Special Education Services.

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

Filed with the Office of the Secretary of State on June 12, 2002.

TRD-200203686
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 463-9701

♦ ♦ ♦

19 TAC §89.1110

The new section is proposed under Texas Education Code, §29.011, which authorizes the Texas Education Agency, the Texas Department of Mental Health and Mental Retardation, and the Texas Rehabilitation Commission to develop, agree to, and by rule adopt a memorandum of understanding that establishes the respective responsibilities of each agency for the provision of services necessary to prepare students enrolled in special education programs for a successful transition to life outside of the public school system.

The new section implements Texas Education Code, §29.011.

§89.1110. Memorandum of Understanding on Individual Transition Planning for Students Receiving Special Education Services.

(a) Participating agencies. The memorandum of understanding (MOU) is established among the following state agencies referred to herein as "the parties":

(1) Texas Commission for the Blind (TCB);

(2) Texas Commission for the Deaf and Hard of Hearing (TCDHH);

(3) Texas Department of Health (TDH);

(4) Texas Department of Housing and Community Affairs (TDHCA);

(5) Texas Department of Human Services (DHS);

(6) Texas Department of Mental Health and Mental Retardation (TDMHMR);

(7) Texas Department of Protective and Regulatory Services (PRS);

(8) Texas Education Agency (TEA);

(9) Texas Higher Education Coordinating Board (THECB);

(10) Texas Juvenile Probation Commission (TJPC);

(11) Texas Rehabilitation Commission (TRC);

(12) Texas Workforce Commission (TWC); and

(13) Texas Youth Commission (TYC).

(b) Purpose.

(1) Under the authority of Texas Education Code (TEC), §29.011 (Transition Planning), the purpose of this MOU is to establish the respective responsibilities of each party for the provision of the services necessary to prepare students receiving special education services for a successful transition to life outside the public school system.

(2) This MOU documents the parties' commitment to collaborative efforts and sharing of resources in providing effective transition services to students receiving special education services.

(c) Philosophy. This MOU is intended to further the development of transition services in Texas that, through a comprehensive array of coordinated services, offers improved choices and opportunities to achieve maximum independence and integration in the community for students receiving special education services. This philosophy reflects the following beliefs:

(1) Transition is a student-centered, student-driven process. Successful transition planning should develop the self-determination skills of each student.

(2) Successful transition is facilitated when each student and his or her parent(s) have the knowledge and skills needed to empower them to plan for the student's future and to make effective use of personal and community resources in achieving independence.

(3) Each student should have opportunities to have a meaningful life and to make informed choices about where to live, work, and play. Each student should have opportunities to fully participate in and be a contributing and respected member of his or her community.

(4) Each student has unique values, preferences, abilities, and challenges. Valuing diversity will enhance the benefits of individual transition planning.

(5) Individual transition planning should be a thoughtful, collaborative process involving the student, the family, school personnel, agencies, community resources, and other stakeholders. Each student should actively participate in identifying his or her individual transition planning committee members.

(6) Individual transition planning should be an integral part of the educational process, not a single event.

(7) The success of individual transition planning is based on the development of ongoing productive working relationships and common goals among all of the parties involved in transition planning. The success of individual transition planning is not dependent upon attendance of all parties at all individual transition planning meetings, although such attendance is encouraged.

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

(1) "Agencies" means the parties, the local entities of the parties, or organizations that provide services and supports to the general public. Participation in this MOU by local workforce development boards may be separately arranged by local agreements. Information regarding specific agency responsibilities is delineated in subsection (e)(4)(C) of this section.

(2) "Admission, review, and dismissal (ARD) committee" means the committee convened for, among other things, the purpose of developing the individualized education program consistent with 34 Code of Federal Regulations (CFR) §300.344 and §89.1050 of this title (relating to The Admission, Review, and Dismissal (ARD) Committee).

(3) "Community experience" means activities that are conducted and provided in community settings, including community-based work experiences and/or exploration, job site training, banking, shopping, transportation, and recreation.

(4) "Employment (individualized competitive employment)" means full-time or part-time competitive employment, including supported employment for which an individual is compensated by the workplace employer at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. This includes the individualized support services that are necessary to maintain the individual in competitive employment. This does not include enclaves, pods in industry, or groups of individuals with disabilities working in an integrated setting.

(5) "FERPA" means the Family Educational Rights and Privacy Act, 20 United States Code (USC) §1232(g), which is a federal law designed to protect the privacy of a student's education records. The law applies to educational institutions and agencies that receive funds under an applicable program of the U.S. Department of Education. FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student, or former student, who has reached the age of 18 or is attending any school beyond the high school level.

(6) "Functional vocational evaluation" means an assessment process that provides information about job or career interests, aptitudes, and skills. Information may be gathered through situational assessments, observation, or formal measures and should be practical in nature.

(7) "Higher education" means any postsecondary education provided by a public, private, or proprietary college, university, or technical school, including college-level courses, developmental education, and adult continuing education.

(8) "IDEA" means the Individuals with Disabilities Education Act, 20 USC §§1400 et seq., which is a federal law that ensures the provision of special education and related services to eligible students with disabilities.

(9) "Individualized education program (IEP)" means a written education program for a student receiving special education and related services that is developed in an ARD committee meeting and includes the elements described in relevant federal and state requirements consistent with 34 CFR §300.346 and §300.347 and §89.1050 of this title.

(10) "Individual transition plan (ITP)" means a written plan that is developed apart from the IEP that focuses on successful independence and integration in the community.

(11) "Local educational agency (LEA)" means, consistent with 20 USC §1401(15), any public authority, institution, or agency having administrative control and direction of a public elementary or secondary school, including a public charter school that is established as an LEA under state law.

(12) "Parent" includes a biological or adoptive parent whose parental rights have not been terminated, surrogate parent, legal guardian, legal conservator, or person acting in the place of a parent.

(13) "Parties" means signatory agencies to this MOU. Any reference to participation by the "parties" as applied to the TWC is subject to the definition of "agencies" as defined in paragraph (1) of this subsection.

(14) "Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education and includes speech-language pathology and audiology services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in school, and parent counseling and training consistent with 34 CFR §300.24.

(15) "Self-determination" means the abilities and attitudes necessary to exercise primary control over one's life and to make choices regarding one's quality of life free from undue external influence or interference.

(16) "Special education" means specially designed instruction and related services, at no cost to the parent(s), to meet the unique needs of a child with a disability consistent with 34 CFR §300.26.

(17) "Student" means an individual with a disability receiving special education services.

(18) "Transition services" means a coordinated set of activities for a student with a disability that meets the criteria described in subparagraph (A) of this paragraph.

(A) Transition services means a coordinated set of activities that:

(i) is designed within an outcome-oriented process that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(ii) is based on the individual student's needs, taking into account the student's preferences and interests; and

(iii) includes:

(I) instruction;

(II) related services;

(III) community experiences;

(IV) development of employment and other post-school adult living objectives; and

(V) if appropriate, acquisition of daily living skills and functional vocational evaluation.

(B) Transition services for students with disabilities may be special education if provided as specially designed instruction, or related services, if requested to assist the student with a disability to benefit from special education consistent with 34 CFR §300.29.

(e) Individual transition planning.

(1) ITP committee members.

(A) The student and the parent have the right to invite participants who have knowledge or special expertise about the student.

(B) Except as provided in subparagraph (C) of this paragraph, transition planning and annual reviews of the ITP shall include, but are not limited to, the following participants:

(i) the student (the student shall not be excluded based on age or severity of disability);

(ii) the student's parent(s);

(iii) the student's special education teacher;

(iv) a person or persons knowledgeable of the general education curriculum and the minimum academic requirements for graduation and the relationship of those requirements to the Academic Achievement Record; and

(v) a representative from career and technology, preferably the student's teacher, if the student is, or is likely to be, participating in career and technology education as part of his or her IEP.

(C) An LEA may designate one individual to fulfill one or both of the roles described in subparagraph (B)(iv) and (v) of this paragraph provided such individual meets the requirements specified in that subparagraph.

(D) Based on procedures developed in subsection (f)(1)(D)(i) of this section dealing with participation, the LEA shall invite a representative of any agency that is currently providing services to the student.

(E) The LEA shall invite a representative of any other agency that is likely to be responsible or capable of identifying, planning, providing, or paying for transition services.

(F) Other participants may include representatives from the community, organizations, or other entities that can assist the student to achieve identified goals.

(G) Participants, in addition to required members, shall be determined based on the individual student's transition needs and plans for the future, and not solely on disability.

(H) The LEA shall take reasonable steps to ensure that all invited participants are afforded the opportunity to attend a student's ITP meeting. If an invited participant cannot attend the meeting, the

LEA and the regional and local entities of the parties shall take reasonable steps to ensure participation, including, but not limited to, individual or conference telephone calls, written, or electronic communication.

(I) A meeting may be conducted without a parent and/or student in attendance if the parent or student is unable to attend or chooses not to participate. In this case, the LEA must have a record of its attempts to arrange a mutually agreed upon time and place, such as:

(i) detailed records of communication attempted, including, but not limited to, telephone calls, letters, electronic communication, and the results of those attempts;

(ii) copies of correspondence sent to the student and parent and any response received; and

(iii) detailed records of visits made to the student's and parent's home or place of employment and the results of those visits.

(2) Consent for release of confidential information. In order to release student confidential information or to include a student's name on a notice sent to another agency, an LEA must first obtain consent to release confidential educational records and information from each student's parent. Each LEA shall seek to obtain such consent with respect to any agency that is or may be responsible for providing or paying for transition services. To the extent that consent is given for the disclosure of information to other agencies, the LEA will ensure that those agencies receive notice of the ITP meeting. Agencies receiving confidential records and information shall protect and maintain the confidentiality of the information received consistent with 34 CFR §§300.560 - 300.577, Part 99, and the agencies' respective confidentiality requirements.

(3) Notice. LEA's must provide written notice of an ITP meeting as follows.

(A) When the student, parent, and school personnel are the only invited participants, notice must be provided at least five school days prior to the meeting. The student, parent, and school personnel may mutually agree to waive this five-school-day timeline. The LEA must maintain written documentation of the waiver in the eligibility folder.

(B) When inviting other participants, in addition to the student, parent, and school personnel, notice must be provided to all participants at least 30 calendar days prior to the meeting. This 30-calendar-day provision may be waived if all invited participants mutually agree. The LEA must maintain written documentation of the waiver in the eligibility folder.

(C) The notice of the ITP meeting must be written in language understandable to the general public and must include:

(i) the student's name;

(ii) the purpose, date, time, and location of the meeting;

(iii) a list of invited participants;

(iv) a statement that the student and parent have the right to bring relevant information, resources, and invite other participants who have knowledge or special expertise about the student;

(v) the name and telephone number of an LEA contact person; and

(vi) a copy of the notice in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(4) Process.

(A) Transition planning process. Before age 13 (or upon initial placement in special education, if a student is initially identified at age 13 or older), or when requested by the student or parent, the LEA must provide each student and the student's parent(s) with information about transition planning. This information shall include:

(i) the philosophy and purpose of the individual transition planning process;

(ii) the role of the student and parent in the student-driven transition planning process;

(iii) the areas of consideration for the individual transition planning process to include the following:

(I) employment;

(II) housing;

(III) transportation;

(IV) recreation and leisure;

(V) reaching age of majority;

(VI) physical and mental health needs; and

(VII) post-secondary education and other options;

(iv) age requirements related to individual transition planning;

(v) ITP committee membership;

(vi) the relationship between the ITP and the IEP and the processes for their development;

(vii) interagency responsibilities and linkages when appropriate;

(viii) comprehensive information, as individually appropriate, made available at the annual regional planning meeting; and

(ix) the list of opportunities to learn about transition planning developed as a result of the annual regional planning meeting as referenced in subsection (f)(1)(D)(i)(V) of this section.

(B) Individual transition plan development process.

(i) The ITP meeting shall be initiated and facilitated by the LEA in collaboration with the student and parent.

(ii) The ITP committee shall develop and annually review an ITP for each student enrolled in a special education program who is at least 16 years of age. At each annual review, the ITP committee shall review the student's progress on the ITP and revise the ITP, as appropriate. A student, parent, or party may request the development of an initial ITP for a student younger than age 16. The ITP committee shall determine the need to develop an initial ITP at an earlier age than 16.

(iii) The ITP shall be developed as a separate document from the IEP.

(iv) A copy of the ITP shall be given to the student and his or her parent(s). To the extent that consent is granted, a copy of

the ITP shall be provided to agencies and others that will assist in the implementation of the ITP.

(v) The ITP development process shall begin with a committee discussion of the student's and parents' role in guiding the transition planning process and the student's vision for independence, self-determination, and inclusion in the community. If the student is unable to attend, the LEA will obtain the student's preferences and interests in writing. Any committee member may provide information relevant to the student's ITP.

(vi) The ITP committee shall discuss and determine the student's long-range goals in the following areas:

(I) employment;

(II) housing;

(III) transportation;

(IV) recreation and leisure;

(V) issues relating to reaching age of majority (e.g., PRS conservatorship, guardianship, health benefits);

(VI) physical and mental health needs;

(VII) post-secondary education and other options; and

(VIII) other issues impacting transition to life outside the public school system.

(vii) The ITP committee shall discuss and identify:

(I) strategies and activities for achieving each of the identified goals;

(II) how progress toward the goals will be evaluated;

(III) a network of support, including, but not limited to, family, friends, coworkers, agencies, and community resources available to the public, that is needed to achieve the student's desired goals;

(IV) when, where, and how support services shall be provided by the network of support. It shall also include a description of specific support services; and

(V) the responsible parties and/or network of support and projected timelines for each of the goals.

(viii) Elements of the ITP that are the responsibility of the student and parent(s) shall be discussed at the meeting and included in the ITP.

(ix) The ITP may include identification of and referral for potential services, but may not include commitment of services for agencies not attending the meeting.

(x) For students who are incarcerated, the ITP shall identify the needed transition services to facilitate the reintegration of the student to the home community and to the receiving LEA.

(C) Agency responsibility.

(i) Regional or local representatives of a party shall attend ITP and review meetings for the students who are currently receiving services from that party.

(ii) Agencies are encouraged, based on agreements reached at the annual regional planning meeting and availability of personnel, to attend ITP and review meetings for any student who is not currently receiving, but may be in need of, services.

(iii) Regional or local representatives of a party that are unable to attend an ITP or review meeting shall, prior to the meeting, send information or communicate with school personnel through options identified in the annual regional planning meeting.

(iv) The elements of the student's ITP to be accomplished by a responsible party shall be included in that party's individualized plan of service for the student.

(v) The following services and activities supporting transition shall be initiated and provided on an individual student basis by the LEA:

(I) educational programming, including instruction, related services, community experiences, development of employment, other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation;

(II) community-based instructional alternatives focusing on independent living and employment;

(III) appropriate instructional environments within adult settings for students ages 18 - 21; and

(IV) referral of students and parents to other agencies for service consideration.

(vi) The following services and activities supporting transition shall be initiated and provided by the TRC:

(I) the planning, administrative, and staff training costs of providing assistance to LEAs and education service center personnel to plan effectively with students who have disabilities who would benefit from referral to the TRC programs; and

(II) the cost of services provided to eligible individuals with disabilities once they have made the transition from the receipt of educational services in school to the receipt of vocational rehabilitation services or other program services provided by the TRC.

(vii) Each party shall ensure compliance with this MOU.

(5) Procedural relationship between the development of the ITP and the development of the IEP.

(A) Federal law requires that the IEP for each student, beginning at age 14 (or younger, if determined appropriate by the ARD committee) and updated annually, must include a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study (such as participation in advanced placement courses or a vocational education program).

(B) Federal law requires that the IEP for each student, beginning at age 16 (or younger, if determined appropriate by the ARD committee), must include a statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

(C) The ITP shall be developed or reviewed apart from the development of the IEP. To minimize scheduling conflicts, the LEA may schedule the development and annual review of the ITP immediately before the ARD committee's development and review of the IEP.

(D) Only those components of the ITP that are the responsibility of the LEA may be incorporated into the student's IEP. Only the failure to implement those components of a student's ITP that are included in the IEP are subject to the due process procedures of IDEA or to TEA complaint procedures.

(E) The time between the ITP meeting and the subsequent ARD committee meeting to incorporate into the IEP those components of the ITP that are the responsibility of the LEA shall be no more than 30 school days.

(F) In the following circumstances, the ARD committee shall establish a timeline for development of an ITP.

(i) Once eligibility for special education services is determined for a student who is at least 16 years old, the ITP must be developed within 30 school days of the initial IEP development.

(ii) For a transfer student who is at least 16 years old and without a current ITP, an ITP must be developed 30 school days from the final transfer ARD committee meeting.

(iii) For a transfer student who is 15 years old and who will turn 16 in less than 30 calendar days from the date of enrollment, an ITP must be developed within 30 school days from the final transfer ARD committee meeting.

(G) For a transfer student with an ITP, the ARD committee shall review the ITP and determine the need for revision within 30 school days from the final transfer ARD committee meeting.

(f) Participation.

(1) Annual regional planning meeting.

(A) Annual regional planning meeting shall be held in each of the 20 education service center (ESC) regions in the state in accordance with the terms of this section.

(B) The purpose of the annual regional planning meeting is to develop common goals, cooperative working relationships, and a written process for implementing and maintaining effective transition planning.

(C) The parties, with the exception of TJPC, shall send regional or local representatives to annual regional planning meetings. Additional participants at the annual regional planning meeting may include persons with disabilities, their parents or other family members, educators, agencies, representatives from consumer and advocacy organizations, and business and community leaders.

(D) The timeline and procedures for the initial annual regional planning meeting include the following.

(i) By March 1, 2003, and at least annually thereafter, each ESC shall ensure that an annual regional planning meeting involving the representatives and participants identified in subparagraph (C) of this paragraph is convened to address:

(I) the level of regional and local agency participation in transition planning, including, but not limited to, procedures to ensure compliance with subsection (e)(4)(C)(iv) of this section;

(II) how notice to agency personnel regarding the ITP meetings shall be provided;

(III) consideration of less than 30 calendar days notice for ITP meetings for transfer students due to the importance of the ITP in providing direction for the IEP;

(IV) options available if an agency representative is unable to attend an ITP meeting;

(V) the development of a list of opportunities for students and parents to learn about transition planning with emphasis on self-determination and making informed choices;

(VI) how and by whom future regional planning meetings shall be planned and facilitated;

(VII) the process for resolving disputes at the local level;

(VIII) the confidentiality of certain information and processes for obtaining consent to release such information; and

(IX) how to avoid duplication of efforts by utilizing established groups addressing interagency issues.

(ii) By October 1, 2003, the written process for implementing and maintaining effective transition planning as required by subparagraph (B) of this paragraph developed at the annual regional planning meeting shall be shared with all the participants of the annual regional planning meeting, as identified in accordance with subparagraph (C) of this paragraph.

(E) During the annual regional planning meeting, the following comprehensive information regarding regional and local agency services shall be provided to the ESC:

(i) a description of services, local availability, and cost (not applicable for TJPC);

(ii) eligibility criteria for services (not applicable for TJPC);

(iii) how to access services (not applicable for TJPC); and

(iv) complaint procedures (not applicable for TJPC and THECB).

(2) Exceptions for the use of school records as assessment data by the parties. The parties agree to accept current relevant school records to use as assessment data, when appropriate, except as indicated below:

(A) TCB: no more than one year old and meets TCB guidelines;

(B) DHS: no more than one year old and meets DHS guidelines;

(C) TDMHMR:

(i) Mental Retardation (MR): the person who conducts the determination of mental retardation for eligibility for MR services considers the previous assessment, social history, or relevant record from another entity, including an LEA if it is a valid reflection of the individual's current level of functioning;

(ii) MR: the determination of mental retardation includes the establishment of the diagnosis of MR during the developmental periods, (i.e., before age 18). Access to school records up to seven years after graduation is available through the Public Education Information Management System at the LEA or through TEA for up to ten years following graduation; and

(iii) Mental Health (MH): determination of eligibility for special education services as a student with emotional disturbance is not the same for eligibility for the priority populations served by mental health services. TDMHMR requires a diagnosis by a licensed practitioner of the Healing Arts to determine if the individual is in the priority population;

(D) TJPC: does not provide direct services, however, the local juvenile probation departments may accept such records;

(E) TWC: does not provide direct services, however, the local workforce development boards may accept such records; and

(F) TRC: no more than three years old and meets TRC guidelines.

(3) Transfer of information.

(A) With the exception of TJPC, parties shall share current service plan information with another part of their agency in a different service area when a student moves. TDMHMR shall share information upon receipt of a written consent by the adult student or the parent/guardian.

(B) With the exception of TJPC, parties shall share current service plan information with the receiving LEA when a student moves upon receipt of a written consent by the adult student or the parent.

(C) All parties shall agree to support or participate in training for the successful implementation of the MOU.

(g) Information sharing.

(1) State. Annually, the TEA will share with the parties an aggregate of relevant information for the purpose of budget development, strategic planning, and service coordination for students with disabilities. The information shall include age, gender, ethnicity, disabilities, and instructional arrangement.

(2) Training. Coordinated training shall be conducted at the state, regional, and local levels. Elements of this training shall include but not be limited to implementation of the MOU, interagency collaboration, community outreach, and best practices. Training shall be organized as follows.

(A) A lead ESC will facilitate the development, with input from the parties, of a training model to be used at the state, regional, and local levels.

(B) Each party shall designate staff to conduct joint interagency training for appropriate state and regional level personnel of the parties and state and regional representatives from agencies.

(C) The regional representatives of the parties shall designate staff to conduct joint interagency training for the local representatives of the parties, participants in the annual regional planning meeting, and students, families, local agencies, and interested members of the community.

(h) Dispute resolution.

(1) Local disputes.

(A) If a local dispute (between or among LEAs and/or local entities of the parties) concerning the implementation of this MOU arises prior to the initial annual regional planning meeting in a particular region, the dispute shall be addressed according to the following procedure.

(i) Resolution of the dispute shall first be attempted at the local level. The specific issues involved in the dispute and possible solutions shall be identified and referred to local personnel authorized to make decisions necessary to resolve the dispute.

(ii) If resolution is not reached after a reasonable period of time (not to exceed 45 days unless the disputing entities agree otherwise), the disputing entities shall refer the dispute to the TEA for further negotiations toward a mutually agreeable resolution. The TEA will contact the disputing entities and set up a meeting for this purpose.

(iii) Disputing entities referring disputes to the TEA shall identify:

(I) the nature of the dispute;

(II) any resolutions agreed upon;

(III) the issues that remain unresolved; and

(IV) the contact persons representing the disputing entities.

(B) In accordance with subsection (f)(1)(D)(i)(VII) of this section, each region's initial annual regional planning meeting must address the process for resolving local disputes. Local disputes that arise after these local dispute resolution processes are in place shall be addressed according to the applicable local process.

(2) State agency disputes.

(A) Resolution of disputes concerning implementation of this MOU between two or more parties must first be attempted at the staff level. If resolution is not reached after a reasonable period of time (not to exceed 45 days unless the disputing parties agree otherwise), the disputing parties will refer the dispute to their respective executive officers, or their designees, for further negotiation. The appropriate state officials shall meet to seek resolution of the dispute.

(B) If the chief executive officers of the disputing parties determine that the dispute cannot be resolved at their level, the disputing parties may pursue resolution through the use of mediation pursuant to the Governmental Dispute Resolution Act, Texas Government Code, Chapter 2009.

(i) MOU review. This MOU may be reviewed and considered for expansion, modification, or amendment at any time the executive officers of the parties agree or at least every four 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.

Filed with the Office of the Secretary of State on June 12, 2002.

TRD-200203687
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 463-9701

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

CHAPTER 161. GENERAL PROVISIONS

22 TAC §161.6

The Texas State Board of Medical Examiners proposes an amendment to §161.6, regarding the Committees of the Board. The proposed amendments are relating to the status and duties of the Non-Profit Health Organizations Committee and the Licensure Committee.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the section is in effect there will be no fiscal implications to state or local government as a result of enforcing the rule as proposed.

Ms. Shackelford also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be updated rules regarding the Non-Profit Health Organizations Committee

and the Licensure Committee. There will be no effect on small or micro businesses. There will be no effect to individuals required to comply with the section as proposed.

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

The amendment is proposed under the authority of the Occupations Code Annotated, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The following are affected by the proposed amendment: Tex. Occ. Code Ann., §153.005.

§161.6. Committees of the Board.

(a) Each board committee shall be composed of board members appointed by the president of the board and shall include at least one physician member who holds the degree of doctor of osteopathic medicine and one public member.

(b) The following are standing and permanent committees of the board. The responsibilities and authority of these committees shall include the following duties and powers, and other responsibilities and charges that the board may from time to time delegate to these committees.

(1) Disciplinary Process Review Committee:

(A) oversee the disciplinary process and give guidance to the board and board staff regarding means to improve the disciplinary process and more effectively enforce the Medical Practice Act and board rules;

(B) monitor the effectiveness, appropriateness, and timeliness of the disciplinary process and enforcement of the Medical Practice Act and board rules;

(C) make recommendations regarding resolution and disposition of specific cases and approve, adopt, modify, or reject recommendations from board staff or board representatives regarding actions to be taken on pending cases; [.]

(D) approve dismissals of complaints and closure of investigations; and

(E) make recommendations to the board staff and the board regarding policies, priorities, budget, and any other matters related to the disciplinary process and enforcement of the Medical Practice Act and board rules.

(2) Executive Committee:

(A) ensure records are maintained of all committee actions;

(B) [~~(C)~~] delegate tasks to other committees;

(C) [~~(D)~~] take action on matters of urgency that may arise between board meetings;

(D) [~~(E)~~] assist in the presentation of information concerning the board and the regulation of the practice of medicine to the Legislature [~~Legislative~~] and other state officials;

(E) [~~(F)~~] review staff reports regarding finances and the budget;

(F) [~~(G)~~] formulate and make recommendations to the board concerning future board goals and objectives and the establishment of priorities and methods for their accomplishment;

(G) [~~(H)~~] study and make recommendations to the board regarding the roles [~~role~~] and responsibilities [~~responsibility~~] of the board offices and committees;

(H) [~~(I)~~] study and make recommendations to the board regarding ways to improve the efficiency and effectiveness of the administration of the board;

(I) [~~(J)~~] study and make recommendations to the board regarding board rules or any area of a board function that, in the judgment of the committee, needs consideration; and

(J) [~~(K)~~] make recommendations to the board regarding matters brought to the attention of the executive committee.

(3) Finance Committee:

(A) review staff reports regarding finances and the budget;

(B) assist in the presentation of budget needs to the Legislature and other state officials;

(C) recommend proper fees for the agency to charge; and

(D) consider and make recommendations to the board regarding any aspect of board finances.

(4) Legislative Committee:

(A) review and make recommendations to the board regarding proposed legislative changes concerning the Medical Practice Act and the regulation of medicine;

(B) establish communication with members of the Legislature, [;] trade associations, consumer groups, and related groups;

(C) assist in the organization, preparation, and delivery of information and testimony to members and committees of the Legislature [~~committees of the Legislature~~]; and

(D) make recommendations to the board regarding matters brought to the attention of the legislative committee.

(5) Licensure Committee:

(A) review applications for licensure and permits, make determinations [~~a determination~~] of eligibility and report to the board its recommendations as provided by the Medical Practice Act and board rules;

(B) review board rules regarding licensure and make recommendations to the board regarding changes or implementation of such rules;

(C) evaluate each examination accepted by the board and develop each examination administered by the board;

(D) investigate and report to the board any problems in the administration of examinations and recommend and implement ways of correcting identified problems;

(E) make recommendations to the board regarding postgraduate training permits and issues concerning physicians in training;

(F) maintain communication with Texas medical schools;

(G) develop rules with regard to international medical schools in the areas of curriculum, faculty, facilities, academic resources, and performance of graduates;

(H) study and make recommendations regarding documentation and verification of records from all applicants for licensure or permits;

(I) review applications for acudetox specialist certification, make determinations [~~a determination~~] of eligibility, and report to the board its recommendations as provided by Texas Occupations Code Annotated, §205.303; [~~the Medical Practice Act; and~~]

(J) review applications for acupuncture licensure recommended by the Texas State Board of Acupuncture Examiners, make determinations of eligibility, and report to the board its recommendations;

(K) review applications for approval and certification of non-profit health organizations pursuant to the Medical Practice Act;

(L) review applications and reports for continued approval and certification of non-profit health organizations pursuant to the Medical Practice Act;

(M) make initial determinations and recommendations to the board regarding approval, denial, revocation, decertification, or continued approval and certification of non-profit health organizations pursuant to the Medical Practice Act;

(N) review board rules regarding non-profit health organizations, and make recommendations to the board regarding changes or implementation of such rules; and

(O) [~~(J)~~] make recommendations to the board regarding matters brought to the attention of the licensure committee.

[~~(6) Non-Profit Health Organizations Committee:~~]

[~~(A) review applications for approval and certification of non-profit health organizations pursuant to the Medical Practice Act;~~]

[~~(B) review applications and reports for continued approval and certification of non-profit health organizations pursuant to the Medical Practice Act;~~]

[~~(C) make initial determinations and recommendations to the board regarding approval, denial, revocation, decertification, or continued approval and certification of non-profit health organizations pursuant to the Medical Practice Act;~~]

[~~(D) review board rules regarding non-profit health organizations, and make recommendations to the board regarding changes or implementation of such rules; and~~]

[~~(E) make recommendations to the board regarding matters brought to the attention of the non-profit health organizations committee.~~]

(6) [~~(7)~~] Public Information/Physician Profile Committee:

(A) develop information for distribution to the public;

(B) review and make recommendations to the board in regard to press releases, newsletters, web-sites and other publications;

(C) study and make recommendations to the board regarding all aspects of public information and [~~or~~] public relations;

(D) receive information from the public concerning the regulation of medicine pursuant to a published agenda item and board rules;

(E) study and make recommendation to the board regarding all aspects of physician profiles; and

(F) make recommendations to the board regarding matters brought to the attention of the public information/physician profile committee.

(7) [~~(8)~~] Standing Orders Committee:

(A) review and make recommendations to the board regarding board rules pertaining to standing orders;

(B) study and make recommendations to the board regarding issues concerning or referred by the Texas State Board of Acupuncture Examiners or other acupuncture issues;

(C) study and make recommendations to the board regarding issues concerning or referred by the Texas State Board of Physician Assistant Examiners;

(D) study and make recommendations to the board concerning ethical issues related to the practice of medicine; and

(E) make recommendations to the board regarding matters brought to the attention of the standing orders committee.

(8) [~~(9)~~] Telemedicine Committee:

(A) review, study, and make recommendations to the board concerning the practice of telemedicine, including but not limited to licensure, regulation, and/or discipline of telemedicine license holders or applicants;

(B) review, study, and make recommendations to the board concerning interstate and intrastate telemedicine issues;

(C) review, study, and make recommendations to the board concerning board rules regarding or affecting the practice of telemedicine; and

(D) review, study, and make recommendations to the board concerning any other issue brought to the attention of the committee.

(c) With statutory or board authorization, the president may appoint, disband, or reconvene standing, ad hoc, or advisory committees as deemed necessary. Such committees shall have and exercise such authority as may be granted by the board.

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

Filed with the Office of the Secretary of State on June 17, 2002.

TRD-200203752
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 163. LICENSURE

22 TAC §163.1, §163.5

The Texas State Board of Medical Examiners proposes amendments to §163.1 and §163.5, regarding definitions and licensure documentation. The amendments update the definitions of "medical school curriculum" and "substantially equivalent"; and supervision of medical school students.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing the rules as proposed.

Ms. Shackelford also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be updated rules. There will be no effect on small or micro businesses. There will be no effect to individuals required to comply with the sections as proposed.

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

The amendments are proposed under the authority of the Occupations Code Annotated, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The following are affected by the proposed amendments: Tex. Occ. Code Ann., §§155.003, 155.0031.

§163.1. Definitions.

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

(1) Acceptable approved medical school--A medical school or college located in the United States or Canada that is approved by the board [~~Board~~].

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

(7) Examinations accepted by the board for licensure.

(A) (No change.)

(B) Federation Licensing Examination (FLEX), after July 1, 1985, passage of both components within seven years with a score of 75 or better on each component;

(C) Federation Licensing Examination (FLEX), prior to June 30, 1985, with a FLEX weighted average of 75 or better in one sitting;

(D)-(K) (No change.)

(8) Examinations administered by the board for licensure--To be eligible for licensure an applicant [~~Applicant~~] must sit for and pass the Texas medical jurisprudence examination administered by the board [~~and pass~~]. A passing score is 75 or better on the Texas medical jurisprudence examinations. The board shall administer the Texas medical jurisprudence examination in writing at times and places [~~as~~] designated by the board.

(9) Good professional character--An applicant [~~Applicant~~] for licensure must not be in violation of or committed any act described in the Medical Practice Act, TEX. OCC. CODE ANN.§§164.051-.053.

(10) One-year training program--Applicants who are graduates of acceptable approved medical schools must successfully complete one year of postgraduate training approved by the board that is:

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

(C) a postresidency program, usually called a fellowship, for additional training in a medical specialty or subspecialty in a program approved by the Texas State Board of Medical Examiners.

(11) (No change.)

(12) Substantially equivalent to a Texas medical school--A medical school or college that is [~~located outside the United States or Canada must be~~] an institution of higher learning designed to select and educate medical students; provide students with the opportunity to acquire a sound basic medical education through training in basic sciences and clinical sciences; [~~to~~] provide advancement of knowledge through research; [~~to~~] develop programs of graduate medical education to produce practitioners, teachers, and researchers; and [~~to~~] afford opportunity for postgraduate and continuing medical education. The school must provide resources, including faculty and facilities, sufficient to support a curriculum offered in an intellectual environment that enables the program to meet these standards. The faculty of the school shall actively contribute to the development and transmission of new knowledge. The medical school shall contribute to the advancement of knowledge and to the intellectual growth of its students and faculty through scholarly activity, including research. The medical school shall include, but not be limited to, the following characteristics:

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

(C) The basic sciences curriculum shall include the contemporary content of those expanded disciplines that have been traditionally titled anatomy, biochemistry, physiology, microbiology and immunology, pathology, pharmacology and therapeutics, neuroscience, biology, histology, and preventive medicine, as defined by the Texas Higher Education Coordinating Board.

(D) The fundamental clinical subjects, which shall be offered in the form of required patient-related clerkships, are internal medicine, obstetrics and gynecology, pediatrics, psychiatry, neurology, family medicine, introduction to patient/physical examination, and surgery, as defined by the Texas Higher Education Coordinating Board.

(E)-(H) (No change.)

(I) Medical education courses must be [~~have been~~] centrally organized, integrated and controlled into a continuous program which was conducted, monitored and approved by the medical school which issues the degree.

(J) All medical or osteopathic medical education received by the applicant in the United States must be accredited by an accrediting body officially recognized by the United States Department of Education as the accrediting body for medical education leading to the doctor of medicine degree or the doctor of osteopathy degree in the United States. In addition, all medical or osteopathic medical education received in Texas must also comply with Chapter 162 of this title (relating to Supervision of Medical School Students) that requires physicians to register with the board prior to supervising medical students who are not enrolled at a medical school that has been accredited by the Liaison Committee on Medical Education or the American Osteopathic Association. This subsection does not apply to postgraduate medical education or training.

(K) An applicant who is unable to comply with the requirements of subparagraph (J) of this paragraph is eligible for an unrestricted license if the applicant [~~Applicant~~]:

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

(13) Three-year training program--Applicants who are graduates of unapproved medical schools must successfully complete three years of postgraduate training in the United States or Canada that is:

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

(C) a postresidency program, usually called a fellowship, for additional training in a medical specialty or subspecialty, [~~in a program~~] approved by the Texas State Board of Medical Examiners.

§163.5. Licensure Documentation.

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

(c) Applicants for licensure who are graduates of unapproved medical schools must furnish all appropriate documentation listed in this subsection, as well as that listed in subsections (a) and (b) of this section.

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

(3) Certificate of Registration. Each applicant must provide a copy of his or her certificate to practice in the country in which his or her medical school is located. If a certificate is unavailable, a letter [~~,~~] submitted directly to this board [~~,~~] from the body governing licensure of physicians in the country in which the school is located, will be accepted. The letter must state that the applicant has met all the requirements for licensure in the country in which the school is located. If an applicant is not licensed in the country of graduation due to a citizenship requirement, a letter attesting to this, submitted directly to this board, will be required.

(4) (No change.)

(5) An applicant who is a graduate of a medical school that is located outside the United States and Canada must present satisfactory proof to the board that each medical school attended was [~~is~~] substantially equivalent to a Texas medical school at the time of attendance. This may include but is not limited to:

(A)-(E) (No change.)

(F) proof that the institutions had [~~must have a~~] written contracts [~~contract~~] with the medical school if the institutions were [~~are~~] not located in a country where the medical school was [~~is~~] located;

(G) proof that the faculty members of the medical school had [~~must have a~~] written contracts [~~contract~~] with the school if they taught a course [~~the course is taught~~] outside the country where the medical school was [~~is~~] located;

(H) proof that the medical education courses taught in the United States complied with [~~must comply~~] the higher education laws of the state in which the courses were taught; [~~and~~]

(I) proof that the faculty members of the medical school were [~~must be~~] on the faculty of the program of graduate medical education when the course was [~~is~~] taught in the United States; and [~~.~~]

(J) proof that all education completed in Texas was under a licensed physician who registered with the board prior to supervising the applicant as set forth in Chapter 162 of this title (relating to Supervision of Medical School Students).

(d)-(e) (No change.)

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

Filed with the Office of the Secretary of State on June 17, 2002.

TRD-200203753
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 164. PHYSICIAN ADVERTISING

22 TAC §164.3

The Texas State Board of Medical Examiners proposes an amendment to §164.3, concerning Misleading or Deceptive Advertising. The proposed amendment is regarding testimonials used in advertising.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the section is in effect there will be no fiscal implications to state or local government as a result of enforcing the rule as proposed.

Ms. Shackelford also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be an updated rule. There will be no effect on small or micro businesses. There will be no effect to individuals required to comply with the section as proposed.

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

The amendment is proposed under the authority of the Occupations Code Annotated, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The following are affected by the proposed amendment: Tex. Occ. Code Ann., §101.201.

§164.3. Misleading or Deceptive Advertising.

No physician shall disseminate or cause the dissemination of any advertisement that is in any way false, deceptive, or misleading. Any advertisement shall be deemed by the board [~~Board~~] to be false, deceptive, or misleading if it:

(1) contains material false claims or misrepresentations of material facts which cannot be substantiated; [~~or~~]

(2) contains material implied false claims or implied misrepresentations of material fact; [~~or~~]

(3) omits material facts; [~~or~~]

(4) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure; [~~or~~]

(5) advertises or assures a permanent cure for an incurable disease; [~~or~~]

(6) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated; [~~or~~]

(7) advertises professional superiority or the performance of professional service in a superior manner if the advertising is not subject to verification; [~~or~~]

(8) contains a testimonial that includes false, deceptive, or misleading statements, or fails to include disclaimers or warnings as to the credentials of the person making the testimonial; [~~or~~]

(9) includes photographs or other representations of models or actors without explicitly identifying them as models and not actual patients; [~~or~~]

(10) causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional; [~~or~~]

(11) represents that health care insurance deductibles or copayments may be waived or are not applicable to health care services to be provided if the deductibles or copayments are required; [~~or~~]

(12) represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or copayments are required; [~~or~~]

(13) states that a service is free when it is not, or contains untruthful or deceptive claims regarding costs and fees. If other costs are frequently incurred when the advertised service is obtained then this should be disclosed. Offers of free service must indeed be free. To state that a service is free but a third party is billed is deceptive and subject to disciplinary action; [~~or~~]

(14) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; [~~or~~]

(15) advertises or represents in the use of a professional name, a title[~~,~~] or professional identification that is expressly or commonly reserved to or used by another profession or professional; [~~or~~]

(16) claims that a physician has a unique or exclusive skill without substantiation of such claim; [~~or~~]

(17) involves uninvited solicitation such as door to door solicitation of a given population or other such tactics for "drumming" patients; or

(18) fails to disclose the fact of giving compensation or anything of value to representatives of the press, radio, television or other communicative medium in anticipation of or in return for any advertisement, article, or infomercial, unless the nature, format or medium of such advertisement makes [~~make~~] the fact of compensation apparent.

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 June 17, 2002.

TRD-200203754
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 165. MEDICAL RECORDS

22 TAC §§165.2 - 165.4

The Texas State Board of Medical Examiners proposes amendments to §§165.2-165.4, concerning Medical Records. The proposed amendments are necessary to update fees charged for copies of billing records and general clean-up of the rules.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the sections are in effect there will be fiscal implications to state or local government as a result of enforcing the rules as proposed. The fiscal impact follows: increased revenue to the state - none. Cost to those persons requesting copies - $25 for the first 20 pages plus $.15 per page thereafter plus $15 for an affidavit, if requested.

Ms. Shackelford also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be updated rules. There will be no effect on small or micro businesses.

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

The amendments are proposed under the authority of the Occupations Code Annotated, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The following are affected by the proposed amendments: Tex. Occ. Code Ann., §§159.001, 159.002, 159.003, 159.004 159.005, 159.006, 159.007, 159.008.

§165.2. Medical and Billing Record Release and Charges.

(a) As required by the Medical Practice Act, §159.006 [~~§5.08(k)~~], a physician shall furnish copies of medical and/or billing records requested or a summary or narrative of the records pursuant to a written release of the information as provided by the Medical Practice Act, §159.005 [~~§5.08(j)~~], except if the physician determines that access to the information would be harmful to the physical, mental, or emotional health of the patient[~~, and the~~] . The physician may delete confidential information about another patient or family member of the patient who has not consented to the release.

(b) The requested copies of medical and/or billing records or a summary or narrative of the records shall be furnished by the physician within 15 business days after the date of the request and reasonable fees for furnishing the information shall be paid by the patient or someone on behalf of the patient.

(c) If the physician denies the request for copies of medical and/or billing records or a summary or narrative of the records, either in whole or in part, the physician shall furnish the patient a written statement, signed and dated, stating the reason for the denial, and a copy of the statement denying the request shall be placed in the patient's medical and/or billing records as appropriate.

(d) For purposes of this section, "medical records" shall include those records as defined in §165.1(a) of this title (relating to Medical Records) and shall include copies of medical records of other health care practitioners contained in the records of the physician to whom a request for release of records has been made.

(e) The physician responding to a request for such information shall be entitled to receive a reasonable fee for providing the requested information. A reasonable fee shall be a charge of no more than $25 for the first twenty pages and $.15 per page for every copy thereafter. In addition, a reasonable fee may include actual costs for mailing, shipping, or delivery. If an affidavit is requested, certifying that the information is a true and correct copy of the records, a reasonable fee of up to $15 may be charged for executing the affidavit. A physician may charge separate fees for medical and billing records requested.

(f) The physician providing copies of requested medical and/or billing records or a summary or a narrative of such records shall be entitled to payment of a reasonable fee prior to release of the information unless the information is requested by a licensed Texas health care provider or a physician licensed by any state, territory, or insular

possession of the United States or any State or province of Canada if requested for purposes of emergency or acute medical care. In the event the physician receives a proper request for copies of medical and/or billing records or a summary or narrative of the [~~medical~~] records for purposes other than for emergency or acute medical care, the physician may retain the requested information until payment is received. In the event payment is not routed with such a request, within ten calendar days from receiving a request for the release of such records for reasons other than emergency or acute medical care, the physician shall notify the requesting party in writing of the need for payment and may withhold the information until payment of a reasonable fee is received. A copy of the letter regarding the need for payment shall be made part of the patient's medical and/or billing record as appropriate. Medical and/or billing records requested pursuant to a proper request for release may not be withheld from the patient, the patient's authorized agent, or the patient's designated recipient for such records based on a past due account for medical care or treatment previously rendered to the patient.

(g) A subpoena shall not be required for the release of medical and/or billing records requested pursuant to a proper release for records under this section and the Medical Practice Act, §159.006 [~~§5.08~~], made by a patient or by the patient's guardian or other representative duly authorized to obtain such records.

(h) In response to a proper request for release of medical records, a physician shall not be required to provide copies of billing records pertaining to medical treatment of a patient unless specifically requested pursuant to the request for release of medical records.

(i) The allowable charges as set forth in this chapter shall be maximum amounts, and this chapter shall be construed and applied so as to be consistent with lower fees or the prohibition or absence of such fees as required by state statute or prevailing federal law. In particular, under §161.202 of the Texas Health and Safety Code, a physician may not charge a fee for a medical or mental health record requested by a patient, former patient or authorized representative of the patient if the request is related to a benefits or assistance claim based on the patient's disability.

§165.3. Patient Access to Diagnostic Imaging Studies in Physician's Office.

(a) Purpose. This section is promulgated to ensure that patients have reasonable access to films and other static diagnostic imaging studies maintained in the physician's office and that the practice of medicine by individual licensees and the delivery of health care to the public shall not be unduly hindered or interrupted by allowing for such access.

(b) Request and release.

(1) Upon receiving a written request and release of information as provided for in the Medical Practice Act, §159.005 [~~§5.08(j),~~] as required for the release of medical records, a physician in possession or control of films or other static diagnostic imaging studies of a patient shall allow access to the films or other diagnostic imaging studies through one or more of the following means:

(A) providing copies of the films or other static diagnostic imaging studies to the patient or recipient as designated in the request; or

(B) releasing the original films or other static diagnostic imaging studies to the patient or recipient as designated in the request.

(2) Release and transfer of original films or other static diagnostic imaging studies may be evidenced by a signed and dated receipt from a recipient of the original films or other diagnostic imaging studies, or from their authorized representative, acknowledging receipt of and responsibility for the original studies.

(c) Exceptions. As provided for under the Medical Practice Act, §159.005 [~~§5.08(j),~~] a physician is not required to release films or other static diagnostic imaging studies directly to a patient if the physician determines that access to the films or static diagnostic imaging studies would be harmful to the physical, mental, or emotional health of the patient. If a physician makes a determination that access would be harmful to the physical, mental, or emotional health of the patient, the physician shall, within the time allowed after receipt of a proper request, provide access to the requested films or static diagnostic imaging studies to an authorized representative of the patient as provided for in subsection (b) of this section.

(d) Time for release and denial. The requested copies or access to films or other static diagnostic imaging studies shall be provided by the physician within 15 [~~30~~] days after the date of receipt of the request. If the physician denies the request, in whole or in part, the physician shall furnish the patient a written statement, signed and dated, stating the reason for the denial. A copy of the statement denying the request shall be placed in the patient's medical records.

(e) Fees. The physician responding to a request for copies of films or other static diagnostic imaging studies shall be entitled to a reasonable fee for providing the copies. A reasonable fee shall be no more than $8 per copy. In addition, a reasonable fee may include actual costs for mailing, shipping, or delivery.

(f) Emergency Request. The physician providing copies of requested films or other static diagnostic imaging studies shall be entitled to a reasonable fee prior to release of the copies unless the copies are requested by a licensed Texas health care provider or a physician licensed by any state, territory, or insular possession of the United States or any state or province of Canada if requested for purposes of emergency or acute medical care. In the event that the physician receives a proper request for copies of films or other static diagnostic imaging studies for purposes other than for emergency or acute medical care, the physician may retain the requested information until payment is received. In the event that payment is not routed with such a request, within ten calendar days from receiving a request for copies of films or other static diagnostic imaging studies for purposes other than emergency or acute medical care, the physician shall notify the requesting party in writing of the need for payment and may withhold the copies until payment of a reasonable fee is received. A copy of the letter regarding the need for payment shall be made part of the patient's medical record. Access to or copies of films or other static diagnostic imaging studies requested pursuant to a proper request for release may not be withheld from the patient, the patient's authorized agent, or the patient's designated recipient for such copies based on a past due account for medical care or treatment previously rendered to the patient.

(g) Subpoena. A subpoena shall not be required for access to or the release of originals or copies of static diagnostic imaging studies requested pursuant to the provisions of this section.

(h) Maximum charges. The allowable charges set forth in this section shall be maximum amounts, and this section shall be construed and applied so as to be consistent with lower fees or the prohibition or absence of such fees as required by prevailing state or federal law.

§165.4. Appointment of Record Custodian of a Physician's Records.

(a) The board [~~Board~~] may appoint a temporary or permanent custodian for medical records abandoned by a physician.

(b) The records will be considered abandoned if they are without custodial care for a minimum of two weeks without alternative

arrangements being made by the physician, the physician's legal guardian, or by the executor of the physician's estate.

(c) The record custodian appointed by the board [~~Board~~] shall take custody of and maintain the confidentiality of the physician's records, to include available medical records and billing records, according to the provisions of board [~~Board~~] rules and state statutes.

(d) The appointed record custodian shall provide the records, or copies of the records, to the patient or to the patient's designee according to board [~~Board~~] rules and state statutes. In addition to the reasonable copying fee defined in board [~~Board~~] rules, the appointed record custodian may charge an additional fee of $25.00 per patient record.

(e) The appointed record custodian shall retain care of the records for no less than 90 days and shall publish appropriate notice of pending destruction of the records for no less than 30 days prior to destruction of the records.

(f) Destruction of medical records shall be done in a manner that [~~which~~] ensures continued confidentiality.

(g) The board [~~Board~~] may publish a Request for Bids for one entity to function as the appointed record custodian for all areas of the state. If a sole statewide contractor is not selected, the board [~~Board~~] may publish a Request for Bids for entities to function as regional appointed record custodian or a custodian may be appointed on a case by case basis.

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

Filed with the Office of the Secretary of State on June 17, 2002.

TRD-200203755
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 166. PHYSICIAN REGISTRATION

22 TAC §166.2

The Texas State Board of Medical Examiners proposes an amendment to §166.2, concerning Continuing Medical Education. The proposed amendments relate to CME hours obtained during the 30-day grace period, audit of CME and CME temporary permit.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the section is in effect there will be no fiscal implications to state or local government as a result of enforcing the rule as proposed.

Ms. Shackelford also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be an updated rule. There will be no effect on small or micro businesses. There will be no effect to individuals required to comply with the section as proposed.

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

The amendment is proposed under the authority of the Occupations Code Annotated, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The following are affected by the proposed amendment: Tex. Occ. Code Ann., §§156.051, 156.052, 156.053.

§166.2. Continuing Medical Education.

(a) As a prerequisite to the annual registration of a physician's permit, 24 hours of continuing medical education (CME) are required to be completed in the following categories:

(1) At least one-half of the hours are to be from formal courses that are:

(A) designated for AMA/PRA Category 1 credit by a CME sponsor accredited by the Accreditation Council for Continuing Medical Education or a state medical society recognized by the Committee for Review and Recognition of the Accreditation Council for Continuing Medical Education;

(B) approved for prescribed credit by the American Academy of Family Physicians;

(C) designated for AOA Category 1-A credit required for osteopathic physicians by an accredited CME sponsor approved by the American Osteopathic Association; or

(D) approved by the Texas Medical Association based on standards established by the AMA for its Physician's Recognition Award.

(2) At least one of the formal hours of CME which are required by paragraph (1) of this subsection must involve the study of medical ethics and/or professional responsibility. Whether a particular hour of CME involves the study of medical ethics and/or professional responsibility shall be determined by the organizations which are enumerated in paragraph (1) of this subsection as part of their course planning.

(3) The remaining hours may be composed of informal self-study, attendance at hospital lectures or grand rounds not approved for formal CME, or case conferences and shall be recorded in a manner that can be easily transmitted to the board upon request.

(b) A physician must report on the annual registration permit application if she or he has completed the required CME [~~continuing medical education~~] during the previous year. A licensee may carry forward CME credit hours earned prior to an annual registration report which are in excess of the 24-hour annual requirement and such excess hours may be applied to the following years' requirements. A maximum of 48 total excess credit hours may be carried forward and shall be reported according to the categories set out in subsection (a) of this section. Excess CME credit hours of any type may not be carried forward or applied to an annual report of CME more than two years beyond the date of the annual registration following the period during which the hours were earned.

(c) A licensee shall be presumed to have complied with this section if in the preceding 36 months the licensee becomes board certified or recertified in a medical specialty and the medical specialty program meets the standards of the American Board of Medical Specialties, the American Medical Association, the Bureau of Osteopathic Specialists, or the American Osteopathic Association. This provision

exempts the physician from all CME requirements, including the requirement for one hour involving the study of medical ethics and/or professional responsibility, as outlined in subsection (a)(2) of this section. [~~, and this~~] This exemption is valid for one annual registration period only.

(d) A physician may request in writing an exemption for the following reasons:

(1) catastrophic illness;

(2) military service of longer than one year's duration outside the state;

(3) medical practice and residence of longer than one year's duration outside the United States; or

(4) good cause shown, submitted in writing by the licensee, that gives satisfactory evidence to the board that the licensee is unable to comply with the requirement for CME [~~continuing medical education~~].

(e) Exemptions are subject to the approval of the executive director or medical director and must be requested in writing at least 30 days prior to the expiration date of the permit.

(f) A temporary exemption under subsection (d) of this section may not exceed one year but may be requested annually, subject to the approval of the board.

(g) Subsection (a) of this section does not apply to a licensee who is retired and has been exempted from paying the annual registration fee under §166.3 of this title (relating to Retired Physician Exception).

(h) This section does not prevent the board from taking board action with respect to a licensee or an applicant for a license by requiring additional hours of CME [~~continuing medical education~~] or of specific course subjects.

(i) The board may require written verification of both formal and informal credits from any licensee within 30 days of request. Failure to provide such verification may result in disciplinary action by the board.

(j) Physicians in residency/fellowship training or who have completed such training within six months prior to the annual registration expiration date, will satisfy the requirements of subsections (a)(1) and (2) of this section by their residency or fellowship program.

(k) Unless exempted under the terms of this section, a licensee's apparent failure to obtain and timely report the 24 hours of CME as required and provided for in this section shall result in the denial of the annual registration permit until such time as the physician obtains and reports the required CME hours; however, the executive director of the board may issue to such a physician a temporary CME license numbered so as to correspond to the nonrenewed license. Such a temporary CME license shall be issued upon receipt of a written request and fee for the license made prior to the expiration of the 30-day grace period for annual registration at the direction of the executive director for a period of no longer than 60 days. A temporary CME license issued pursuant to this subsection may be issued [~~to allow the board to verify the accuracy of information related to the physician's CME hours and~~] to allow the physician who has not obtained or timely reported the required number of hours an opportunity to correct any deficiency so as not to require termination of ongoing patient care.

(l) The fee for issuance of a temporary CME license pursuant to the provisions of this section shall be in the amount specified for temporary licenses under §175.1 of this title (relating to Fees).

(m) CME hours which are obtained during the 30 day grace period after the expiration of the licensee's permit or while under a CME temporary license to comply with the CME requirements for the preceding year as a prerequisite for obtaining an annual registration permit, shall first be credited to meet the CME requirements for the previous year. Once the previous year's CME requirement is satisfied, any additional hours obtained shall be credited to meet the CME requirements for the current year.

(n) A [~~An intentionally~~] false report or false statement to the board by a licensee regarding CME hours reportedly obtained shall be a basis for disciplinary action by the board pursuant to the Medical Practice Act (the "Act"), TEX. OCC. CODE ANN. §§164.051-.053. A licensee who is disciplined by the board for such a violation may be subject to the full range of actions authorized by the Act including suspension or revocation of the physician's medical license, but in no event shall such action be less than an administrative penalty of $500 [~~and a public reprimand~~].

(o) Administrative penalties for failure to timely obtain and report required CME hours may be determined by the Disciplinary Process Review Committee of the board as provided for in §187.40 of this title (relating to Administrative Penalties).

(p) Unless exempted under the terms of this section, failure [~~Failure~~] to obtain and timely report the CME hours on an annual registration permit application shall subject the licensee to a monetary penalty for late registration in the amount set forth in §175.2 of this title (relating to Penalties). Any temporary CME licensure fee and any administrative penalty imposed for failure to obtain and timely report the 24 hours of CME required for an annual registration permit application shall be in addition to the applicable penalties for late registration as set forth in §175.2 of this title (relating to Penalties).

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 June 17, 2002.

TRD-200203756
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 173. PHYSICIAN PROFILES

22 TAC §173.1

The Texas State Board of Medical Examiners proposes an amendment to §173.1, concerning Profile Contents. The amendment will correct an error and delete status dates from profiles.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the section is in effect there will be no fiscal implications to state or local government as a result of enforcing the rule as proposed.

Ms. Shackelford also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be an updated rule. There will be no effect on small or micro businesses.

There will be no effect to individuals required to comply with the section as proposed.

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

The amendment is proposed under the authority of the Occupations Code Annotated, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The following are affected by the proposed amendment: Tex. Occ. Code Ann., §154.006.

§173.1. Profile Contents.

(a) The Texas State Board of Medical Examiners (the "board") shall develop and make available to the public a comprehensive profile of each licensed physician electronically via the Internet or in paper format upon request.

(b) The profile of each licensed physician shall contain the following information listed in paragraphs (1)- (24) [~~(28)~~] of this subsection:

(1) full name;

(2) place of birth if the physician requests that it be included in the physician's profile;

(3) gender;

(4) ethnic origin if the physician requests that it be included in the physician's profile;

(5) name of each medical school attended and the dates of:

(A) graduation; or

(B) Fifth Pathway designation and completion of the Fifth Pathway Program;

(6) a description of all graduate medical education in the United States or Canada, including:

(A) beginning and ending dates;

(B) program name;

(C) city and state of program;

(D) type of training (internship, residency or fellowship); and

(E) specialty of program;

(7) any specialty certification held by the physician and issued by a board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists;

(8) primary and secondary specialties practiced, as designated by the physician;

(9) the number of years the physician has actively practiced medicine in:

(A) the United States or Canada; and

(B) Texas;

(10) the original date of issuance of the physician's Texas medical license;

(11) the expiration date of the physician's annual registration permit;

(12) the physician's current registration, disciplinary and licensure statuses [~~and dates of such statuses~~];

(13) the name and city of each hospital in Texas in which the physician has privileges;

(14) the physician's primary practice location (street address, city, state and zip code);

(15) the type of language translating services, including translating services for a person with impairment of hearing, that the physician provides at the physician's primary practice location;

(16) whether the physician participates in the Medicaid program;

(17) whether the physician's patient service areas are accessible to disabled persons, as defined by federal law;

(18) a description of any conviction for an offense constituting a felony, a Class A or Class B misdemeanor, or a Class C misdemeanor involving moral turpitude during the ten-year period preceding the date of the profile;

(19) a description of any charges reported to the board during the ten-year period preceding the date of the profile to which the physician has pleaded no contest, for which the physician is the subject of deferred adjudication or pretrial diversion, or in which sufficient facts of guilt were found and the matter was continued by a court of competent jurisdiction;

(20) a description of any disciplinary action against the physician by the board during the ten-year period preceding the date of the profile;

(21) a description of any disciplinary action against the physician by a medical licensing board of another state during the ten-year period preceding the date of the profile;

(22) a description of the final resolution taken by the board on medical malpractice claims or complaints required to be opened by the board under the Medical Practice Act (the "Act"), TEX. OCC. CODE ANN. §164.201;

(23) a description of any formal complaint issued by the board's [~~Board's~~] staff against the physician and initiated and filed with the State Office of Administrative Hearings under §164.005 of the Act and the status of the complaint; and

(24) a description of a maximum of five awards, honors, publications or academic appointments submitted by the physician, each no longer than 120 characters.

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 June 17, 2002.

TRD-200203757
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 183. ACUPUNCTURE

22 TAC §183.4, §183.20

The Texas State Board of Medical Examiners proposes amendments to §183.4 and §183.20, concerning Licensure and Continuing Acupuncture Education. The amendments update evaluating English proficiency and continuing acupuncture education.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing the rules as proposed.

Ms. Shackelford also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be updated rules. There will be no effect on small or micro businesses. There will be no effect to individuals required to comply with the sections as proposed.

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

The amendments are proposed under the authority of the Occupations Code Annotated, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The following are affected by the proposed amendments: Tex. Occ. Code Ann., §§205.202, 205.255.

§183.4. Licensure.

(a) Qualifications. An applicant must present satisfactory proof to the acupuncture board that the applicant:

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

(7) is able to communicate in English as demonstrated by one of the following:

(A) passage of the NCCAOM examination taken in English; [~~or~~]

(B) passage of the TOEFL (Test of English as a Foreign Language) with a score of 550 or higher on the paper based test or with a score of 213 or higher on the computer based test; [~~or~~]

(C) passage of the TSE (Test of Spoken English) with a score of 45 or higher; [~~or~~]

(D) passage of the TOEIC (Test of English for International Communication) with a score of 500 or higher; or

(E) at the discretion of the acupuncture board, passage of any other similar, validated exam testing English competency given by a testing service with results reported directly to the acupuncture board or with results otherwise subject to verification by direct contact between the testing service and the acupuncture board. [~~; or~~]

[~~(F) an interview conducted in English with the acupuncture board, a committee of the acupuncture board, or the executive director of the acupuncture board. Only one interview shall be granted to each requesting applicant unless that applicant can satisfactorily demonstrate that a second personal interview is the only remaining opportunity for the applicant to meet the required ability to communicate in the English language. Should the applicant fail to adequately demonstrate the ability to communicate in the English language at the second interview, the applicant is ineligible for future interviews to determine English proficiency.~~]

(b) (No change.)

(c) Licensure documentation.

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

(3) Additional documentation. Applicants may be required to submit other documentation, including but not limited to the following:

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

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

(i)-(iv) (No change.)

(E) Outpatient treatment for alcohol/substance abuse or mental illness. Each applicant that has been treated on an outpatient basis within the last five [~~ten~~] years for alcohol/substance abuse or mental illness must submit the following:

(i)-(iii) (No change.)

(F)-(I) (No change.)

(4) (No change.)

(d)-(h) (No change.)

§183.20. Continuing Acupuncture Education.

(a) Purpose. This section is promulgated to promote the health, safety, and welfare of the people of Texas through the establishment of minimum requirements for continuing acupuncture education (CAE) for licensed Texas acupuncturists so as to further enhance their professional skills and knowledge.

(b) Minimum Continuing Acupuncture Education. As a prerequisite to the annual registration of the license of an acupuncturist, the acupuncturist shall complete 17 hours of continuing acupuncture education (CAE) each year. [~~in the following categories:~~]

(1) The required hours shall be from courses that are designated or otherwise approved for credit by the Texas State Board of Acupuncture Examiners at the time the courses [~~course was~~] were taken based on a review and recommendation of the Education Committee of the board [~~Board~~] as described in subsection (n) of this section.

(2) At least five of the required hours shall be from courses in [~~shall be~~] herbology.

(3) At least two hours of the required hours shall be from courses in [~~shall be~~] ethics.

(c)-(f) (No change.)

(g) Verification of Credits. The board may require written verification of both formal and informal continuing acupuncture education hours from any licensee and the licensee shall provide the requested verification within 30 calendar days of the date of the request. Failure to timely provide the requested verification may result in disciplinary action by the board [~~Board~~].

(h)-(i) (No change.)

(j) Application of Additional Hours. Continuing acupuncture education hours that [~~which~~] are obtained to comply with the requirements for the preceding year as a prerequisite for licensure renewal, shall first be credited to meet the requirements for that previous year. Once the requirements of the previous year are satisfied, any additional hours obtained shall be credited to meet the continuing acupuncture education requirements of the current year. A licensee may carry forward CAE hours earned prior to an annual registration report which are in excess of the 17-hour annual requirement and such excess hours may

be applied to the following years' requirements. A maximum of 34 total excess hours may be carried forward. Excess CAE hours may not be carried forward or applied to an annual report of CAE more than two years beyond the date of the annual registration following the period during which the hours were earned.

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

(n) Approval of Continuing Acupuncture Education. Continuing Acupuncture Education [~~(~~CAE~~)~~] credit hours shall be approved by the Texas State Board of Acupuncture Examiners based on the recommendation of the Education Committee of the board [~~Board~~] in regard to courses, programs, and activities submitted by licensees to satisfy the CAE requirements of this section. Approval shall be based on a showing by the education provider that:

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

(o) Continuing Acupuncture Education Approval Requests. All requests for approval of courses, programs, or activities for purposes of satisfying [~~Continuing Acupuncture Education (~~]CAE[~~)~~] credit requirements shall be submitted in writing to the Education Committee of the board [~~Board~~] on a form approved by the board [~~Board~~], along with any required fee, and accompanied by information, documents, and materials accurately describing the course, program, or activity, and necessary for verifying compliance with the requirements set forth in subsection (n) of this section. At the discretion of the board [~~Board~~] or the Education Committee, supplemental information, documents, and materials may be requested as needed to obtain an adequate description of the course, program, or activity and to verify compliance with the requirements set forth in subsection (n) of this section. At the discretion of the board [~~Board~~] or the Education Committee, inspection of original supporting documents may be required for a determination on an approval request. The Acupuncture Board shall have the authority to conduct random and periodic checks of courses, programs, or activities to ensure that criteria for education approval as set forth in subsection (n) of this section have been met and continue to be met by the education provider. Upon requesting approval of a course, program, or activity, the education provider shall agree to such checks by the Acupuncture Board or its designees, and shall further agree to provide supplemental information, documents, and material describing the course, program, or activity which, in the discretion of the Acupuncture Board, may be needed for approval or continued approval of the course, program, or activity. Failure of an education provider to provide the necessary information, documents, and materials to show compliance with the standards set forth in subsection (n) of this section shall be grounds for denial of CAE approval or recision of prior approval in regard to the course, program, or activity.

(p) Reconsideration of Denials of Approval Requests. Determinations to deny approval of a CAE course, program, or activity may be reconsidered by the Education Committee or the board [~~Board~~] based on additional information concerning the course, program, or activity, or upon a showing of good cause for reconsideration. A decision to reconsider a denial determination shall be a discretionary decision based on consideration of the additional information or the good cause showing. Requests for reconsideration shall be made in writing by the education provider, and may be made orally or in writing by board [~~Board~~] staff or a committee of the board [~~Board~~].

(q) Reconsideration of Approvals. Determinations to approve a CAE course, program, or activity may be reconsidered by the Education Committee or the board [~~Board~~] based on additional information concerning the course, program, or activity, or upon a showing of good cause. A decision to reconsider an approval determination shall be a discretionary decision based on consideration of the additional information or the good cause showing. Requests for reconsideration may be made in writing by a member of the public or may be made orally or in writing by board [~~Board~~] staff or a committee of the board [~~Board~~].

(r) CAE Credit for Course Instruction. Instructors of board-approved CAE courses may receive three hours of CAE credit for each hour of lecture, not to exceed six hours of continuing education credit per year, regardless of how many hours taught. Participation as a member of a panel presentation for the approved course shall not entitle the participant to earn CAE credit as an instructor. No CAE credit shall be granted to school faculty members as credit for their regular teaching assignments.

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 June 17, 2002.

TRD-200203758
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 184. SURGICAL ASSISTANTS

22 TAC §§184.17 - 184.24

The Texas State Board of Medical Examiners proposes new §§184.17-184.24, concerning Surgical Assistants. The new rules are proposed to outline the disciplinary process relating to surgical assistants and provide instruction regarding the complaint procedure notification.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the sections are in effect the increased revenue to the state from administrative penalties cannot be determined at this time. Impact to those required to comply will be dependent upon how many administrative penalties are issued.

Ms. Shackelford also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to provide guidance to licensed surgical assistants regarding the disciplinary process of the board and other requirements. There will be no effect on small or micro businesses.

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

The new rules are proposed under the authority of the Occupations Code Annotated, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The following are affected by the proposed new rules: Tex. Occ. Code Ann., Chapter 206.

§184.17. Disciplinary Guidelines.

(a) Chapter 190 of this title (relating to Disciplinary Guidelines) shall apply to surgical assistants regulated under this chapter to

be used as guidelines for the following areas as they relate to the denial of licensure or disciplinary action of a licensee:

(1) practice inconsistent with public health and welfare;

(2) unprofessional and dishonorable conduct;

(3) disciplinary actions by state boards and peer groups;

(4) repeated and recurring meritorious health care liability claims; and

(5) aggravating and mitigating factors.

(b) If the provisions of Chapter 190 conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

§184.18. Administrative Penalties.

(a) Pursuant to §206.351 of the Act, the board by order may impose an administrative penalty, subject to the provisions of the APA, against a person licensed or regulated under the Act who violates the Act or a rule or order adopted under the Act. The imposition of such a penalty shall be consistent with the requirements of the Act and the APA.

(b) The penalty for a violation may be in an amount not to exceed $5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) Prior to the imposition of an administrative penalty by board order, a person must be given notice and opportunity to respond and present evidence and argument on each issue that is the basis for the proposed administrative penalty at a show compliance proceeding.

(d) The amount of the penalty shall be based on the factors set forth under the Act, §206.351(c) and Chapter 190 of this title (relating to Disciplinary Guidelines).

(e) Consistent with the Act, §206.351(e), if the board by order determines that a violation has occurred and imposes an administrative penalty on a person licensed or regulated under the Act, the board shall give notice to the person of the board's order which shall include a statement of the right of the person to seek judicial review of the order.

(f) An administrative penalty may be imposed under this section for the following:

(1) failure to timely comply with a board subpoena issued by the board pursuant to §206.308 of the Act and board rules shall be grounds for the imposition of an administrative penalty of no less than $100 and no more than $5,000 for each separate violation;

(2) failure to timely comply with the terms, conditions, or requirements of a board order shall be grounds for imposition of an administrative penalty of no less than $100 and no more than $5,000 for each separate violation;

(3) failure to timely report a change of address to the board shall be grounds for imposition of an administrative penalty of no less than $100 and no more than $5,000 for each separate violation;

(4) failure to timely respond to a patient's communications shall be grounds for imposition of an administrative penalty of no less than $100 and no more than $5,000 for each separate violation;

(5) failure to comply with the complaint procedure notification requirements as set forth in §184.19 of this title (relating to Complaint Procedure Notification) shall be grounds for imposition of an administrative penalty of no less than $100 and no more than $5,000 for each separate violation;

(6) failure to provide show compliance proceeding information in the prescribed time shall be grounds for imposition of an administrative penalty of no less than $100 and no more than $5,000 for each separate violation; and

(7) for any other violation other than quality of care that the board deems appropriate shall be grounds for imposition of an administrative penalty of no less than $100 and no more than $5,000 for each separate violation.

(g) In the case of untimely compliance with a board order, the board staff shall not be authorized to impose an administrative penalty without an informal show compliance proceeding if the person licensed or regulated under the Act has not first been brought into compliance with the terms, conditions, and requirements of the order other than the time factors involved.

(h) Any order proposed under this section shall be subject to final approval by the board.

(i) Failure to pay an administrative penalty imposed through an order shall be grounds for disciplinary action by the board pursuant to the Act, §206.302(a)(4), regarding unprofessional or dishonorable conduct likely to deceive or defraud, or injure the public, and shall also be grounds for the executive director to refer the matter to the attorney general for collection of the amount of the penalty.

(j) A person who becomes financially unable to pay an administrative penalty after entry of an order imposing such a penalty, upon a showing of good cause by a writing executed by the person under oath and at the discretion of the Disciplinary Process Review Committee of the board, may be granted an extension of time or deferral of no more than one year from the date the administrative penalty is due. Upon the conclusion of any such extension of time or deferral, if payment has not been made in the manner and in the amount required, action authorized by the terms of the order or subsection (i) of this section and the Act, §206.301(a)(4) may be pursued.

§184.19. Complaint Procedure Notification.

(a) Methods of Notification. Pursuant to the Act, §206.153, for the purpose of directing complaints to the board, the board and its licensees shall provide notification to the public of the name, mailing address, and telephone number, both regular and toll free, for filing complaints by one or more of the following methods:

(1) displaying in a prominent location at their place or places of business, signs in English and Spanish of no less than 8 and 1/2 inches by 11 inches in size with the board-approved notification statement printed alone and in its entirety in black on a white background in type no smaller than standard 24-point Times Roman print with no alterations, deletions, or additions to the language of the board-approved statement;

(2) placing the board-approved notification statement printed in English and Spanish in black type no smaller than standard 10-point, 12-pitch typewriter print on each bill for services with no alterations, deletions, or additions to the language of the board-approved statement; or

(3) placing the board-approved notification statement printed in English and Spanish in black type no smaller than standard 10-point, 12-pitch typewriter print on each registration form, application, or written contract for services with no alterations, deletions, or additions to the language of the board-approved statement.

(b) Approved English Notification Statement. The following notification statement in English is approved by the board for purposes of these rules and the Act, §206.153 and is a sample of the type print referenced in subsection (a) of this section.

Figure: 22 TAC §184.19(b)

(c) Approved Spanish Notification Statement. The following notification statement in Spanish is approved by the board for purposes of these rules and the Act, §206.153, and is a sample of the type print referenced in subsection (a) of this section.
Figure: 22 TAC §184.19(c)

§184.20. Investigations.

(a) Confidentiality. All complaints, adverse reports, investigation files, other investigation reports, and other investigative information in the possession of, or received, or gathered by the board or its employees or agents relating to a licensee, an application for license, or a criminal investigation or proceeding are privileged and confidential and are not subject to discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in licensee discipline.

(b) Permitted disclosure of investigative information. Investigative information in the possession of the board or its employees or agents that relates to discipline of a licensee and information contained in such files may not be disclosed except in the following circumstances:

(1) to the appropriate licensing or regulatory authorities in other states or the District of Columbia or a territory or country where the surgical assistant is licensed, registered, or certified or has applied for a license or to a peer review committee reviewing an application for privileges or the qualifications of the licensee with respect to retaining privileges;

(2) to appropriate law enforcement agencies if the investigative information indicates a crime may have been committed and the board shall cooperate with and assist all law enforcement agencies conducting criminal investigations of licensees by providing information relevant to the criminal investigation to the investigating agency and any information disclosed by the board to an investigative agency shall remain confidential and shall not be disclosed by the investigating agency except as necessary to further the investigation;

(3) to a health-care entity upon receipt of written request. Disclosures by the board to a health-care entity shall include only information about a complaint filed against a surgical assistant that was resolved after investigation by a disciplinary order of the board or by an agreed settlement, and the basis and current status of any complaint under active investigation that has been referred by the executive director or the director's designee for legal action; and

(4) to other persons if required during the investigation.

(c) Renewal of licenses. A licensee shall furnish a written explanation of his or her answer to any question asked on the application for license renewal, if requested by the board. This explanation shall include all details as the board may request and shall be furnished within 14 days of the date of the board's request.

(d) Reports to the Board.

(1) Relevant information required to be reported to the board pursuant to §206.159 of the Act, indicating that a surgical assistant's practice poses a continuing threat to the public welfare shall include a narrative statement describing the time, date, and place of the acts or omissions on which the report is based.

(2) A report that a surgical assistant's practice constitutes a continuing threat to the public's welfare shall be made as soon as possible after the peer review committee, quality assurance committee, surgical assistant, surgical assistant student, physician or any person usually present in the operating room, including a nurse or surgical technologist involved reaches that conclusion and is able to assemble the relevant information.

§184.21. Impaired Surgical Assistants.

(a) Mental or physical examination requirement. The board may require a licensee to submit to a mental and/or physical examination by a physician or physicians designated by the board if the board has probable cause to believe that the licensee is impaired. Impairment is present if one appears to be unable to practice with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material; or as a result of any mental or physical condition. Probable cause may include, but is not limited to, any one of the following:

(1) sworn statements from two people, willing to testify before the board, medical board, or the State Office of Administrative Hearings that a certain licensee is impaired;

(2) a sworn statement from an official representative of the Texas Association of Surgical Assistants stating that the representative is willing to testify before the board that a certain licensee is impaired;

(3) evidence that a licensee left a treatment program for alcohol or chemical dependency before completion of that program;

(4) evidence that a licensee is guilty of intemperate use of drugs or alcohol;

(5) evidence of repeated arrests of a licensee for intoxication;

(6) evidence of recurring temporary commitments of a licensee to a mental institution; or

(7) medical records indicating that a licensee has an illness or condition which results in the inability to function properly in his or her practice.

(b) Rehabilitation Order. The board through an agreed order or after a contested proceeding, may impose a nondisciplinary rehabilitation order on any licensee, or as a prerequisite for licensure, on any licensure applicant. Chapter 180 of this title (relating to Rehabilitation Orders) shall govern procedures relating to surgical assistants who are found eligible for a rehabilitation order. If the provisions of Chapter 180 conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

§184.22. Procedure.

Chapter 187 of this title (relating to Procedural Rules) shall govern procedures relating to surgical assistants where applicable. If the provisions of Chapter 187 conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

§184.23. Compliance.

Chapter 189 of this title (relating to Compliance) shall be applied to surgical assistants who are under board orders. If the provisions of Chapter 189 conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

§184.24. Construction.

The provisions of this chapter shall be construed and interpreted so as to be consistent with the statutory provisions of the Act and the Medical Practice Act. In the event of a conflict between this chapter and the provisions of the Acts, the provisions of the Acts shall control; however, this chapter shall be construed so that all other provisions of this chapter which are not in conflict with the Acts shall remain in effect.

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 June 17, 2002.

TRD-200203759
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 190. DISCIPLINARY GUIDELINES

22 TAC §190.1

The Texas State Board of Medical Examiners proposes an amendment to §190.1, concerning Disciplinary Guidelines. The proposed amendment concerns clarification of the definition of practice inconsistent with public health and welfare and general clean-up of the section.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the section is in effect there will be no fiscal implications to state or local government as a result of enforcing the rule as proposed.

Ms. Shackelford also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be an updated rule. There will be no effect on small or micro businesses. There will be no effect to individuals required to comply with the section as proposed.

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

The amendment is proposed under the authority of the Occupations Code Annotated, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The following are affected by the proposed amendment: Tex. Occ. Code Ann., §§164.001, 164.051, 164.052, 164.053, 165.001, 165.002, 165.003.

§190.1. Disciplinary Guidelines.

(a) Purpose. This chapter is promulgated to:

(1) provide guidance and a framework of analysis in the making of recommendations in contested licensure and disciplinary matters;

(2) promote consistency in the exercise of sound discretion by board members in the imposition of sanctions in disciplinary matters; [~~and~~]

(3) provide guidance for board members for the resolution of potentially contested matters; and[~~.~~]

(4) provide guidance as to the types of conduct that constitute violations of the Medical Practice Act (the "Act") or board rules.

(b) Limitations. This chapter shall be construed and applied so as to preserve board member discretion in the imposition of sanctions and remedial measures pursuant to the Act's provisions related to methods of discipline and administrative penalties [~~Medical Practice Act (the "Act"), §4.12 (related to Methods of Discipline) and §4.125 (related to Administrative Penalty).~~] This chapter shall be further construed and applied so as to be consistent with the Act, and shall be limited to the extent as otherwise proscribed by statute and board rule.

(c) Guidelines. The following acts, practices, and conduct are presumed to be violations of the Act. A Respondent may rebut this presumption by providing an adequate explanation and evidence as to why an act listed below was committed. The following shall not be considered an exhaustive or exclusive listing.

(1) Practice Inconsistent with Public Health and Welfare. Failure to practice in an acceptable professional manner consistent with public health and welfare within the meaning of the Act includes, but is not limited to:

(A) failure to treat a patient according to the generally accepted standard of care;

(B) negligence in performing medical services;

(C) failure to use proper diligence in one's professional practice;

(D) failure to safeguard against potential complications;

(E) improper utilization review;

(F) failure to timely respond in person when on-call or when requested by emergency room or hospital staff;

(G) failure to disclose reasonably foreseeable side effects of a procedure or treatment;

(H) failure to disclose reasonable alternative treatments to a proposed procedure or treatment;

(I) failure to obtain and document informed consent from the patient or other person authorized by law to consent to treatment on the patient's behalf before performing tests, treatments, or procedures;

(J) termination of patient care without providing reasonable notice to the patient and a reasonable alternative for the patient's care;

(K) prescription or administration of a drug in a manner that is not in compliance with Chapter 200 of this title (relating to Standards for Physicians Practicing Integrative and Complementary Medicine) or, that is either not approved by the Food and Drug Administration (FDA) for use in human beings or does not meet standards for off-label use, unless an exemption has otherwise been obtained from the FDA;

(L) prescription of any dangerous drug or controlled substance without first establishing a proper professional relationship with the patient. A proper relationship, at a minimum requires:

(i) establishing that the person requesting the medication is in fact who the person claims to be;

(ii) establishing a diagnosis through the use of acceptable medical practices such as patient history, mental status examination, physical examination, and appropriate diagnostic and laboratory testing. An online or telephonic evaluation by questionnaire is inadequate;

(iii) discussing with the patient the diagnosis and the evidence for it, the risks and benefits of various treatment options; and

(iv) ensuring the availability of the physician or coverage of the patient for appropriate follow-up care; and

(M) inappropriate prescription of dangerous drugs or controlled substances to oneself, family members, or others in which there is a close personal relationship that would include the following:

(i) prescribing or administering dangerous drugs or controlled substances without taking an adequate history, performing a proper physical examination, and creating and maintaining adequate records; and

(ii) prescribing controlled substances in the absence of immediate need. "Immediate need" shall be considered no more than 72 hours.

(2) Unprofessional and Dishonorable Conduct. Unprofessional and dishonorable conduct that is likely to deceive, defraud, or injure the public within the meaning of the Act includes, but is not limited to:

(A) violating a board order;

(B) failing to comply with a board subpoena or request for information or action;

(C) providing false information to the board;

(D) failing to cooperate with board staff;

(E) engaging in sexual contact with a patient;

(F) engaging in sexually inappropriate behavior or comments directed towards a patient;

(G) becoming financially or personally involved with a patient in an inappropriate manner;

(H) referring a patient to a facility without disclosing the existence of the licensee's ownership interest in the facility to the patient;

(I) using false, misleading, or deceptive advertising;

(J) submitting billing statements to a patient or a third party payor that are improper, fraudulent or that are otherwise in violation of §311.0025 of the Health and Safety Code;

(K) behaving in an abusive or assaultive manner towards a patient or the patient's family or representatives that interferes with patient care or could be reasonably expected to adversely impact the quality of care rendered to a patient;

(L) failing to timely respond to communications from a patient;

(M) failing to complete the required amounts of CME;

(N) failing to maintain the confidentiality of a patient;

(O) failing to report suspected abuse of a patient by a third party, when the report of that abuse is required by law;

(P) behaving in a disruptive manner toward physicians, hospital personnel, other medical personnel, patients, family members or others that interferes with patient care or could be reasonably expected to adversely impact the quality of care rendered to a patient; and

(Q) entering into any agreement whereby a licensee, peer review committee, hospital, medical staff, or medical society is restricted in providing information to the board.

(3) Disciplinary actions by another state board. A voluntary surrender of a license in lieu of disciplinary action or while an investigation is pending constitutes disciplinary action within the meaning of the Act.

(4) Disciplinary actions by peer groups. A voluntary relinquishment of privileges or a failure to renew privileges with a hospital, medical staff, or medical association or society while investigation or a disciplinary action is pending or is on appeal constitutes disciplinary action within the meaning of the Act.

(d) [~~(c)~~] Aggravation. The following may be considered as aggravating factors so as to merit more severe or more restrictive action by the board:

(1) patient harm and the severity of patient harm;

(2) economic harm to any individual or entity and the severity of such harm;

(3) environmental harm and severity of such harm;

(4) increased potential for harm to the public;

(5) attempted concealment of misconduct;

(6) premeditated misconduct;

(7) intentional misconduct;

(8) motive;

(9) prior misconduct [~~of a similar or related nature~~];

(10) disciplinary history;

(11) prior action, written warnings or written admonishments from any government agency or official peer review organization or health care entity [~~regarding statutes or regulations~~] pertaining to the misconduct;

(12) violation of a board order;

(13) failure to implement remedial measures to correct or mitigate harm from the misconduct;

(14) lack of rehabilitative potential or likelihood for future misconduct of a similar nature; and

(15) relevant circumstances increasing the seriousness of the misconduct.

(e) [~~(d)~~] Extenuation and Mitigation. The following may be considered as extenuating and mitigating factors so as to merit less severe or less restrictive action by the board:

(1) absence of patient harm;

(2) absence of economic harm to any individual or entity;

(3) absence of environmental harm;

(4) absence of potential harm to the public;

(5) self-reported and voluntary admissions of misconduct;

(6) absence of premeditation to commit misconduct;

(7) absence of intent to commit misconduct; [~~morma~~]

(8) motive;

(9) absence of prior misconduct [~~of a similar or related nature~~];

(10) absence of a disciplinary history;

(11) implementation of remedial measures to correct or mitigate harm from the misconduct;

(12) rehabilitative potential;

(13) prior community service and present value to the community;

(14) relevant circumstances reducing the seriousness of the misconduct; and,

(15) relevant circumstances lessening responsibility for the misconduct.

(f) Use of Administrative Penalties. An administrative penalty may be imposed upon finding that the person has violated the Act, a board rule, or an order adopted under the Act in lieu of or in addition to any other penalty. The board shall consider the following in determining the appropriate amount of any administrative penalty assessed:

(1) the amount necessary to deter future violations;

(2) economic harm;

(3) estimated cost of the investigation and prosecution of the case;

(4) estimated cost of any future monitoring of the licensee.

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 June 17, 2002.

TRD-200203760
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 193. STANDING DELEGATION ORDERS

22 TAC §193.11, §193.12

The Texas State Board of Medical Examiners proposes new §193.11 and §193.12, concerning Use of Lasers and Delegated Laser Hair Removal Treatment. The new rules will outline requirements regarding the use of lasers and supervision requirements.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the sections are in effect there may be fiscal implications to state or local government as a result of enforcing the rules as proposed. Fiscal implications follow: impact regarding revenue to state - none. Impact to those required to comply - there will be training costs for both the supervising physician and non-physician practitioner. In addition, there will be costs for the non-physician owned business for physician supervision. The amount of these costs is unknown at this time.

Ms. Shackelford also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to provide guidelines for the use of lasers. There will be no effect on small or micro businesses.

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

The new rules are proposed under the authority of the Occupations Code Annotated, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The following are affected by the proposed new rules: Tex. Occ. Code Ann., §157.001.

§193.11. Use of Lasers.

(a) "Surgery" is the practice of medicine and includes any procedure using instruments, including lasers, scalpels, or needles, in which human tissue is cut, burned, vaporized, or otherwise altered by any mechanical means, laser, or ionizing radiation. The term also includes procedures using instruments that require closure by suturing, clamping, or other device.

(b) As a form of surgery, the use of lasers is considered the practice of medicine and cannot be delegated to non-physician employees without the delegating/supervising physician being onsite and immediately available, with the exception of laser hair removal as provided in Section 193.12 of this title (relating to Delegated Laser Hair Removal Treatment). As defined under the Texas Department of Health's rules, this includes medical devices that are Class IV and IIIb lasers, as well as Class II and Intense Pulsed Light machines, or any other light-based medical device.

§193.12. Delegated Laser Hair Removal Treatment.

(a) Purpose. The purpose of this section is to set forth guidelines for the delegation of tasks to qualified non-physicians providing laser hair removal treatment under reasonable physician control and supervision. Nothing in these rules shall be construed to relieve the supervising physician of the professional or legal responsibility for the care and treatment of the physician's patients.

(b) Laser hair removal. Laser hair removal is a surgical procedure, whereby an individual uses any medical device based on laser, intense pulsed light or any other non-ionizing energy, approved by the Food and Drug Administration (FDA), for the purpose of reducing permanently or temporarily, the amount or size of hair.

(c) Delegation.

(1) A physician licensed to practice medicine in Texas may delegate to a properly trained person acting under adequate supervision, the performance of laser hair removal authorized by the physician through the physician's order, standing delegation order, standing medical order, or other order or protocol provided for in this section.

(2) The operation of lasers is considered the practice of medicine and may not be delegated unless prior to treatment, the delegating physician either evaluates the patient by reviewing the patient's records or personally examines the patient and signs the patient's chart. The delegating physician must remain onsite and/or available within 30 minutes to respond to any untoward event that may occur.

(d) Supervision. Supervision by the delegating physician shall be considered adequate for purposes of this section if the physician is in compliance with this section and the physician:

(1) ensures that patients are adequately informed and have signed consent forms prior to treatment that outline reasonably foreseeable side effects and untoward complications that may result from the use of lasers for the purpose of hair removal;

(2) is responsible for the formulation or approval of a written protocol and any patient-specific deviation from the protocol;

(3) reviews and signs, at least annually, the written protocol and any patient-specific deviations from the protocol regarding care provided to a patient under the protocol on a schedule defined in the written protocol;

(4) receives, on a schedule defined in the written protocol, a periodic status report on the patient, including any problems or complications encountered;

(5) is readily available through direct telecommunication for consultation, assistance, and direction;

(6) personally attends to, evaluates, and treats complications that arise; and

(7) evaluates the technical skills of an assistant performing laser hair removal by documenting and reviewing at least quarterly the assistant's ability:

(A) to properly operate the devices and provide safe and effective care; and

(B) to respond appropriately to complications and untoward effects of the procedures.

(e) Written protocols. Written protocols for the purpose of this section shall mean a physician's order, standing delegation order, standing medical order, or other written order that is maintained on site. A written protocol must provide at a minimum the following:

(1) a statement identifying the individual physician authorized to utilize a medical device for hair removal and responsible for the delegation of the performance of laser hair removal;

(2) a statement of the activities, decision criteria, and plan the delegate shall follow when exercising laser hair removal authority;

(3) selection criteria for laser hair removal patients;

(4) identification of devices and settings to be used for patients who meet selection criteria;

(5) methods by which the laser devices are to be operated;

(6) a description of appropriate care and follow-up for common complications, serious injury, or emergencies as a result of laser hair removal; and

(7) a statement of the activities the delegate shall follow in the course of exercising laser hair removal authority, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician concerning specific decisions made. Documentation shall be recorded within a reasonable time after each procedure, and may be performed on the patient's record or medical chart.

(f) Educational requirements for delegating/supervising physicians. As part of the delegating/supervising physician's training, the physician must:

(1) complete a basic training program devoted to the principles of lasers, their instrumentation, physiological effects and safety requirements. The initial program must last at least 24 hours, and include clinical applications of various wavelengths and hands-on practical sessions with lasers and their appropriate surgical or therapeutic delivery systems; and

(2) obtain at least eight hours of continuing medical education annually regarding the appropriate standard of care in the field of laser hair removal.

(g) Educational requirements for delegates. A physician may delegate laser hair removal procedures to a qualified assistant. The physician must ensure that the assistant complies with paragraphs (1)-(5) of this subsection prior to performing laser hair removal in order to properly assess the assistant's competency.

(1) The assistant has completed and is able to document clinical and academic training in the following subjects:

(A) Fundamentals of laser operation

(B) Bioeffects of laser radiation on the eye and skin

(C) Significance of specular and diffuse reflections

(D) Non-beam hazards of lasers

(E) Ionizing radiation hazards

(F) Laser and laser system classifications

(G) Control measures

(2) The assistant has read and signed the facility's policies and procedures regarding the safe use of lasers.

(3) The assistant has attended at least eight hours of continuing education annually in the field of laser hair removal.

(4) The assistant has completed at least ten procedures of precepted training for each laser procedure and laser type to assess competency.

(5) The assistant has obtained certification in laser hair removal by a national certifying organization, unless the assistant is a licensed registered nurse or physician assistant.

(h) Quality assurance. The delegating/supervising physician must ensure that there is a quality assurance program for the facility at which laser hair removal is performed in order for the purpose of continuously improving the selection and treatment of laser hair removal patients. An appropriate quality assurance program shall consist of the following elements.

(1) A mechanism to identify complications and untoward effects of treatment and to determine their cause.

(2) A mechanism to review the adherence of assistants to standing delegation orders, standing medical orders and written protocols.

(3) A mechanism to monitor the quality of laser treatments.

(4) A mechanism by which the findings of the quality assurance program are reviewed and incorporated into future standing delegation orders, standing medical orders, written protocols, and supervising responsibility.

(5) An ongoing training program to improve the quality and performance of assistants.

(i) Deviation/Complication Review Reports. A physician that supervises laser hair removal treatments must write reports regarding the frequency and seriousness of complications, how often deviations from protocols occur, the type of deviations encountered, and how deviations and complications were addressed by the facility. Reports must be written on a quarterly basis with a copy maintained at the facility and the physician's office (if in a different location) to be made available to the board upon request.

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 June 17, 2002.

TRD-200203761

Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 305-7016

♦ ♦ ♦

PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 850. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

The Texas Board of Professional Geoscientists ("Board") proposes new rules §§850.1, 850.10, 850.60, 850.61, 850.62, 850.63, 850.65, 850.80, 850.81, and 850.82 regarding the implementation of the Texas Geoscience Practice Act.

These rules are necessary to implement Senate Bill 405, Acts of the 77th Texas Legislature, and to establish procedures and requirements necessary for the functioning of the Texas Board of Professional Geoscientists.

William H. Kuntz, Jr., Acting Executive Director, has determined that for the first five-year period the new rules are in effect there will be no cost to state or local government as a result of enforcing or administering the new rules beyond that stated in the fiscal note to Senate Bill 405.

Mr. Kuntz also has determined that for each year of the first five-year period the new rules are in effect, the public benefit will be the provision of mechanisms to administer and enforce the mandate of Senate Bill 405.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Acting Executive Director, Texas Board of Professional Geoscientists, P.O. Box 12157, Austin, Texas 78711, or facsimile 512/475-2872, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER A. AUTHORITY AND RESPONSIBILITIES

22 TAC §850.1, §850.10

The new rules are proposed under Senate Bill 405, 77th Texas Legislature, which authorizes the Board to adopt and enforce rules consistent with the Act and necessary for the performance of its duties.

The statute affected by the proposed rules is Senate Bill 405, 77th Texas Legislature, and the code sections in which it may be codified. No other statutes, articles, or codes are affected by the proposal.

§850.1. Authority.

These rules are promulgated under the authority of the Texas Board of Professional Geoscientists, Senate Bill 405, 77th Legislature.

§850.10. Definitions.

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

(1) Address of record--In the case of a person licensed, certified, or registered by the Board, the address which is filed by the licensee or registrant with the Board.

(2) The Act--Senate Bill 405, 77th Legislature.

(3) APA--The Administrative Procedure Act (TEX. GOV'T. CODE, Chapter 2001).

(4) Applicant--Any person seeking a license from the Board.

(5) Chairman--The officer referred to in the Act as "presiding officer".

(6) Vice-Chairman--The officer referred to in the Act as "assistant presiding officer".

(7) Complainant--Any person who has filed a sworn, written complaint with the secretary-treasurer of the Board against any person whose activities are subject to the jurisdiction of the Board.

(8) Contested case or proceeding--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the Board after an opportunity for adjudicative hearing.

(9) Executive Director--as used in any statute or rule assigned to the Texas Board of Professional Geoscientists, means the person appointed by the Board to be responsible for managing the day-to-day affairs of the Board.

(10) Final decision maker--The Board, which is the sole body authorized by law to render the final decision in a contested case brought under the Act.

(11) Hearings Examiner, Examiner, Administrative Law Judge--A person employed by the Board to conduct hearings in contested cases.

(12) License--The whole or part of any Board registration, license, certificate of authority, approval, permit, endorsement, title or similar form of permission required or permitted by the Act.

(13) Party--A person admitted to participate in a case before the final decision maker.

(14) Person--any individual, partnership, corporation, or other legal entity, including a state agency or governmental subdivision.

(15) Pleading--A written document submitted by a party, or a person seeking to participate in a case as a party, which requests procedural or substantive relief, makes claims, alleges facts, makes legal argument, or otherwise addresses matters involved in the case.

(16) Respondent--Any person, licensed or unlicensed, who has been charged with violating any provision of the Act or a rule or order issued by the Board.

(17) Rule--Any Board statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the Board and is filed with the Texas Register.

(18) T.R.C.P.--Texas Rules of Civil Procedure

(19) U.S.P.S.--United States Postal Service.

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 June 10, 2002.

TRD-200203633

William H. Kuntz, Jr.
Acting Executive Director
Texas Board of Professional Geoscientists
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 463-7348

♦ ♦ ♦

SUBCHAPTER B. ORGANIZATION

22 TAC §§850.60 - 850.63, 850.65

The new rules are proposed under Senate Bill 405, 77th Texas Legislature, which authorizes the Board to adopt and enforce rules consistent with the Act and necessary for the performance of its duties.

The statute affected by the proposed rules is Senate Bill 405, 77th Texas Legislature, and the code sections in which it may be codified. No other statutes, articles, or codes are affected by the proposal.

§850.60. Responsibilities of the Board - General Provisions.

(a) The Board governs the Texas Board of Professional Geoscientists, which is the state agency responsible for oversight of the public practice of geoscience.

(b) It is the intent of the Board that the rules of the Board be interpreted in the best interest of the public and the state.

(c) Through these rules, the Board intends to establish procedures with which to receive public interest information and complaints from the general public and the Board's licensees, assure that access to Board programs is made available to all citizens, to set fees appropriately, and to establish practice and procedures for administering the Board's programs.

§850.61. Responsibilities of the Board - Meetings.

(a) Meetings will be conducted under Robert's Rules of Order (Revised 1998).

(b) When a quorum, that is, a majority of the members, is present, a motion before the Board is carried by an affirmative vote of the majority of the members of the Board present.

(c) Meetings will be conducted as public meetings under the Open Meetings Act, Government Code, Chapter 551.

(d) The Board will determine on a case by case basis, the number of and the location of cameras and recording devices in order to maintain order during Board meetings.

(e) The Board shall provide the public a reasonable opportunity to appear before the Board at its meetings and to speak on any issue under the jurisdiction of the Board. Subject to the statutory requirement of a "reasonable opportunity," the Board may limit the amount of time that each speaker may speak on a given subject under the jurisdiction of the Board.

§850.62. General Powers and Duties of the Board.

(a) Complaints against a person or entity regulated by the Board must be made in writing, sworn to by the person making the complaint, and filed with the secretary-treasurer of the Board at the office of the Board in Austin.

(b) A complaint must be filed within two years of the event giving rise to the complaint. Complaints filed after the above stated period will not be accepted by the Board unless the complainant can show good cause to the Board for the late filing.

(c) Citizens who do not speak English or who have a physical, mental, or developmental disability will be provided reasonable access to the Board meetings and to the Board's programs.

(d) The Board welcomes appropriate citizen input and communications at Board meetings and upon prior reasonable notice to the Board, the Board will provide interpreters and/or sign language specialists to assist the citizen in presenting their input to the Board.

§850.63. Responsibilities of the Board and Executive Director.

(a) The Board may take the disciplinary actions described in and set forth in the Act on the grounds described and set forth in the Act, and may issue orders accordingly.

(b) The Board may deny a license on the grounds described in and set forth in the Act.

(c) The Board may reinstate a license by the procedures and on the conditions set forth in the Act.

(d) The Board may impose an administrative penalty based on the factors and subject to the limitations set forth in the Act.

(e) The Board shall give notice of its order imposing a sanction or penalty to all parties. The notice must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty assessed;

(3) whether or not a motion for rehearing is required as a prerequisite for appeal; and

(4) the motion for rehearing time table.

(f) Licensees will be notified at least 60 days in advance of impending expiration of the license and what the fee will be.

(g) Special accommodation exams will be made available as required by the American with Disabilities Act of 1990, Public Law 101-336. Upon request, exams may be offered in a foreign language at the expense of the requestor.

(h) The Board shall require license holders to notify consumers and service recipients of the name, mailing address, and telephone numbers of the Board for purposes of directing complaints to the Board. The notification shall be included on:

(1) the written contract for services of an individual or entity regulated by the Board;

(2) a sign prominently displayed in the place of business of each individual or entity regulated by the Board if the consumers or service recipients must visit the place of business for said service or products; and

(3) a bill for service provided by an individual or entity regulated by the Board.

(i) The Board by rule may provide for prorating fees for the issuance of a license, registration, certificate, permit or title, so that a person regulated by the Board pays only that portion of the applicable fee that is allocable to the number of months during which the license, registration, certificate, permit or title is valid.

§850.65. Petition for Adoption of Rules.

Any interested party may request adoption of a rule(s) by submitting a letter of request to the Board with a draft of the rule(s) attached. As a minimum the request should contain:

(1) items to be deleted should be bracketed or lined through;

(2) items added should be underlined; and

(3) the rationale for the requested rule 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 June 10, 2002.

TRD-200203634
William H. Kuntz, Jr.
Acting Executive Director
Texas Board of Professional Geoscientists
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 463-7348

♦ ♦ ♦

SUBCHAPTER C. FEES

22 TAC §§850.80 - 850.82

The new rules are proposed under Senate Bill 405, 77th Texas Legislature, which authorizes the Board to adopt and enforce rules consistent with the Act and necessary for the performance of its duties.

The statute affected by the proposed rules is Senate Bill 405, 77th Texas Legislature, and the code sections in which it may be codified. No other statutes, articles, or codes are affected by the proposal.

§850.80. Fees.

Fees set by the Board shall be published in the rules promulgated by the Board.

§850.81. Charges for Providing Copies of Public Information.

Cost for providing public information is that as promulgated by the Texas Building and Procurement Commission under Title 1, Texas Administrative Code, §§111.61 - 111.70 (Cost of Public Information).

§850.82. Dishonored Check Fee.

If a check, drawn to the Texas Board of Professional Geoscientists is dishonored by a payor, the Board shall charge a fee of $25 to the drawer or endorser for processing the dishonored check. The Board shall notify the drawer or endorser of the fee by sending a request for payment of the dishonored check and the processing fee by certified mail to the last known business address of the person as shown in the records of the Board. If the Board has sent a request for payment in accordance with the provisions of this section, the failure of the drawer or endorser to pay the processing fee within 15 days after the Board has mailed the request is a violation of these rules.

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

Filed with the Office of the Secretary of State on June 10, 2002.

TRD-200203635
William H. Kuntz, Jr.
Acting Executive Director
Texas Board of Professional Geoscientists
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 463-7348

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

SUBCHAPTER D. NEWBORN SCREENING PROGRAM

The Texas Department of Health (department) proposes amendments to §§37.51-37.67 and the repeal of §37.69 concerning the newborn screening program.

Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 37.51-37.67 have been reviewed and the department has determined that reasons for their adoption continue to exist. However, the sections require revision as described in this preamble. Section 37.69 has been reviewed, and the department has determined that reasons for its adoption no longer exist.

The department published a Notice of Intention to Review §§37.51-37.67 and §37.69 as required by Government Code, §2001.039 in the *Texas Register* on April 28, 2000, (25 TexReg 3799). No comments were received as a result of the publication.

The amendment to §37.51 corrects a syntax error. Amendments to §37.52 incorporate the definition of "bona fide resident" used by the Children With Special Health Care Needs Services Program. The amendment to §37.53 improves syntax by substituting "receive" for "be subjected to." An amendment rewords §37.54 to indicate more accurately that children usually have only a single managing conservator or guardian. An amendment to §37.55 clarifies the amount of time specimens must be air-dried by changing "three hours" to "three to four hours". The amendment to §37.56 clarifies the circumstances under which newborns must be screened within the first 72 hours of life. The amendment to §37.57 refers to "department" rather than "Texas Department of Health." An amendment to §37.58 clarifies that individuals must report to the department all confirmed cases of conditions for which screening tests are required, as stated by Health and Safety Code §33.015. Amendments clarify and update §37.59 by including references to the Children With Special Health Care Needs Services Program (CSHCN) in lieu of the Chronically Ill and Disabled Children's Services Program (CIDC), and also refer to the "program" rather than the "Newborn Screening Program." The amendment to §37.60 also refers to "program" rather than "Newborn Screening Program." Amendments to §37.61 also include the uniform references to "program" rather than "Newborn Screening Program", "department" rather than "Texas Department of Health (department)", and "Children With Special Health Care Needs (CSHCN)" rather than "Chronically Ill and Disabled Children (CIDC)". The section has also been updated by addition of the "Children's Health Insurance Plan (CHIP)" as another benefit which could pay for newborn screening services. The amendments to §37.62 continue the uniform use of "program" in lieu of "Newborn Screening Program (program)", include the Bureau of Children's Health as the current organizational address of the program, and delete a reference to a complete program application, which is not included in the

rules. Amendments to the financial participation scale in §37.63 clarify income eligibility criteria and add references to CHIP and CSHCN. The amendment to §37.64 clarifies that the Newborn Screening Program is part of the department's Bureau of Children's Health, and the section now refers to the department's fair hearing rules, rather than to the formal hearing rules. The amendment to §37.65 corrects a syntax error. Amendments to §37.66 and §37.67 include the uniform use of "department" for "Texas Department of Health (department)" and "program" for "Newborn Screening Program (program)". Section 37.69, which refers to the original effective dates of the program, is being repealed because it is no longer necessary.

Margaret Drummond-Borg, M.D., Director, Genetic Screening and Case Management Division, has determined that for each year of the first five years the sections and repeal are in effect, there are no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed because the amendments and repeal make no substantive changes in the sections.

Dr. Drummond-Borg has also determined that for each year of the first five years the sections and repeal are in effect, the public benefits anticipated as a result of enforcing or administering the amendments and repeal will be consistency between the rules and contemporary practice and statutes; clarification of financial eligibility for services; increased clarity and readability of the sections; and possible reduction of the number of unsatisfactory specimens received by the program by increasing the permissible drying time. There will be no effect on micro-businesses or small businesses. This was determined because the amendments and repeal make no substantive changes in the rules, which could impact micro-businesses or small business. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Margaret Drummond-Borg, M.D., Director, Genetic Screening and Case Management Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, (512) 458-7443, fax (512) 458-7350. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

25 TAC §§37.51 - 37.67

The amendments are proposed under Health and Safety Code, §33.002(b) which provides the Texas Board of Health (board) with the authority to adopt rules necessary to carry out the Newborn Screening Program; and Health and Safety Code, §12.001 which provides the board with authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The amendments affect the Health and Safety Code, Chapter 33, and implement Government Code, §2001.039.

§37.51. Purpose.

These sections describe the Newborn Screening Program administered by the Texas Department of Health. Under the authorization of the statutes listed in these sections, each newborn delivered in the state must be subjected to a panel of screening tests to identify the newborn that may be at risk of developing phenylketonuria, other heritable diseases, or hypothyroidism. These[~~The~~] sections also identify program services which are available to individuals who have a confirmed diagnosis of a heritable disease or hypothyroidism and establish eligibility criteria, financial participation requirements and procedures for the orderly provision of the identified services to eligible individuals.

§37.52. Definitions.

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

(1) (No change.)

(2) Bona fide resident--A person who:

(A) is physically present within the geographic boundaries of the state;

(B) has an intent to remain within the state;

(C) maintains an abode within the state (i.e., house or apartment, not merely a post office box);

(D) has not come to Texas from another country for the purpose of obtaining medical care, with the intent to return to the person's native country;

(E) does not claim residency in any other state or country; and

(i) is a minor child residing in Texas whose parent(s), managing conservator, or guardian of the child's person is a bona fide resident;

(ii) is a person residing in Texas who is the legally dependent spouse of a bona fide resident; or

(iii) is an adult residing in Texas, including an adult whose legal guardian is a bona fide resident or who is his/her own guardian.

[~~(2) Bona fide resident--An individual who:~~]

[~~(A) is physically present within the geographic boundaries of Texas; has an intent to remain within the state, either permanently or for an indefinite period; actually maintains an abode (e.g., house, apartment, etc., but not merely a post office box) within this state; and~~]

[~~(B) does not claim residency in any other state or country; is a minor child, residing in Texas, of a bona fide resident; is a legal dependent spouse, residing in Texas, of a bona fide resident; is an adult residing in Texas and his/her legal guardian is a bona fide resident.~~]

(3)-(15) (No change.)

§37.53. Conditions for Which Newborn Screening Tests Are Required.

Except as permitted in §37.54 of this title (relating to Exemption from Screening), all newborns delivered in Texas shall receive [~~be subjected to~~] two screening tests for the following conditions:

(1)-(5) (No change.)

§37.54. Exemption from Screening.

A newborn may not be screened if either [~~the~~] parent, the managing conservator, or guardian objects to the screening tests because the screening tests conflict with the religious tenets or practices of either of the parents, the managing conservator [~~conservators~~], or guardian [~~guardians~~].

§37.55. Responsibilities of Persons Attending a Newborn.

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

(c) Specimens must air-dry on a flat surface for at least three to four hours and must be mailed to the department within 24 hours after collection. If multiple specimens are mailed in one envelope, care must be taken to avoid cross-contamination.

§37.56. Blood Specimen Collection for Required Screening Tests.

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

(c) Unless delivered in a hospital[~~Newborns delivered outside of hospitals~~] or birthing center licensed by the department[~~centers, e.g., home deliveries~~], a newborn must be screened within the first 72 hours of life. The second screen must be done between one and two weeks of age.

(d)-(e) (No change.)

§37.57. Screening Test Procedures To Be Used.

Analysis of the blood specimens for the required screening tests must be performed by the department [~~Texas Department of Health (department)~~]. The department is responsible for identifying and implementing proper laboratory procedures for the screening tests required in §37.53 of this title (relating to Conditions for Which Screening Tests Are Required).

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

§37.58. Follow-up and Recordkeeping on Positive Screens.

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

(d) Individuals shall [~~are requested to~~] report to the department all confirmed cases of the conditions for which required screening tests are performed [~~required~~] that have been detected by other mechanisms.

(e)-(f) (No change.)

§37.59. Coordination with Children With Special Health Care Needs [~~Chronically Ill and Disabled Children's~~] Services Program.

(a) All newborns and other individuals under the age of 21 years who have been screened and have been found to be presumptively positive through the program [~~Newborn Screening Program (program)~~] may be referred, if financially eligible, to the department's [~~Texas Department of Health's (department's)~~] Children With Special Health Care Needs (CSHCN) Program [~~Chronically Ill and Disabled Children's Services Program (CIDC)~~].

(b) An individual who is determined to be eligible for CSHCN [~~CIDC~~] services shall be given approved services through that program, including special dietary formula for individuals who have phenylketonuria and homosystinuria [~~through CIDC~~]. An individual who does not meet CSHCN [~~that~~] eligibility criteria shall be referred to the program[~~Newborn Screening Program~~] for a determination of eligibility for program[~~Newborn Screening Program~~] services.

§37.60. Scope of Newborn Screening Program Services.

In cooperation with the individual's attending physician and within the limits of funds appropriated by the legislature for this purpose, the program is authorized to provide the following services to individuals who are approved for program [~~Newborn Screening Program~~] services:

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

§37.61. Eligibility Requirements.

(a) Except as otherwise provided for in these sections, to be eligible to receive program services, an individual must:

(1) have a confirmed diagnosis of a disorder screened by the program[~~Newborn Screening Program (program)~~];

(2)-(7) (No change.)

(b) An individual is not eligible to receive services from the program at no cost or reduced cost to the extent that the individual or the parent, managing conservator, guardian, or other person with a legal obligation to support the individual is eligible for some other benefit, such as Medicaid, Children With Special Health Care Needs (CSHCN) [~~Chronically Ill and Disabled Children (CIDC)~~], Children's Health Insurance Plan (CHIP) or private insurance, that would pay for all or part of the services.

(c) The department [~~Texas Department of Health (department)~~] may waive ineligibility if the department finds that:

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

§37.62. Application Process.

(a) To be considered for program [~~Newborn Screening Program (program)~~] services, a complete application [~~(copy attached)~~] for admission to the program must be filed annually with the program administrator by mailing to the following address: Newborn Screening Program, Bureau of Children's Health [~~Women and Children~~], Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(b)-(h) (No change.)

§37.63. Calculation of Financial Participation Obligation.

(a) (No change.)

(b) The following financial participation scale lists the copayment obligation for program services.

Figure: 25 TAC §37.63(b)

(c)-(e) (No change.)

§37.64. Denial of Application; Modification, Suspension, Termination of Program Services.

(a) (No change.)

(b) Procedure for denial, modification, suspension, or termination do not apply to adjustments made by the program in poverty income guidelines to conform to federal poverty income guidelines or to adjustments in the type and amount of program services available when such adjustments are necessary to conform to budgetary limitations as provided in §37.60 of this title (relating to Scope of Newborn Screening Program Services.)

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

(3) Within 30 days after receiving notice as specified in paragraph (2) of this subsection, the individual or the individual's representative may appeal the program's decision to deny, suspend, modify, or terminate the services to the department and request an administrative hearing before the department. Appeals and request for hearings must be in writing and sent the following address by certified mail: Administrator, Newborn Screening Program, Bureau of Children's Health [~~Women and Children~~], Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3190. Failure to respond will be deemed a waiver of the appeal and of the opportunity for a hearing.

(4) Appeals and administrative hearings will be conducted in accordance with the department's fair [~~formal~~] hearing rules, §§1.41, 1.51-1.55 [~~§§1.21-1.32~~] of this title (relating to Fair [~~Formal~~] Hearing Procedures).

§37.65. Advisory Bodies and Task Forces.

The commissioner may appoint both technical and lay advisory committees to assist in the administration of this program. The commissioner may also convene special task forces to assist the program and [~~the~~] advisory committees with special technical expertise or to address special emotional, social, educational, financial, or other problems which arise in families having a family member with a confirmed diagnosis of phenylketonuria, other heritable disease, or hypothyroidism.

§37.66. Confidentiality of Information.

(a) All information required by these sections to be submitted may be verified at the discretion of the department [~~Texas Department of Health (department)~~] with or without notice to any individual applying for or recipient of program [~~Newborn Screening Program (program)~~] benefits, or to the providers of program services. Except as necessary for timely and effective referral for diagnostic services or to

ensure appropriate management for individuals with confirmed diagnosis, the information received by the program in the administration of the program is confidential to the extent authorized by law.

(b) (No change.)

§37.67. Nondiscrimination Statement.

The department [~~Texas Department of Health~~] operates in compliance with Civil Rights Act of 1964 Title VI (Public Law 88-352) and Part 80 of Title 45, Code of Federal Regulations, so that no person will be excluded from participation in the program [~~Newborn Screening Program (program)~~], be denied benefits of the program, or be otherwise subjected to discrimination on the grounds of race, color, national origin, sex, creed, disability, or age.

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

Filed with the Office of the Secretary of State on June 14, 2002.

TRD-200203701
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 458-7236

♦ ♦ ♦

25 TAC §37.69

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

The repeal is proposed under Health and Safety Code, §33.002(b) which provides the Texas Board of Health (board) with the authority to adopt rules necessary to carry out the Newborn Screening Program; and Health and Safety Code, §12.001 which provides the board with authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The repeal affects the Health and Safety Code, Chapter 33, and implements Government Code, §2001.039.

§37.69. Effective Dates.

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 June 14, 2002.

TRD-200203702
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 458-7236

♦ ♦ ♦

CHAPTER 91. CANCER

The Texas Department of Health (department) proposes amendments of §§91.1, 91.4, 91.6, 91.7, the repeal of §§91.2, 91.3, 91.5, 91.8 - 91.14 and new §§91.2, 91.3, 91.5, 91.8 - 91.12 concerning the cancer registry and the reporting of cancer incidence data to the department or its authorized representatives. The amended and new sections specify who is required to report and has access to records for reporting; what cancer information is to be reported; when, how and where this information should be reported; a definition of reporting compliance and a cost-recovery method to access cancer information from persons failing to report in the prescribed format; quality assurance activities; confidentiality and disclosure of cancer information; and requests for and release of statistical and personal cancer data.

Specifically, these amendments, repeals, and new sections are required by Chapter 82, Texas Health and Safety Code which was revised by Senate Bill 285, 77th Legislature, 2001, to include cancer reporting by health care practitioners and to clarify and improve cancer incidence reporting. These changes also are needed to fulfill federal grant requirements for Texas to maintain a statewide population-based cancer registry that meets national standards. State law and regulations must support the National Program of Cancer Registries' requirements (42 U.S.C. §§280e to 280e-4) for receipt of federal funding.

New §91.3 reflects the expanded scope of the law for cancer reporting to include health care practitioners (physicians and dentists). New §§91.3 and 91.9 address cancer case reporting and data disclosure under the Health Insurance Portability and Accountability Act of 1996 and the Texas Health and Safety Code, Chapter 181, Medical Records Privacy. An amendment to §91.4 reflects changes in the reportable conditions and information and requires electronic reporting with one exception. New §91.5 outlines reporting timeframes and frequency of reporting for health care facilities, health care practitioners and clinical laboratories. New §91.12 reflects a new approval process for release of personal cancer data.

Nancy S. Weiss, Ph.D., Director, Cancer Registry Division has determined that for the first five-year period the sections are in effect, there will be fiscal implications as a result of enforcing or administering the sections as proposed. These sections are necessary for the department to continue to receive federal grant funds. For FY 2002, those funds are $2.1 million. The amounts for subsequent years have not yet been determined. It is estimated that costs to the state to administer the new data collection method will be offset by the federal funds received. There will be no fiscal implications for most local governments. Local governments that are providing cancer diagnosis and/or treatment will incur costs of $8 to $15 per case.

Dr. Weiss has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be to have complete and accurate cancer data reported within six months of initial diagnosis or admission for the diagnosis or treatment of cancer. This will increase the availability of timely, statewide cancer incidence data for use in cancer prevention and control efforts in the state and for securing cancer research funding. The anticipated effect on micro-businesses or small businesses (as well as large businesses) that do not report will be the cost of data collection by the department estimated to be $35 to $65 per unreported cancer case. The economic costs to persons who are required to comply with the sections as proposed will be the staff time to complete reporting requirements which is estimated to be 15 to 45 minutes per case (estimated $8 to $15 per case). There will be no impact on local employment.

Government Code, §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001

(Administrative Procedure Act). The department has reviewed §§91.1 - 91.14 and has determined that reasons for adopting the sections continue to exist; however §§91.1, 91.4, 91.6, and 91.7 are being amended, and proposed new §§91.2, 91.3, 91.5, 91.8 - 91.12 are necessary as described in this preamble. Sections 91.2, 91.3, 91.5, 91.8 - 91.14 have been reviewed and the department has determined that the reasons for adopting these sections no longer continue to exist and the rules will be repealed.

The department published a Notice of Intention to Review for §§91.1 - 91.14 in the *Texas Register* on January 7, 2000 (25 TexReg 218). No comments were received due to publication of this notice.

Comments on the proposal may be submitted to Nancy S. Weiss, Ph.D., Director, Cancer Registry Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, (512) 458-7523. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

SUBCHAPTER A. CANCER REGISTRY

25 TAC §§91.1 - 91.12

The amendments and new sections are proposed under Health and Safety Code §82.006 which provides the department with the authority to adopt rules necessary to implement Chapter 82 (Cancer Registry); §81.004 which provides the Texas Board of Health with the authority to administer Chapter 81 for protecting the public's health and preventing the introduction of disease in the state; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The amendments and new sections affect Health and Safety Code, Chapter 82.

§91.1. Purpose.

These sections implement the Texas Cancer Incidence Reporting Act, Health and Safety Code, Chapter 82, which authorizes the Texas Board of Health to adopt rules concerning the reporting of cases [~~of precancerous and tumorous diseases and~~] cancer for the recognition, prevention, cure, or control of those diseases, and to facilitate participation in the national program of cancer registries established by 42 United States Code §§280e to 280e-4. Nothing in these sections shall preempt the authority of facilities or individuals providing diagnostic or treatment services to patients with cancer to maintain their own cancer [~~facility based tumor~~] registries.

§91.2. Definitions.

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

(1) Act--The Texas Cancer Incidence Reporting Act, Texas Health and Safety Code, Chapter 82.

(2) Cancer--Includes a large group of diseases characterized by uncontrolled growth and spread of abnormal cells; any condition of tumors having the properties of anaplasia, invasion, and metastasis; a cellular tumor the natural course of which is fatal, including malignant and benign tumors of the central nervous system; and malignant neoplasm, other than nonmelanoma skin cancers such as basal and squamous cell carcinomas.

(3) Cancer reporting handbook--The division's manual for cancer reporters that documents reporting procedures and format.

(4) Clinical laboratory--An accredited facility in which tests are performed identifying findings of anatomical changes; specimens are interpreted and pathological diagnoses are made.

(5) Department--Texas Department of Health.

(6) Division--Cancer Registry Division of the department.

(7) Health care facility--A general or special hospital as defined by the Health and Safety Code, Chapter 241; an ambulatory surgical center licensed under the Health and Safety Code, Chapter 243; an institution licensed under the Health and Safety Code, Chapter 242; or any other facility, including an outpatient clinic, that provides diagnostic or treatment services to patients with cancer.

(8) Health care practitioner--A physician as defined by Occupations Code, §151.002 or a person who practices dentistry as described by the Occupations Code, §251.003.

(9) Personal cancer data--Information that includes items that may identify an individual.

(10) Quality assurance--Operational procedures by which the accuracy, completeness, and timeliness of the information reported to the department can be determined and verified.

(11) Regional cancer registry-The organization authorized by the department to receive and collect cancer data for a designated area of the state and which maintains the system by which the collected information is reported to the department.

(12) Regional director--The physician who is the chief administrative officer of a public health region and is designated by the department under the Local Public Health Reorganization Act, Health and Safety Code, §121.007.

(13) Report--Information provided to the department that notifies the appropriate authority of the occupancy of a specific cancer in a person, including all information required to be provided to the department.

(14) Research--A systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge.

(15) Statistical data--Aggregate presentation of individual records on cancer cases excluding patient identifying information.

(16) Texas Cancer Registry--The cancer incidence reporting system administered by the Cancer Registry Division.

§91.3. Who Reports, Access to Records.

(a) Each health care facility, clinical laboratory or health care practitioner shall report to the department, by methods specified in §§91.4 - 91.7 of this title (relating to Cancer Registry), required data from each medical record pertaining to a case of cancer in its custody or under its control except for cases to which subsection (d) of this section would apply.

(b) A health care facility or clinical laboratory providing screening, diagnostic or therapeutic services to patients with cancer shall grant the department or its authorized representative access to but not removal of all medical records which would identify cases of cancer, establish characteristics or treatment of cancer, or determine the medical status of any identified cancer patient.

(c) A health care practitioner providing diagnostic or treatment services to patients with cancer shall grant the department or its authorized representative access to but not removal of all medical records which would identify cases of cancer, establish characteristics or treatment of cancer, or determine the medical status of any identified cancer

patient except for cases to which subsection (d) of this section would apply.

(d) The department may not require a health care practitioner to furnish data or provide access to records if:

(1) the data or records pertain to cases reported by a health care facility providing screening, diagnostic, or therapeutic services to cancer patients that involve patients referred directly to or previously admitted to the facility; and

(2) the facility reported the same data the practitioner would be required to report.

(e) Health care facilities, clinical laboratories, and health care practitioners are subject to federal law known as the Health Insurance Portability and Accountability Act of 1996 found at Title 42 United States Code §1320d et seq.; the federal privacy rules adopted in Title 45 Code of Federal Regulations (C.F.R.) Parts 160 and 164; and state law found in the Health and Safety Code, Chapter 181, Medical Records Privacy, §181.101. Because state law requires reporting of cancer data, persons subject to this chapter are permitted to provide the data to the department without patient consent or authorization under 45 C.F.R. §164.512(a) relating to uses and disclosures required by law and §164.512(b)(1) relating to disclosures for public health activities. Both of these exceptions to patient consent or authorization are recognized in the state law in Health and Safety Code, §181.101.

§91.4. What to Report.

(a) Reportable conditions.

(1) The cases [~~Cases~~] of cancer [~~or those precancerous or tumorous diseases~~] to be reported to the division are as follows:

(A) all neoplasms with a behavior code of two or three in the most current edition of the International Classification on Diseases for Oncology (ICD-O) of the World Health Organization with the exception of those designated by the division as non-reportable in the cancer reporting handbook; and

(B) all benign and borderline neoplasms of the [~~brain and~~] central nervous system[~~;~~].

[~~(C) cystadenomas of borderline malignancy of ovary (ICDO-2 codes C56.9 and M83801);~~]

[~~(D) hydatiform mole, malignant (ICDO-2 codes C58.9 and M91001); and~~]

[~~(E) any neoplasm specified malignant.~~]

(2) Codes and taxa of the most current edition of the International Classification of Diseases, [~~Ninth Revision,~~] Clinical Modification of the World Health Organization which correspond to the division's reportable list are specified in the cancer reporting handbook.

(b) Reportable information.

(1) The data required to be reported [~~produced or furnished~~] shall include, but not be limited to:

(A) (No change.)

(B) social security number, date of birth, gender [~~sex~~], race and [~~Spanish~~] ethnicity, marital status, and birthplace, to the extent such information is available from the medical record;

(C) (No change.)

(D) diagnosis including the cancer site and laterality, cell type, tumor behavior, grade and size, stage of disease, date of diagnosis, and diagnostic confirmation method;

(E) (No change.)

(F) text information to support cancer diagnosis, stage and treatment codes, unless another method acceptable to the division is used to confirm these codes.[~~to be provided by facilities without a documented data quality program such as one approved by the American College of Surgeons.~~]

(2) Each report shall:

(A) be legible and contain all data items required in paragraph (1) of this subsection [~~(b)(1) of this section relating to reporting requirements and complete documentation~~];

(B) - (C) (No change.)

(D) in the case of individuals who have more than one form of cancer, be submitted separately for each primary cancer [~~or precancerous or tumorous disease~~] diagnosed;

(E) be submitted to the division electronically, or manually if electronic means are unavailable; and the annual cancer caseload of the health care facility, clinical laboratory or health care practitioner is 50 or fewer cases; and

(F) (No change.)

§91.5. When to Report.

(a) All reports shall be submitted to the department within six months of the patient's admission, initial diagnosis or treatment for cancer.

(b) Data shall be submitted no less than quarterly by health care facilities with annual caseloads of 400 or less. Monthly submissions are required for all other health care facilities.

(c) Data shall be submitted no less than quarterly by health care practitioners initially diagnosing a patient with cancer and performing the in-house pathological tests for that patient. Otherwise, data shall be submitted within 4 months of the request to a health care practitioner by the department or its authorized representative for a report or subset of a report on a patient diagnosed or treated elsewhere and for whom the same cancer data has not been reported.

(d) Data shall be submitted no less than bi-annually by clinical laboratories.

§91.6. How to Report.

A report of cancer can be made to the department by any of the following methods:

(1) submission of an original of a completed Confidential Cancer Reporting Form (TCR No.1)[~~;~~] if electronic means are unavailable and the annual cancer caseload of the health care facility, clinical laboratory or health care practitioner is 50 or fewer cases; or

(2) submission electronically of a TCR No. 1 or a subset of data items acceptable to the division using one of the following methods:

(A) (No change.)

(B) compact disc [~~magnetic tape~~];

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

§91.7. Where to Report.

(a) Forms.

[~~(1)~~] All counties shall be assigned by the division to a [~~designated~~] regional cancer registry. [~~of a public health region.~~] Completed forms shall be submitted to the regional director or his designee at the regional cancer registry [~~public health region~~] designated to receive data from the county where the person with cancer [~~or precancerous or tumorous disease~~] is admitted, diagnosed or treated.

[(2) A map and list of public health regions, and the addresses of respective regional directors are available from the Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756-3199.]

(b) All electronic data reports should be submitted to the division as specified in the cancer reporting handbook. [central office of the division to the Cancer Registry Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.]

§91.8. Compliance.

(a) Each health care facility, clinical laboratory or health care practitioner that reports to the department, by methods specified in §§91.4-91.7 of this title (relating to Cancer Registry), is considered compliant.

(b) A person will be notified in writing if the person has not reported in compliance with this chapter within 30 days following the end of the calendar year quarter and will be given an opportunity to take corrective action within 60 days from the date of the notification letter. A second notification letter will be sent 30 days after the date of the original notification letter if no corrective action has been taken.

(c) If a person is non-compliant and takes no corrective action within 60 days of the original notification letter, the department or its authorized representative may access the information from the health care facility, clinical laboratory or health care practitioner as provided in §91.3 of this title (relating to Who Reports, Access to Records) and report it in the appropriate format.

(1) The health care facility, clinical laboratory or health care practitioner shall be notified at least two weeks in advance before a scheduled arrival for collection of the information.

(2) A health care facility, clinical laboratory or health care practitioner that knowingly or in bad faith fails to furnish data as required by this chapter shall reimburse the department or its authorized representative for its cost to access and report the information. The costs must be reasonable, based on the actual costs incurred by the department or by its authorized representative in the collection of the data and may include salary and travel expenses. It is presumed that a health care facility, clinical laboratory or health care practitioner acted knowingly or in bad faith if it failed to take corrective action within 60 days of the date of the original notification letter.

(3) A health care facility, clinical laboratory or health care practitioner may request the department to conduct a hearing under the department's fair hearing rules to determine whether reimbursement to the department is appropriate.

(d) Any health care facility, clinical laboratory or health care practitioner which is required to reimburse the department or its authorized representative for the cost to access and report the information pursuant to subsection (c)(2) of this section shall provide payment to the department or its authorized representative within 60 days of the day this payment is demanded. In the event any health care facility, clinical laboratory or health care practitioner fails to make payment to the department or its authorized representative within 60 days of the day the payment is demanded, the department or its authorized representative may, at its discretion, assess a late fee not to exceed 1-1/2 % per month of the outstanding balance.

§91.9. Confidentiality and Disclosure.

(a) Pursuant to the Act, Chapter 82, §82.009, all data obtained is for the confidential use of the department and the persons or public or private entities that the department determines are necessary to carry out the intent of the Act.

(b) Limited release of the data is allowed by the Act, §82.008(h) and §82.009(b).

(c) Any requests for confidential or statistical data shall be made in accordance with §§91.11 or 91.12 of this title (relating to Cancer Registry).

(d) The Texas Cancer Registry is subject to the Health and Safety Code, Chapter 181, Medical Records Privacy, §181.101 that requires compliance with portions of the federal law and regulations cited in §91.3(e) of this title (relating to Who Reports, Access to Records). The department is authorized to use and disclose, for purposes described in the Act, cancer data without patient consent or authorization under 45 C.F.R §164.512(a) relating to uses and disclosures required by law, §164.512(b)(1) and (2) relating to uses and disclosures for publish health activities, and §164.512(i) relating to uses and disclosures for research purposes.

§91.10. Quality Assurance.

The department shall cooperate and consult with persons required to comply with this chapter so that such persons may provide timely, complete and accurate data. The department will provide:

(1) reporting training, on-site case-finding studies, and re-abstracting studies;

(2) quality assessment reports to ascertain that the computerized data utilized for statistical information and data compilation is accurate; and

(3) educational information on cancer morbidity and mortality statistics available from the Texas Cancer Registry and the department.

§91.11. Requests for Statistical Cancer Data.

(a) Statistical cancer data previously analyzed and printed are available upon written or oral request to the division. All other requests for statistical data shall be in writing and directed to: Cancer Registry Division, Texas Department of Health, 1100 West 49th Street, Austin Texas 78756-3199.

(b) To ensure that the proper data are provided, the request shall include, but not be limited to, the following information:

(1) name, address, and telephone number of the person requesting the information;

(2) type of data needed and for what years (e.g. lung cancer incidence rates, Brewster County, 1992-1995); and

(3) name and address of person(s) to who data and billings are to be sent (if applicable).

§91.12. Requests and Release of Personal Cancer Data.

(a) Data requests for research.

(1) Requests for personal cancer data shall be in writing and directed to: Texas Department of Health, Institutional Review Board (IRB), 1100 West 49th Street, Austin, Texas 78756-3199.

(2) Written requests for personal data shall meet the submission requirements of the department's IRB before release.

(3) The division may release personal cancer data to state, federal, local, and other public agencies and organizations if approved by the IRB.

(4) The division may release personal cancer data to private agencies, organizations, and associations if approved by the IRB.

(5) The division may release personal cancer data to any other individual or entities for reasons deemed necessary by the department to carry out the intent of the Act if approved by the IRB.

(b) Data requests for non-research purposes.

(1) The division may provide reports containing personal data back to the respective reporting entity from records previously submitted to the division from each respective reporting entity for the purposes of case management and administrative studies. These reports will not be released to any other entity.

(2) The division may release personal data to other bureaus of the department, provided that the disclosure is required or authorized by law. All communications of this nature shall be clearly labeled "Confidential" and will follow established departmental internal protocols and procedures.

(3) The division may release personal data to the department's Cancer Registry Program personnel headquartered in public health regions or public health departments to facilitate the collection, editing, and analysis of cancer registry data for the respective geographic area. All communications of this nature shall be clearly labeled "Confidential" and will follow established departmental internal protocols and procedures.

(4) The division may release personal cancer data to state, federal, local, and other public agencies and organizations in accordance with subsection (a) of this section.

(5) The division may release personal cancer data to any other individual or entities for reasons deemed necessary by the board to carry out the intent of the Act and in accordance with subsection (a) of this section.

(6) A person who submits a valid authorization for release of an individual cancer record shall have access to review or obtain copies of the information described in the authorization for release.

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 June 14, 2002.

TRD-200203710
Susan Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 458-7236

♦ ♦ ♦

25 TAC §§91.2 - 91.3, 91.5, 91.8 - 91.14

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

The repeals are proposed under Health and Safety Code §82.006 which provides the department with the authority to adopt rules necessary to implement Chapter 82 (Cancer Registry); §81.004 which provides the Texas Board of Health with the authority to administer Chapter 81 for protecting the public's health and preventing the introduction of disease in the state; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The repeals affect Health and Safety Code, Chapter 82.

§91.2. Definitions.
§91.3. Who Reports.
§91.5. When To Report.
§91.8. Compliance.
§91.9. Immunity from Liability.
§91.10. Confidentiality and Disclosure.
§91.11. Quality Assurance.
§91.12. Requests for Statistical Cancer Data.
§91.13. Requests and Release of Personal Cancer Data.
§91.14. Statistical Reports.

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 June 14, 2002.

TRD-200203711
Susan Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 458-7236

♦ ♦ ♦

CHAPTER 97. COMMUNICABLE DISEASES

The Texas Department of Health (department) proposes amendments to §§97.91-97.92 concerning consent for immunizations required for delegation of authority to give informed consent for immunizations of a minor. The department also proposes amendments to §§97.101-97.102 concerning statewide immunization of children by hospitals, physicians, and other health care providers.

Government Code, §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The department has reviewed Subchapter C, §§97.91-97.92 and Subchapter D, §§97.101-97.102 and determined that reasons for adopting the sections continue to exist; however, clarification on terminology is necessary to make the rules more accessible, understandable, and usable.

The department published a Notice of Intention to Review Subchapter C, §§97.91-97.92 and Subchapter D, §§97.101-97.102 as required by Government Code, §2001.039 in the *Texas Register* on January 14, 2000 (25 TexReg 275). No comments were received due to publication of this notice.

The Delegation of Authority form in §97.91(d) was revised to state Delegation of Authority to Give Consent for Immunizations of a Minor. Also, the Documentation of Failure to Contact form in §97.92(d) was revised to state Documentation of Failure to Contact Parent, Managing Conservator, Guardian, or Other Person for Consent for Immunizations of a Minor.

The amendments to §§97.101 and 97.102 updated the area of the department where to obtain required immunizations schedules for minors.

Linda S. Linville, M.S., R. N., Chief, Bureau Immunization and Pharmacy Support, has determined that for the first five-year-period that the sections will be in effect there will be no fiscal implications for state or local governments as a result of enforcing and administering the sections as proposed.

Ms. Linville has also determined that for each year of the first five years the sections are in effect the impact on hospitals, physicians, clinics and parents will remain unchanged. The proposed changes are simply for clarification so the proposed revisions shall have no fiscal impact on small businesses or micro-businesses or persons who are required to comply with the sections. No impact on local employment is expected.

Comments on the proposal may be submitted to Janie Garcia, Immunization Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7284, extension 6430, or (800) 252-9152. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

SUBCHAPTER C. CONSENT FOR IMMUNIZATION

25 TAC §97.91, §97.92

These amendments are proposed under the authority of Health and Safety Code, §81.023, which gives the board the right to develop immunization requirements for children; and Health and Safety Code, §12.001 which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

The amendments affect the Health and Safety Code, Chapters 12 and 81.

§97.91. Delegation of Authority To Give Informed Consent for Immunizations of a Minor.

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

(d) The delegation of authority statement must contain the information in subsection (c) of this section and could resemble the following.
Figure: 25 TAC §97.91(d)

§97.92. Recommendations for Documentation of Reason(s) Parent, Managing Conservator, Guardian, or Other Person Could Not Be Contacted.

(a) (No change.)

(b) The reason the parent, managing conservator, guardian, or other authorized person cannot be contacted should [~~be written or typed and~~] contain the name of the consenting adult, name of the minor child, the relationship of the consenting adult to the minor child, the date of the interview, the initials of the clinician conducting the interview of the consenting adult, and the reason the parent, managing conservator, guardian, or other authorized person could not be contacted.

(c) (No change.)

(d) The documentation of failure to contact the parent, managing conservator, guardian, or other authorized person should contain at least the information in subsections (b) and (c) of this section and could resemble the following.
Figure: 25 TAC §97.92(d)

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 June 14, 2002.

TRD-200203695

Susan Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 458-7236

♦ ♦ ♦

SUBCHAPTER D. STATEWIDE IMMUNIZATION OF CHILDREN BY HOSPITALS, PHYSICIANS, AND OTHER HEALTH CARE PROVIDERS

25 TAC §97.101, §97.102

These amendments are proposed under the authority of Health and Safety Code, §81.023, which gives the board the right to develop immunization requirements for children; and Health and Safety Code, §12.001 which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

The amendments affect the Health and Safety Code, Chapters 12 and 81.

§97.101. Statewide Immunization of Children.

(a) Every person less than 18 years old shall be immunized against vaccine-preventable diseases [~~caused by infectious agents~~] in accordance with the immunization schedule adopted by the Board of Health. The immunization requirements are also adopted as a statewide "control measure" for communicable diseases as that term is used in the Health and Safety Code, §81.081 and §81.082, and as an "instruction of the department" as that term is used in the Health and Safety Code, §81.007.

(b) The vaccine requirements [~~required immunization schedule~~] shall be those required [~~based upon the immunization requirements~~] for children and students under §§97.61-97.77 of this title (relating to Immunization Requirements in Texas Elementary and Secondary Schools and Institutions of Higher Education). Additional copies of Immunization Requirements in Texas Elementary and Secondary Schools and Institutions of Higher Education may be obtained from [~~Literature and Forms,~~] Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3180, (512) 458-7284.

(c)-(g) (No change.)

§97.102. Immunizations Required upon Admission of a Child to the Texas Department of Criminal Justice, Texas Department of Mental Health and Mental Retardation, or the Texas Youth Commission.

(a) On admission of a child to a facility of the Texas Department of Mental Health and Mental Retardation, the Texas Department of Criminal Justice, or the Texas Youth Commission, the facility physician shall review the immunization history of the child and administer any needed immunization(s) or refer the child for immunization(s) to another health care provider. Required immunizations are those set out in §97.63 of this title (relating to Required Immunizations). Copies of Immunization Requirements in Texas Elementary and Secondary Schools and Institutions of Higher Education may be obtained from [~~: Literature and Forms,~~] Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3180, (512) 458-7284.

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

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

Filed with the Office of the Secretary of State on June 14, 2002.

TRD-200203696
Susan Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 458-7236

♦ ♦ ♦

CHAPTER 221. MEAT SAFETY ASSURANCE SUBCHAPTER B. MEAT AND POULTRY INSPECTION

25 TAC §221.11, §221.14

The Texas Department of Health (department) proposes amendments to §§221.11 and 221.14 concerning meat and poultry inspection. Proposed changes to §221.11 adopt United States Department of Agriculture (USDA) regulations to limit the amount of water retained by raw, single-ingredient, meat and poultry products as a result of post-evisceration processing. Proposed changes to §221.14 clarify conditions under which processing of hunter killed exotic animals or hunter killed feral swine may be carried out without benefit of a grant of Custom Exemption.

Under the proposed changes to §221.11, raw livestock and poultry carcasses and parts will not be permitted to retain water resulting from post-evisceration processing, such as carcass washing and chilling, unless the establishment preparing those carcasses and parts demonstrates to the department, with data collected in accordance with a written protocol, that any water retained in the carcasses and parts is an inevitable consequence of the process used to meet applicable food safety requirements. In addition, the establishment will be required to disclose on the labeling of the meat or poultry products the maximum percentage of retained water in the raw product. The required labeling statement will help consumers of raw meat and poultry products to make informed purchasing decisions.

Establishments having data demonstrating that there is no retained water in their products can choose not to label the products with the retained-water statement or to make a no-retained-water claim on the product label. The proposed rule also revises the poultry chilling regulations to improve consistency with the Pathogen Reduction/Hazard Analysis and Critical Control Points (PR/HACCP) regulations; eliminates "command-and-control" features; and reflects current technological capabilities and good manufacturing practices. The rule allows the department to continue to meet the statutory requirement for rules to equal federal meat and poultry inspection regulations.

The proposed changes to §221.14 will clarify the fact that persons engaged in processing hunter killed exotic animals and hunter killed feral swine may not use the same facilities to engage in the receipt, storage, processing, or distribution of other amenable meat and/or poultry food products, as those used for processing hunter killed exotic animals and hunter killed feral swine, without benefit of a grant of Custom Exemption.

Tom J. Sidwa, D.V.M., Meat Safety Assurance Division, has determined that for each year of the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the rules as proposed. There will be no impact on local employment.

Dr. Sidwa has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated will be to retain compatibility with federal regulations, to provide consumers with more information regarding their meat and poultry purchases, and to clarify for industry the requirements of a grant of Custom Exemption. Dr. Sidwa has also estimated that there will be a cost to micro businesses, small businesses or individuals who are required to comply with §221.11. The requirement to prohibit retained water in raw meat would not appear to have a significant impact on the meat industry because it is already achieving zero retained water. It is estimated that five or fewer establishments will have difficulty meeting pathogen reduction standards and will be required to conduct water retention tests to establish unavoidable levels. The total industry cost for the testing required is estimated to be $23,500. The total industry cost for the labeling requirement is estimated to be $50,000. The proposed changes to §221.14 would result in no additional costs for any entity currently operating in compliance with the current rules in 25 Texas Administrative Code (TAC), Chapter 221, and Chapter 229.

Comments on the proposal may be submitted to Tom J. Sidwa, D.V.M., Meat Safety Assurance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 719-0205. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Health and Safety Code, Chapter 433, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of Chapter 433; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The amendments affect the Health and Safety Code, Chapter 433 and Chapter 12.

§221.11. Federal Regulations on Meat and Poultry Inspection.

(a) The Texas Department of Health (TDH) adopts by reference the following federal requirements in the Code of Federal Regulations (CFR), as amended:

(1)-(32) (No change.)

(33) 9 CFR, Part 417, "Hazard Analysis and Critical Control Point (HACCP) Systems"; [~~and~~]

(34) 9 CFR, Part 424, "Preparation and Processing Operations[~~.~~]"; and

(35) 9 CFR, Part 441 "Consumer Protection Standards: Raw Products."

(b) (No change.)

§221.14. Custom Slaughter and Processing; Very Low Volume Poultry/Rabbit Slaughter Operations.

(a) Custom slaughter requirements. The requirements of this section shall apply to the custom slaughter by any person of livestock, as defined in §221.12(b) of this title (relating to Meat and Poultry Inspection), delivered by or for the owner thereof for such slaughter, not for sale to the public and exclusively for use, in the household of such owner, by him and members of his household and nonpaying guests.

The requirements of this section do not apply to processing of hunter killed game animals, as defined in §221.12(b) of this title. The requirements of this section do not apply to processing of hunter killed exotic animals, or [~~and~~] hunter killed feral swine, as defined in §221.12(b) of this title[~~.~~], provided persons engaged in such processing do not utilize the same facilities to engage in the receipt, storage, processing, or distribution of other meat and/or poultry food products.

(1)-(10) (No change.)

(b) Custom processing requirements. The requirements of this section shall apply to the custom processing by any person of uninspected livestock carcasses or parts, delivered by or for the owner thereof for such processing, not for sale to the public and exclusively for use, in the household of such owner, by him and members of his household and nonpaying guests. The requirements of this section shall not apply to processing of hunter killed game animals, as defined in §221.12(b) of this title. The requirements of this section do not apply to processing of hunter killed exotic animals, or [~~and~~] hunter killed feral swine, as defined in §221.12(b) of this title[~~.~~], provided persons engaged in such processing do not utilize the same facilities to engage in the receipt, storage, processing, or distribution of other meat and/or poultry food products.

(1)-(11) (No change.)

(c) (No change.)

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

Filed with the Office of the Secretary of State on June 14, 2002.

TRD-200203698
Susan Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 458-7236

♦ ♦ ♦

CHAPTER 230. AVERAGE MANUFACTURE PRICE AND PURCHASE PRICE REPORTING FOR PHARMACEUTICALS

25 TAC §230.1

The Texas Department of Health (department) proposes new §230.1, concerning the average manufacture price and purchase price reporting for pharmaceuticals.

Specifically, the new section covers definitions; exemptions; reporting procedures; confidentiality and enforcement. New subsection (a) will define the terms necessary to use in order to correctly request and receive accurate pricing information. New subsection (b) provides that certain businesses and entities that are required to be licensed by Health and Safety Code, Chapter 431, will be exempt from reporting pricing information since they do not sell pharmaceuticals to the state. New subsection (c) provides for requesting pricing information from manufacturers and wholesale distributors and for reporting that information back to be retrieved by the designee(s) of the Interagency Council on Pharmaceuticals Bulk Purchasing. New subsection (d) provides confidentiality provisions in compliance with House Bill 915, 77th Legislative Session (2001), as codified in the Health and Safety Code, Chapter 110. New subsection (e) provides for a confidential opportunity to correct inaccurate or missing information, answer questions, and discuss reports prior to referral to the Office of the Attorney General for enforcement.

Susan E. Tennyson, J.D., Chief, Bureau of Food and Drug Safety, has determined that for the first five-year period the section is in effect, there will be fiscal implications as a result of administering the rule as proposed. The effect on state government will mean increased revenue to the state estimated by the Legislative Budget Board to be $8,978,506 in FY03, $9,319,667 in FY04, $9,675,671 in FY05, and $10,044,032 in FY06. It is estimated that the costs to the department to administer the new provisions will be a one-time cost of $76,000. There will be no impact on local government.

Ms. Tennyson has also determined that for each of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be to enable the state to negotiate a lower price for pharmaceuticals and to increase the state's purchasing power. There are anticipated costs to micro-businesses, small businesses or persons who comply with the rule. The costs cannot be determined, but the process will involve receiving an electronic request for pricing information from the department, calculating the cost information for the report, filling in the report, and electronically submitting it to the department, where it will be entered into the appropriate database. It has been estimated that the cost to large wholesale drug distributors may be approximately $108,400 per year for each large wholesale drug distributor.

Comments on the proposed rule may be submitted to Susan E. Tennyson, Bureau of Food and Drug Safety, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 719-0222, e-mail address: Susan.Tennyson@tdh.state.tx.us. Comments will be accepted for 60 days from the date of publication of this proposal in the *Texas Register*.

The new section is proposed under the Health and Safety Code, §431.208, which provides the department with the authority to adopt necessary regulations to implement the reporting of purchase prices; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The new section affects the Health and Safety Code, Chapter 431 and Chapter 12.

§230.1. Average Manufacturer Price and Purchase Price Reporting for Pharmaceuticals.

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

(1) Actual price--The weighted median invoice price at which a wholesale distributor sells a drug to a Texas retail pharmacy from the first day of the month through the last day of the calendar month prior to the date of the request.

(2) Average manufacturer price--The average price paid to the manufacturer for the drug in the United States by wholesalers for drugs distributed to the retail pharmacy class of trade, after deducting customary prompt pay discounts, calculated for the most recent required quarterly report to the Secretary of Health and Human Services.

(3) BFDS--The Bureau of Food and Drug Safety within the Texas Department of Health.

(4) Council--The Interagency Council on Pharmaceuticals Bulk Purchasing.

(5) Department--The Texas Department of Health.

(6) Drug manufacturer--A person subject to licensure in Chapter 229 of this title who manufactures, prepares, propagates, compounds, processes, packages, repackages, or changes the container, wrapper, or labeling of any drug product.

(7) Retail pharmacy, for the purpose of actual price--Any Class A pharmacy or community pharmacy authorized to dispense a drug or device to the public under a prescription drug order. It does not, however, include long-term care pharmacies, physicians' offices, closed-door pharmacies, or outpatient pharmacies affiliated with health systems.

(8) Wholesale drug distributor--A person subject to licensure in Chapter 229 of this title to engage in the wholesale distribution of prescription drugs to retail pharmacies in Texas including, but not limited to: manufacturers; repackers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies that conduct wholesale distributions.

(b) Exemptions. The following entities, upon furnishing affirmative proof, are exempted from the reporting requirements of this section.

(1) Manufacturers or wholesale drug distributors of only:

(A) veterinary drugs or medical equipment;

(B) durable medical equipment;

(C) oxygen and oxygen USP;

(D) salvaged drugs or devices;

(E) dental equipment; and/or

(F) cosmetics.

(2) Manufacturers or wholesale drug distributors who are:

(A) health care clinics;

(B) hospitals or hospital districts;

(C) university health care systems and/or pharmacy schools;

(D) blood and tissue centers; or

(E) other non-profit health care systems.

(c) Reporting procedures.

(1) Requests. No later than the 25th day of each month, the council's designee(s) shall submit a list of drugs about which pricing information is desired, to the BFDS. The list from the council will be in a standardized format, which identifies each drug by the National Drug Code (NDC) for the drug, the name of the drug, the unit dosage and the count, and the name of the manufacturer. The BFDS will then submit the request electronically to each manufacturer and wholesale drug distributor by the 5th day of the next month.
Figure: 25 TAC §230.1(c)(1)

(2) Reports. Each manufacturer and wholesale sale distributor shall report to BFDS on a standardized electronic format no later than the 30th day after receipt of the request. The manufacturer shall report the average manufacturer price and the wholesale drug distributor shall report the actual price for the drug.
Figure: 25 TAC §230.1(c)(2)

(3) The BFDS will provide direct access to all reports to the council designee(s) on a file transfer protocol. BFDS will provide the council with a monthly report of those manufacturers and wholesale drug distributors not filing the required report. BFDS will not have direct access to pricing information.

(d) Confidentiality. Information provided by a manufacturer and a wholesale drug distributor pursuant to these rules and the Health and Safety Code, Chapter 110, may only be disclosed pursuant to the Health and Safety Code, Chapter 110, and the procedures of the council.

(e) Enforcement.

(1) The BFDS will provide electronic notice of a failure to report to a manufacturer or wholesale drug distributor from whom the council did not receive a requested report. The manufacturer or wholesale drug distributor must submit the report within 15 days after receipt of the notice of failure to report.

(2) If the council disputes the accuracy of the information on a particular NDC or NDCs provided by the manufacturer or wholesale drug distributor, then a confidential settlement conference with the manufacturer or wholesale drug distributor, a member of the council, and BFDS may be held.

(3) If a manufacturer or wholesale drug distributor fails to file the requested report after being provided the 15-day opportunity to cure, or if the accuracy of the report cannot be reconciled, BFDS shall consider the manufacturer's or wholesale drug distributor's demonstration of good faith prior to any referral to the Office of the Attorney General for investigation and/or action.

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 June 14, 2002.

TRD-200203697
Susan Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 458-7236

♦ ♦ ♦

CHAPTER 289. RADIATION CONTROL
SUBCHAPTER F. LICENSE REGULATIONS

25 TAC §289.252

The Texas Department of Health (department) proposes an amendment to §289.252, concerning licensing of radioactive material.

Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 289.252 has been reviewed and the department has determined that the reasons for adopting the section continue to exist; however, revisions to the rule are necessary.

The proposed rule adds requirements for applicants for licensure, and licensees upon renewal, to submit documentation of financial qualification, as required by House Bill 1099 (77th Legislature 2001). The revision increases the specified amounts of

financial assurance for decommissioning for certain quantities of radioactive materials authorized on the license, to adjust for inflation. The revision adds a requirement for persons who receive, possess, or process sealed sources as radioactive waste from other persons and who are exempt from §289.254 of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities) to submit a decommissioning funding plan and financial assurance. In Figure: 25 TAC, §289.252(ii)(2), the "Ca-45" radionuclide was deleted after the "K-40" radionuclide within the second group of radionuclides, as this radionuclide was incorrectly included within this group. The revision also clarifies that if a person stores sealed sources of radioactive material received from other persons for recycle or beneficial reuse for longer than two years, that person is then considered to be receiving the sealed sources of radioactive material as radioactive waste from other persons. Other minor clarifying changes are added to make corrections and to make the section consistent with other sections of this title. This amendment is part of the department's continuing effort to update, clarify, and simplify its rules regarding the control of radiation based upon technological advances, public concerns, legislative directives, or other factors.

The department published a Notice of Intention to Review for §289.252 as required by Government Code §2001.039 in the *Texas Register* (27 TexReg 1189) on February 15, 2002. No comments were received by the department on this section.

Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, has determined that for each year of the first five years the section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section as proposed. The increase in the specified amounts of financial assurance for decommissioning will be held in the Radiation and Perpetual Care Security Trust Account in the event that funds are needed to decommission a site.

Mrs. McBurney has also determined that for each year of the first five years the proposed section will be in effect, the public benefit anticipated as a result of enforcing the section will be to ensure continued protection of the public, workers, and the environment from unnecessary exposure to radiation by ensuring that applicants/licensees are financially qualified to conduct the licensed activities. The proposed section also ensures funds required of licensees for financial assurance are adequate to decommission licensed facilities. There will be no fiscal impact from the financial qualification requirement on applicants/licensees that are small businesses, micro-businesses or other persons not required to submit financial assurance. There will not be a fiscal impact because those licensees not required to submit financial assurance may submit attestation of financial qualification. There will also be no fiscal impact from the financial qualification requirement on applicants/licensees that are small businesses, micro-businesses, or other persons required to submit financial assurance. There will not be a fiscal impact because licensees required to submit financial assurance may submit the same types of documentation used to obtain the financial assurance instrument in order to comply with the financial qualification requirement. Licensees that are small businesses, micro-businesses, or other persons required to comply with the section as proposed and choose to submit the financial assurance amount specified in rule, will incur an increase in financial assurance for decommissioning ranging from $10,000 to $100,000 over the lifetime of the license. If a licensee's site is adequately decommissioned, the financial assurance is returned to the licensee at that time. There is no anticipated impact on local employment.

Comments on the proposal may be presented to Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, Telephone (512) 834-6688 or electronic mail at Ruth.McBurney@tdh.state.tx.us. Public comments will be accepted for 30 days following publication of this proposal in the *Texas Register*. In addition, a public meeting to accept oral comments will be held at 1:30 p.m., Tuesday, July 9, 2002, in Conference Room N218, Texas Department of Health, Bureau of Radiation Control, located at the Exchange Building, 8407 Wall Street, Austin, Texas.

The amendment is proposed under the Health and Safety Code, §401.301, which provides the Texas Board of Health (board) with authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which provides the board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner of health.

The amendment affects Health and Safety Code, Chapter 401, Chapter 12, and implements Government Code, §2001.039.

§289.252. Licensing of Radioactive Material.

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

(d) Filing application for specific licenses. The agency may, at any time after the filing of the original application, require further statements in order to enable the agency to determine whether the application should be denied or the license should be issued.

(1) (No change.)

(2) Each application shall be signed by the chief executive officer or other individual delegated the authority to manage, direct, or administer the licensee's activities [~~management~~].

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

(6) Each applicant shall demonstrate to the agency that the applicant is financially qualified to conduct the activity requested for licensure, including any required decontamination, decommissioning, reclamation, and disposal before the agency issues a license. Each licensee shall demonstrate to the agency that it remains financially qualified to conduct the licensed activity before a license is renewed. Methods for demonstrating financial qualifications are specified in subsection (ii)(8) of this section. The requirement for demonstration of financial qualification is separate from the requirement specified in subsection (gg) of this section for certain applicants or licensees to provide financial assurance in conjunction with a decommissioning funding plan.

(7) If facility drawings submitted in conjunction with the application for a license are prepared by a professional engineer or engineering firm, those drawings shall be final and shall be signed, sealed and dated in accordance with the requirements of the Texas Board of Professional Engineers, 22 Texas Administrative Code, Chapter 131.

(8) [~~(6)~~] Applications for licenses shall be processed in accordance with the following time periods.

(A) The first period is the time from receipt of an application by the Division of Licensing, Registration and Standards to the date of issuance or denial of the license or a written notice outlining why the application is incomplete or unacceptable. This time period is 60 days.

(B) The second period is the time from receipt of the last item necessary to complete the application to the date of issuance or denial of the license. This time period is 30 days.

(C) These time periods are exclusive of any time period incident to hearings and post-hearing activities required by the Government Code, Chapter 2001.

(9) [~~(7)~~] Notwithstanding the provisions of §289.204(e)(1) of this title, reimbursement of application fees may be granted in the following manner.

(A) In the event the application is not processed in the time periods stated in paragraph (8) [~~(6)~~] of this subsection, the applicant has the right to request of the director of the Radiation Control Program full reimbursement of all application fees paid in that particular application process. If the director does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.

(B) Good cause for exceeding the period established is considered to exist if:

(i) the number of applications for licenses to be processed exceeds by 15% or more the number processed in the same calendar quarter the preceding year;

(ii) another public or private entity utilized in the application process caused the delay; or

(iii) other conditions existed giving good cause for exceeding the established periods.

(C) If the request for full reimbursement authorized by subparagraph (A) of this paragraph is denied, the applicant may then request a hearing by appeal to the Commissioner of Health for a resolution of the dispute. The appeal will be processed in accordance with the Formal Hearing Procedures, §§1.21, 1.23, 1.25, 1.27 [~~§§1.21-1.34~~] of this title (relating to the Texas Board of Health).

(10) [~~(8)~~] Applications for licenses may be denied for the following reasons:

(A) any material false statement in the application or any statement of fact required under provisions of the Texas Radiation Control Act (Act); [~~and~~]

(B) conditions revealed by the application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a license on an application; or [~~.~~]

(C) failure to clearly demonstrate how these requirements have been addressed.

(e) General requirements for the issuance of specific licenses. A license application will be approved if the agency determines that:

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

(9) the owner of the property is aware that radioactive material is stored [~~and/or used~~] on the property, if the proposed storage facility is not owned by the applicant. The applicant shall provide a written statement from the owner, or from the owner's agent, indicating such. This paragraph does not apply to property owned or held by a government entity or to property on which radioactive material is used under an authorization for temporary job site use.

(10) there is no reason to deny the license as specified in subsection (d)(10) of this section.

(f)-(n) (No change.)

(o) Specific licenses for the manufacture and commercial distribution of sealed sources or devices containing radioactive material for medical use. In addition to the requirements in subsection (e) of this section, a specific license to manufacture and commercially distribute sealed sources and devices containing radioactive material to persons licensed for use of sealed sources in the healing arts for use as a calibration or reference source will be issued if the agency approves the following information submitted by the applicant:

(1) an evaluation of the radiation safety of each type of sealed source or device including the following:

(A)-(G) (No change.)

(H) procedures for disposition of unwanted or unused radioactive material; [~~and~~]

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

(p) Specific licenses for the manufacture and commercial distribution of radioactive material for certain *in vitro* clinical or laboratory testing in accordance with the general license. In addition to the requirements in subsection (e) of this section, a specific license to manufacture or commercially distribute radioactive material for use in accordance with the general license in §289.251(k)(2) of this title will be issued if the agency approves the following information submitted by the applicant:

(1) (No change.)

(2) that each prepackaged unit bears a durable, clearly visible label:

(A) (No change.)

(B) displaying the radiation caution symbol in accordance with §289.202(z) of this title and the words, "CAUTION, RADIOACTIVE MATERIAL," and "Not for Internal or External Use in Humans or Animals;"[~~;~~]

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

(q)-(r) (No change.)

(s) Specific licenses for the manufacture and commercial distribution of products containing depleted uranium for mass-volume applications.

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

(4) Each person licensed in accordance with paragraph (1) of this subsection shall:

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

(C) assure that before being installed in each product or device, the depleted uranium has been impressed with the following legend clearly legible through any plating or other covering: "Depleted Uranium;"[~~;~~]

(D) furnish a copy of the following:

(i) the general license in §289.251(g)(5) of this title to each person to whom the licensee commercially distributes depleted uranium in a product or device for use in accordance with the general license in §289.251(g)(5) of this title;[~~, or~~]

(ii)-(iii) (No change.)

(E)-(G) (No change.)

(t)-(v) (No change.)

(w) Issuance of specific licenses.

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

(3) The agency may also request additional information after the license has been issued to enable the agency to determine whether the license should be modified.

(x) (No change.)

(y) Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

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

(3) Within 60 days of the occurrence of any of the following, each licensee shall provide notification to the agency in writing and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity, so that the building and/or outdoor area is suitable for release in accordance with §289.202(eee) of this title, or submit within 12 months of notification a decommissioning plan, if required by paragraph (6) of this subsection, and begin decommissioning upon approval of that plan if:

(A) the license has expired in accordance with this subsection or subsection (dd)(3) of this section; [~~or~~]

(B) the licensee has decided to permanently cease principal activities, as defined in §289.201(b) of this title, at the entire site or in any separate building or outdoor area; [~~or~~]

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

(4) Coincident with the notification required by paragraph (3) of this subsection, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee in accordance with subsection (gg) of this section in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance shall be increased, or may be decreased, as appropriate, with agency approval, to cover the detailed cost estimate for decommissioning established in accordance with paragraph (9)(E) of this subsection.

(5)-(13) (No change.)

(14) As the final step in decommissioning, the licensee shall do the following:

(A) (No change.)

(B) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in accordance with the radiological requirements for license termination specified in §289.202(ddd) of this title. The licensee shall do the following, as appropriate:

(i) report the following levels:

(I) gamma radiation in units of microroentgen per hour (μR/hr) (millisieverts per hour (mSv/hr)) at 1 meter (m) from surfaces;

(II) radioactivity, including alpha and beta, in units of disintegrations per minute (dpm) or microcuries (μCi) (megabecquerels (MBq)) per 100 square centimeters (cm^2) for surfaces;

(III) μCi (MBq) per milliliter for water; and

(IV) picocuries (pCi) (becquerels (Bq)) per gram (g) for solids such as soils or concrete; and

[(i) ~~report levels of gamma radiation in units of millisieverts per hour (mSv/hr) (microroentgen per hour (μR/hr)) at 1 meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (MBq) (disintegrations per minute (dpm) or μCi per 100 cm^2 for both removable and fixed for surfaces, MBq (μCi) per milliliter (ml) for water, and becquerels (Bq) (picocuries (pCi)) per gram (g) for solids such as soils or concrete; and~~]

(ii) (No change.)

(15) The agency will provide written notification to specific licensees [~~licenses~~], including former licensees [~~licenses~~] with provisions continued in effect beyond the expiration date in accordance with paragraph (2) of this subsection [~~(y)(2) of this section~~], that the provisions of the license are no longer binding. The agency will provide such notification when the agency determines that:

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

(C) a radiation survey has been performed that demonstrates that the premises are suitable for release in accordance with the radiological requirements for license termination specified in §289.202(ddd) of this title,[~~.~~] or other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the radiological requirements for license termination specified in §289.202(ddd) of this title; and

(D) (No change.)

(16) (No change.)

(z) Renewal of license.

(1) Requests for renewal of specific licenses shall be filed in accordance with subsection (d)(1)-(3) and (5)-(7) [~~(5)~~] of this section. In any application for renewal, the applicant may incorporate drawings by reference.

(2) (No change.)

(aa)-(cc) (No change.)

(dd) Modification and revocation of licenses.

(1) The terms and conditions of all licenses shall be subject to amendment, revision, or modification. A license may be suspended or revoked by reason of amendments to the Act, [~~or~~] by reason of rules in this chapter, or [~~and~~] orders issued by the agency.

(2) Any license may be revoked, suspended, or modified, in whole or in part, for any of the following:

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

(C) violation of, or failure to observe any of the terms and conditions of the Act, this chapter, [~~or of~~] the license, or order of the agency.

(3) Each specific license revoked by the agency ends at the end of the day on the date of he agency's final determination to revoke the license, or on the revocation date stated in the determination, or as otherwise provided by the agency order.

(4) Except in cases in which the occupational and public health, interest or safety requires otherwise, no license shall be modified, suspended, or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the licensee in writing and the licensee shall have been afforded an opportunity to demonstrate compliance with all lawful requirements.

(ee) Reciprocal recognition of licenses.

(1) Subject to this section, any person who holds a specific license from the NRC, any agreement state, or any licensing state, and issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity and at which radiation safety records are normally maintained, is granted a general license to conduct

the activities authorized in such licensing document within the state of Texas provided that:

(A) (No change.)

(B) the out-of-state licensee notifies the agency in writing at least three working days prior to engaging in such activity. If, for a specific case, the three working-day period would impose an undue hardship on the out-of-state licensee, the licensee may, upon application to the agency, obtain permission to proceed sooner. The agency may waive the requirement for filing additional written notifications during the remainder of the calendar year following the receipt of the initial notification from a person engaging in activities in accordance with the general license provided in this subsection. Such notification shall include:

(i) the exact location, start date, duration, and type of activity to be conducted;

(ii)-(vi) (No change.)

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

(2) In addition to the provisions of paragraph (1) of this subsection, any person who holds a specific license issued by the NRC, an agreement state, or a licensing state authorizing the holder to manufacture, transfer, install, or service the device described in §289.251 (h)(1)(C) and (k)(1) of this title, within areas subject to the jurisdiction of the licensing body, is granted a general license to install, transfer, demonstrate, or service the device in the state of Texas provided that:

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

(C) the person assures that any labels required to be affixed to the device in accordance with requirements of the authority that licensed manufacture of the device bear a statement that "Removal of this label is prohibited;"[";] and

(D) (No change.)

(3) (No change.)

(ff) (No change.)

(gg) Financial assurance and record keeping for decommissioning.

(1) The applicant for or holder of each specific license authorizing the possession and use of unsealed radioactive material with a half-life greater than 120 days and in quantities exceeding 10^5 times the applicable quantities set forth in subsection (ii)(2) of this section shall submit a decommissioning funding plan as described in paragraph (4)[(5)] of this subsection in an amount sufficient to allow the agency to engage a third party to decommission the site(s) specified on the license. The decommissioning funding plan shall also be submitted when a combination of isotopes is involved if R divided by 10^5 is greater than 1 (unity rule), where R is defined as the sum of the ratios of the quantity of each isotope to the applicable value in subsection (ii)(2) of this section. Those persons who receive, possess, or process sealed sources as radioactive waste from other persons and who are exempt from §289.254 of this title shall submit a decommissioning funding plan as described in paragraph (4) of this subsection in an amount sufficient to allow the agency to engage a third party to decommission the site(s) specified on the license. Persons who receive, possess, or process sealed sources of radioactive material from other persons for recycle or beneficial reuse and store the sealed sources of radioactive material for longer than two years, are considered to be receiving, possessing, or processing sealed sources of radioactive material as radioactive waste from other persons and shall submit a decommissioning funding plan as described in paragraph (4) of this subsection in an amount sufficient to allow the agency to engage a third party to decommission the site(s) specified on the license.

(2) The applicant for or holder of each specific license authorizing possession and use of radioactive material of half-life greater than 120 days and in quantities specified in paragraph (3) [(4)] of this subsection shall either:

(A) submit a decommissioning funding plan as described in paragraph (4)[(5)] of this subsection in an amount sufficient to allow the agency to engage a third party to decommission the site(s) specified on the license; or

(B) submit [a certification that] financial assurance for decommissioning [has been provided] in the amount in accordance with paragraph (3)[(4)] of this subsection using one of the methods described in paragraph (5)[(6)] of this subsection in an amount sufficient to allow the agency to engage a third party to decommission the site(s) specified on the license. Upon renewal, the holder of a specific license shall certify that the current financial assurance is adequate to meet the requirements of this subparagraph or submit financial assurance that meets the requirements of this subparagraph. For an applicant, the financial [this certification may state that the appropriate] assurance will be obtained after the application has been approved and the license issued, but prior to the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (5)[(6)] of this subsection shall be submitted to the agency before receipt of licensed material. If the applicant does not defer execution of the financial instrument, [as part of the certification,] a signed original of the financial instrument obtained to satisfy the requirements of paragraph (5)[(6)] of this subsection shall be submitted to the agency.

[(3) The holder of each specific license issued:]

[(A) on or after January 1, 1995, that is of a type described in paragraph (2) of this subsection shall provide financial assurance for decommissioning in accordance with the criteria specified in this section;]

[(B) before January 1, 1995, and of a type described in paragraph (1) of this subsection, shall submit on or before January 1, 1995, a decommissioning funding plan or a certification of financial assurance for decommissioning in an amount at least equal to $750,000, in accordance with the criteria specified in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan at this time, the licensee shall include a decommissioning funding plan in any application for license renewal;]

[(C) before January 1, 1995, and of a type described in paragraph (2) of this subsection, shall submit on or before January 1, 1995, a certification of financial assurance for decommissioning or a decommissioning funding plan in accordance with the criteria specified in this section.]

(3) [(4)] The required amount [amounts] of financial assurance for decommissioning is [are] determined by the quantity of material authorized by the license and is determined [and are] as follows:

(A) $850,000 [$750,000] for quantities of material greater than 10^4 but less than or equal to 10^5 times the applicable quantities in subsection (ii)(2) of this section in unsealed form. (For a combination of radionuclides, if R, as defined in paragraph (1) of this subsection, divided by 10^4 is greater than 1 but R divided by 10^5 is less than or equal to one.);

(B) $170,000 [$150,000] for quantities of material greater than 10^3 but less than or equal to 10^4 times the applicable

quantities in subsection (ii)(2) of this section in unsealed form. (For a combination of radionuclides, if R, as defined in paragraph (1) of this subsection, divided by 10^3 is greater than 1 but R divided by 10^4 if less than or equal to one.); or

(C) $85,000 [$75,000] for quantities of material greater than 10^{10} times the applicable quantities in subsection (ii)(2) of this section in sealed sources or plated foils. (For a combination of radionuclides, if R, as defined in paragraph (1) of this subsection, divided by 10^{10} is greater than one.)

(4) [(5)] Each decommissioning funding plan shall contain a cost estimate for decommissioning in an amount sufficient to allow the agency to engage a third party to decommission the site(s) specified on the license and a description of the method of assuring funds for decommissioning from paragraph (5) [(6)] of this subsection, including means of adjusting cost estimates and associated funding levels periodically over the life of the facility. The required amount of financial assurance for decommissioning is determined by the quantity of material authorized by the license. The applicant for or holder of the specific license shall submit with the decommissioning funding plan [The decommissioning funding plan shall also contain a certification by the licensee that financial assurance for decommissioning has been provided in an amount sufficient to allow the agency to engage a third party to decommission the license and] a signed original of the financial instrument obtained to satisfy the requirements of paragraph (5) [(6)] of this subsection. Upon approval of the decommissioning funding plan by the agency, the amount of financial assurance shall be adjusted and posted in conformance with agency approval.

(5) [(6)] Financial assurance for decommissioning shall be provided by one or more of the following methods and shall be reviewed and approved by the agency. The financial instrument obtained shall be continuous for the term of the license.

(A) Prepayment. Prepayment is the deposit prior to issuance of the license [the start of operation] into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(B) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in subsection (ii)(3) of this section. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in subsection (ii)(4) of this section. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in subsection (ii)(5) of this section. For nonprofit entities, such as colleges, universities, and nonprofit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in subsection (ii)(6) of this section. A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning shall contain the following conditions.

(i) The surety method or insurance shall be open-ended or, if written for a specified term, such as five years, shall be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the agency, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance shall also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the agency within 30 days after receipt of notification of cancellation.

(ii) The surety method or insurance shall be payable in the state of Texas to the Radiation and Perpetual Care Fund. [a trust established for decommissioning costs. The trustee and trust shall be acceptable to the agency. An acceptable trustee includes an appropriate state or federal government agency or an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.]

(iii) The surety method or insurance shall remain in effect until the agency has terminated the license.

(C) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions shall be in accordance with subparagraph (B) of this paragraph.

(D) In the case of federal, state, or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount in accordance with paragraph (4) of this subsection, and indicating that funds for decommissioning will be obtained when necessary.

(E) When a governmental entity is assuming custody and ownership of a site, there shall be an arrangement that is deemed acceptable by such governmental entity.

(6) [(7)] Each person licensed in accordance with this section shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the agency. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the agency considers important to decommissioning consists of the following:

(A) records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas, as in the case of possible seepage into porous materials such as concrete. These records shall include any known information on identification of involved nuclides, quantities, forms, and concentrations;

(B) as-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used and/or stored, and of locations of possible inaccessible contamination such as buried pipes that may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute

appropriate records of available information concerning these areas and locations;

(C) except for areas containing only sealed sources (provided the sealed sources have not leaked or no contamination remains after any leak) or byproduct materials having only half-lives of less than 65 days, a list contained in a single document and updated every two years, of the following:

(i) all areas designated and formerly designated as restricted areas as defined in §289.201(b) of this title;

(ii) all areas outside of restricted areas that require documentation under subparagraph (A) of this paragraph; and

(iii) all areas outside of restricted areas where current and previous wastes have been buried as documented in accordance with §289.202(tt) of this title; and

(D) records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

(7) [~~(8)~~] Any licensee who has submitted an application before January 1, 1995, for renewal of license in accordance with this section shall provide financial assurance for decommissioning in accordance with paragraphs (1) and (2) of this subsection. This assurance shall be submitted when this section becomes effective March 1, 1998.

(hh) (No change.)

(ii) Appendices.

(1) (No change.)

(2) Isotope quantities (for use in subsection (gg) of this section).

Figure: 25 TAC §289.252(ii)(2)

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

(5) Criteria relating to use of financial tests and self guarantees for providing reasonable assurance of funds for decommissioning by commercial companies that have no outstanding rated bonds.)

(A) (No change.)

(B) Financial test.

(i) (No change.)

(ii) In addition, to pass the financial test, a company shall meet all of the following requirements:

(I) the company's independent certified public accountant shall have compared the data used by the company in the financial test, that [~~which~~] is required to be derived from the independently audited year end financial statement based on United States generally accepted accounting practices for the latest fiscal year, with the amounts in the financial statement. In connection with that procedure, the licensee shall inform the agency within 90 days of any matters that may cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test;

(II)-(III) (No change.)

(C) (No change.)

(6) Criteria relating to use of financial tests and self-guarantees [~~self-guarantee~~] for providing reasonable assurance of funds for decommissioning by nonprofit entities, such as colleges, universities, and nonprofit hospitals.

(A) (No change.)

(B) Financial test.

(i) To pass the financial test, a college or university shall meet the criteria of subclause (I) or (II) of this clause. The college or university shall meet one of the following:

(I) for applicants or licensees that issue bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poor's [~~Poors~~] or Aaa, Aa, or A as issued by Moody's [~~Moodys~~].

(II) (No change.)

(ii)-(iii) (No change.)

(C) Self-guarantee. The terms of a self-guarantee that an applicant or licensee furnishes shall provide the following:

(i)-(iv) (No change.)

(v) If, at any time, the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poor's [~~Poors~~] or Moody's [~~Moodys~~], the licensee shall provide notice in writing of the fact to the agency within 20 days after publication of the change by the rating service.

(7) (No change.)

(8) Requirements for Demonstrating Financial Qualifications.

(A) If an applicant or licensee is not required to submit financial assurance in accordance with subsection (gg) of this section, that applicant or licensee shall demonstrate financial qualification by submitting attestation that the applicant or licensee is financially qualified to conduct the activity requested for licensure, including any required decontamination, decommissioning, reclamation, and disposal before the agency issues a license.

(B) If an applicant or licensee is required to submit financial assurance in accordance with subsection (gg) of this section, that applicant or licensee shall:

(i) submit one of the following:

(I) the bonding company report or equivalent (from which information can be obtained to calculate a ratio as described in clause (ii) of this subparagraph) that was used to obtain the financial assurance instrument used to meet the financial assurance requirement specified in subsection (gg) of this section. However, if the applicant or licensee posted collateral to obtain the financial instrument used to meet the requirement for financial assurance specified in subsection (gg) of this section, the applicant or licensee shall demonstrate financial qualification by one of the methods specified in subclause (II) or (III) of this clause;

(II) SEC documentation (from which information can be obtained to calculate a ratio as described in clause (ii) of this subparagraph, if the applicant or licensee is a publicly-held company; or

(III) a self-test (for example, an annual audit report certifying a company's assets and liabilities and resulting ratio as described in clause (ii) of this subparagraph or, in the case of a new company, a business plan specifying expected expenses versus capitalization and anticipated revenues).

(ii) declare its Standard Industry Classification (SIC) code. Several companies publish lists, on an annual basis, of acceptable assets-to liabilities (assets divided by liabilities) ratio ranges for each type of SIC code. If an applicant or licensee submits

documentation of its current assets and current liabilities or, in the case of a new company, a business plan specifying expected expenses versus capitalization and anticipated revenues, and the resulting ratio falls within an acceptable range as published by generally recognized companies (for example, Almanac of Business and Industrial Financial Ratios, Industry NORM and Key Business Ratios, Dunn and Bradstreet Industry publications, and Manufacturing USA: Industry Analyses, Statistics, and Leading Companies), the agency will consider that applicant or licensee financially qualified to conduct the requested or licensed activity.

(C) If the applicant or licensee is a state or local government entity, a statement of such will suffice as demonstration that the government entity is financially qualified to conduct the requested or licensed activities.

(D) The agency will consider other types of documentation if that documentation provides an equivalent measure of assurance of the applicant's or licensee's assets and liabilities and the resulting ratio.

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 June 14, 2002.

TRD-200203716
Susan Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 458-7236

♦ ♦ ♦

CHAPTER 289. RADIATION CONTROL

The Texas Department of Health (department) proposes the repeal of §289.254 and new §289.254, concerning the licensing of radioactive waste processing and storage facilities.

Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 289.254 has been reviewed and the department has determined that the reasons for adopting the section continue to exist; however, revisions to the rule are necessary.

The new rule adds requirements for applicants for licensure, and licensees upon renewal, to submit documentation of financial qualification, as required by House Bill 1099 (77th Legislature 2001). The revision increases the specified amounts of financial assurance for decommissioning for certain quantities of radioactive materials authorized on the license, to adjust for inflation. Wording is added to exempt persons who, under certain conditions, receive, possess, or process sealed sources of radioactive material from other persons for recycle or beneficial reuse from the requirements of this section. The new rule also clarifies that if a person stores sealed sources of radioactive material received from other persons for recycle or beneficial reuse for longer than two years, that person is then considered to be receiving the sealed sources of radioactive material as radioactive waste from other persons. Other minor clarifying changes are added to make corrections and to make the section consistent with other sections of this title. The repeal and new rule are part of the department's continuing effort to update, clarify, and simplify its rules regarding the control of radiation based upon technological advances, public concerns, legislative directives, or other factors.

The department published a Notice of Intention to Review for §289.254 as required by Government Code §2001.039 in the *Texas Register* (26 TexReg 6737) on August 31, 2001. No comments were received by the department on this section.

Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, has determined that for each year of the first five years the sections will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections as proposed. The increase in the specified amounts of financial assurance for decommissioning will be held in the Radiation and Perpetual Care Security Trust Account in the event that funds are needed to decommission a site. There is no anticipated impact on local employment.

Mrs. McBurney has also determined that for each year of the first five years the proposed sections will be in effect, the public benefit anticipated as a result of enforcing the sections will be to ensure continued protection of the public, workers, and the environment from unnecessary exposure to radiation by ensuring that applicants/licensees are financially qualified to conduct the licensed activities. The proposed sections also ensures funds required of licensees for financial assurance are adequate to decommission licensed facilities. There will be no fiscal impact from the financial qualification requirement on applicants/licensees that are small businesses, micro-businesses or other persons not required to submit financial assurance. There will not be a fiscal impact because those licensees not required to submit financial assurance may submit attestation of financial qualification. There will also be no fiscal impact from the financial qualification requirement on applicants/licensees that are small businesses, micro-businesses, or other persons required to submit financial assurance. There will not be a fiscal impact because licensees required to submit financial assurance may submit the same types of documentation used to obtain the financial assurance instrument in order to comply with the financial qualification requirement. Licensees that are small businesses, micro-businesses, or other persons required to comply with the section as proposed and choose to submit the financial assurance amount specified in rule, will incur an increase in financial assurance for decommissioning ranging from $10,000 to $100,000 over the lifetime of the license. If a licensee's site is adequately decommissioned, the financial assurance is returned to the licensee at that time.

Comments on the proposal may be presented to Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, Telephone (512) 834-6688 or electronic mail at Ruth.McBurney@tdh.state.tx.us. Public comments will be accepted for 30 days following publication of this proposal in the *Texas Register*. In addition, a public meeting to accept oral comments will be held at 2:30 p.m., Tuesday, July 9, 2002, in Conference Room N218, Texas Department of Health, Bureau of Radiation Control, located at the Exchange Building, 8407 Wall Street, Austin, Texas.

SUBCHAPTER F. LICENSE REGULATIONS

25 TAC §289.254

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

The repeal is proposed under the Health and Safety Code, §401.301, which provides the Texas Board of Health (board) with authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which provides the board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner of health.

The repeal affects Health and Safety Code, Chapter 401, Chapter 12, and implements Government Code, §2001.039.

§289.254. Licensing of Radioactive Waste Processing and Storage Facilities.

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 June 14, 2002.

TRD-200203721
Susan Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 458-7236

♦ ♦ ♦

25 TAC §289.254

The new section is proposed under the Health and Safety Code, §401.301, which provides the Texas Board of Health (board) with authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which provides the board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner of health.

The new section affects Health and Safety Code, Chapter 401, Chapter 12, and implements Government Code, §2001.039.

§289.254. Licensing of Radioactive Waste Processing and Storage Facilities.

(a) Purpose and scope.

(1) This section establishes the requirements for management of commercial radioactive waste processing and storage facilities, the procedures and criteria for the issuance of licenses to receive, possess, transport, store, and process radioactive waste from other persons, and the terms and conditions upon which the agency will issue such licenses.

(2) Except as otherwise provided, this section applies to all persons who transport, receive, possess, store, or process radioactive waste from other persons. In addition to the requirements of this section, all licensees, unless otherwise specified, are subject to the requirements §289.201 of this title (relating to General Provisions for Radioactive Material), §289.202 of this title (relating to Standards for Protection Against Radiation from Radioactive Material), §289.203 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections), §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.205 of this title (relating to Hearing and Enforcement Procedures), §289.252 of this title (relating to Licensing of Radioactive Material), and §289.257 of this title (relating to Packaging and Transportation of Radioactive Material).

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

(1) Commencement of major construction--Any major structural erection or major alterations to existing structures, or other substantial action that would change the facility design or site for the purpose of establishing a radioactive waste processing or storage facility. The term does not mean the acquisition of existing structures or minor changes thereto.

(2) Decommissioning--The final activities carried out at a radioactive waste processing or storage site after completion of processing operations to remove safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and/or termination of the license. Such activities shall include:

(A) disposing of all radioactive waste at a licensed radioactive waste disposal site;

(B) dismantling or decontaminating site structures;

(C) decontaminating site surfaces and remaining equipment; and

(D) conducting final closure surveys, decontamination, and reclamation of the site.

(3) Disposal--Isolation or removal of radioactive wastes from mankind and his environment. The term does not include emissions and discharges under rules of the agency.

(4) Engineered barriers--Man-made devices to contain or limit the potential movement of radioactive material, which might result from spills or other accidents.

(5) Floodplain--The lowland and relatively flat areas adjoining inland and coastal waters, including flood prone areas of offshore islands.

(6) Local government--A county, an incorporated city or town, a special district, or other political subdivision of the state.

(7) Major aquifer--An aquifer that yields large quantities of water in a comparatively large area of the state. Major aquifers are located in the following formations: Ogallala, Alluvium and Bolsom Deposits, Edwards-Trinity (Plateau), Edwards (Balcones Fault Zone - San Antonio Region), Edwards (Balcones Fault Zone - Austin Region), Trinity Group, Carrizo-Wilcox, and Gulf Coast.

(8) Natural barriers--The natural characteristics of a site or surface and subsurface composition that serves to impede the movement of radioactive material. Natural barriers may include, for example, the location of a facility remote from an aquifer, or the sorptive capability of the soil surrounding a facility.

(9) Person affected--A person:

(A) who is a resident of a county, or a county adjacent to the county, in which radioactive materials subject to the Texas Radiation Control Act (Act) are/or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and

(B) who shall demonstrate that he has suffered or will suffer actual injury or economic damage.

(10) Processing--The storage, extraction of materials, transfer, volume reduction, compaction, incineration, solidification, or other separation and preparation of radioactive waste from other persons for reuse or disposal, including any treatment or activity that renders the waste less hazardous, safer for transport, or amenable to recovery, storage, or disposal.

(11) Radioactive waste processing facility--A facility where radioactive waste received from other persons is processed and repackaged according to United States Department of Transportation (DOT) regulations.

(12) Radioactive waste storage facility--A facility where radioactive waste received from other persons and packaged according to DOT regulations is stored while awaiting shipment to a licensed radioactive waste processing or disposal facility.

(13) Reconnaissance level information--Any information or analysis that can be retrieved or generated without the performance of new comprehensive site-specific investigations. Reconnaissance level information includes, but is not limited to, relevant published scientific literature; drilling records required by state agencies, such as the Railroad Commission of Texas, the Texas Environmental Quality Commission (Commission), and the Texas Natural Resources Information System; and reports of governmental agencies.

(14) Site--The real property, including the buffer zone, on which a radioactive waste processing or storage facility may be located.

(15) Site monitoring--The procedures for the monitoring of the site and environment to assess quality of site operations and performance and to detect and quantify levels and types of radioactivity and chemicals in the environment. It includes preoperational, operational, and license termination phases.

(16) Site operations--The routine day-to-day activities carried out at the site for the receipt, processing, and storage of radioactive waste.

(17) Site suitability--The capability of the various characteristics of a processing or storage facility or site to safely contain the radioactive waste expected to be present at the site.

(18) Sole source aquifer--The aquifer that is the sole or principal source of drinking water for an area designated under the Safe Drinking Water Act of 1974, 42 United States Codes Annotated 300f, et seq.

(19) Waste processing and storage categories--Radionuclides classified as follows:

(A) any one of seven groups into which radionuclides in normal form are classified, according to their toxicity and their relative potential hazard in transport, as specified in subsection (v) of this section; and

(B) any radionuclide not specifically listed in one of the categories in subsection (v) of this section shall be assigned to one of the categories in accordance with subsection (v)(2) of this section.

(20) Wetlands--Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that, under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include playa lakes, swamps, marshes, bogs, and similar areas.

(c) Activities requiring license. Except for persons exempted by this section, no person shall receive, possess, and store or process radioactive waste from another person except as authorized in a specific license issued in accordance with this section.

(d) Radioactive waste processing and storage facility classification.

(1) Classification of radioactive waste processing and storage facilities. Radioactive waste processing and storage facilities are classified according to the radionuclides, other than sealed sources, received, possessed, or processed in each of the waste processing and storage categories, as defined in subsection (b) of this section with all applicable provisions, except that, for the purposes of this section which apply to processing and storage of radioactive waste, Category IV shall include waste processing and storage categories IV-VII. The total possession limit of each category of unsealed (dispersible) radionuclides for each class of facility is as follows:
Figure: 25 TAC §289.254(d)(1)

(2) Class III storage facilities are those in which the applicable possession limit of radioactive waste exceeds any limit of Class II storage facilities.

(3) Class III processing facilities are those in which the applicable possession limit of radioactive waste exceeds any limit of Class II processing facilities.

(e) Exemptions.

(1) Sealed sources.

(A) Persons who receive, possess, or process sealed sources of radioactive material as radioactive waste from other persons are exempt from this section, provided that:

(i) encapsulated sources are tested upon receipt and determined to have less than 0.005 microcurie of removable contamination; and

(ii) sealed sources of radioactive material remain in sealed form after receipt.

(B) Persons who receive, possess, or process sealed sources of radioactive material from other persons for recycle or beneficial reuse are exempt from this section, provided that:

(i) encapsulated sources are tested upon receipt and determined to have less than 0.005 microcurie of removable contamination; and

(ii) sealed sources of radioactive material remain in sealed form after receipt.

(C) Persons exempt from the requirements of this section in accordance with subparagraph (A) of this paragraph, shall meet the requirements for financial assurance and record keeping for decommissioning in accordance with §289.252(gg) of this title. Persons who store sealed sources of radioactive material, in accordance with subparagraph (B) of this paragraph, for longer than two years, are considered to be receiving, possessing, or processing sealed sources of radioactive material as radioactive waste from other persons and shall meet the requirements for financial assurance and record keeping for decommissioning in accordance with §289.252(gg) of this title.

(2) Unsealed sources.

(A) Persons who receive, possess, or process sources of radioactive material in unsealed form as radioactive waste from other persons are exempt from this section provided that:

(i) the total radioactivity of all radioactive waste possessed at any one time does not exceed the applicable limits for Class I processing or storage facilities as described in subsection (d) of this section; and

(ii) the total volume of radioactive waste processed in any one year does not exceed 50 cubic feet.

(B) Persons who receive, possess, and store radioactive material in unsealed form as radioactive waste from other persons are exempt from this section provided that:

(i) the radioactive waste consists only of radiopharmaceutical residues resulting from radiopharmaceuticals manufactured, compounded, and supplied by those persons receiving the radiopharmaceutical residues as radioactive waste;

(ii) the radioactive waste is held in storage for decay to background radiation levels; and

(iii) the radioactive waste is not shipped to a radioactive waste processing or disposal facility.

(3) Radioactive material. A person who receives, possesses, and stores radioactive material as radioactive waste from sites owned and controlled by that same person is not considered to have received waste from other persons.

(f) Filing application for a specific license.

(1) The applicant for a license to receive, possess, or process radioactive waste from other persons shall submit, on BRC Form 252-2, "Application for Radioactive Material License," seven copies of each license application or application for amendment and any supporting documents. Applications for issuance of licenses shall include all general and specific technical requirements, financial information, and environmental requirements, if applicable, described in this section.

(2) The agency may at any time after the submission of the original application, require further statements or data to enable the agency to determine whether the application should be denied or the license should be issued.

(3) Each application shall be signed by the chief executive officer or other individual delegated the authority to manage, direct, or administer the licensee's activities.

(4) An application for a license may include a request for one or more of the activities specified in paragraph (1) of this subsection. The agency may require the issuance of separate licenses for those activities.

(5) Each application for a license shall be accompanied by the fee prescribed in §289.204 of this title.

(6) If facility drawings submitted in conjunction with the application for a license are prepared by a professional engineer or engineering firm, those drawings shall be final and shall be signed, sealed and dated in accordance with the requirements of the Texas Board of Professional Engineers, 22 Texas Administrative Code, Chapter 131.

(7) Each application shall clearly demonstrate how the requirements of this subsection and subsections (g), (h), (i), and (j) of this section have been addressed.

(8) Each application shall be accompanied by a completed BRC Form 252-1, (Business Information Form).

(9) Applications for licenses shall be processed in accordance with the following time periods.

(A) The first period is the time from receipt of an application by the Division of Licensing, Registration and Standards to the date of issuance or denial of the license or a written notice outlining why the application is incomplete or unacceptable. This time period is 90 days.

(B) The second period is the time from receipt of the last item necessary to complete the application to the date of issuance or denial of the license. This time period is 90 days.

(C) These time periods are exclusive of any time period incident to hearings and post-hearing activities required by Government Code, Chapters 2001 and 2002.

(10) Notwithstanding the provisions of §289.204(e)(1) of this title, reimbursement of application fees may be granted in the following manner.

(A) In the event the application is not processed in the time periods as stated in paragraph (9) of this subsection, the applicant has the right to request of the director of the Radiation Control Program full reimbursement of all application fees paid in that particular application process. If the director does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.

(B) Good cause for exceeding the period established is considered to exist if:

(i) the number of applications for licenses to be processed exceeds by 15% or more the number processed in the same calendar quarter the preceding year;

(ii) another public or private entity utilized in the application process caused the delay; or

(iii) other conditions existed giving good cause for exceeding the established periods.

(C) If the request for full reimbursement authorized by subparagraph (A) of this paragraph is denied, the applicant may then request a hearing by appeal to the Commissioner of Health for a resolution of the dispute. The appeal will be processed in accordance with the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title (relating to the Texas Board of Health).

(11) Applications for licenses may be denied for the following reasons:

(A) any material false statement in the application or any statement of fact required under provisions of the Act;

(B) conditions revealed by the application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a license on an application; or

(C) failure to clearly demonstrate how the requirements of this section have been addressed.

(g) Additional requirements. An applicant for a license under this section shall include the following information in the application to the agency:

(1) identity of the applicant including the full name, address, telephone number, and description of the business(es) or occupation(s) of the applicant;

(2) the organizational structure of the applicant, both off-site and on-site, including a description of lines of authority and assignments of responsibilities, whether in the form of administrative directives, contract provisions, or otherwise;

(3) a description of past operations that the applicant has been involved in including any license limitations, suspensions or revocations of such licenses, and any other information that will allow the agency to assess the applicant's past operating history;

(4) the technical qualifications, including training and experience, of the applicant and members of the applicant's staff to engage in the proposed activities; and minimum training and experience requirements for personnel;

(5) a description of the personnel training and retraining program;

(6) a statement of need and a description of the proposed activities identifying:

(A) the location of the proposed site;

(B) the character of the proposed activities;

(C) the types, chemical and/or physical forms and quantities of radioactive waste to be received, possessed, and processed; and

(D) the plans for use of the facility for purposes other than processing of radioactive waste;

(7) proposed time schedules for construction and receipt and processing of radioactive waste at the proposed facility;

(8) description of the site and accurate drawings of the facility including, but not limited to:

(A) construction;

(B) foundation details;

(C) ventilation;

(D) plumbing and fire suppression systems;

(E) physical security system;

(F) storage areas;

(G) radioactive waste handling or processing areas;

(H) proximity to creeks or culverts; and

(I) soil types under the facility with respect to compatibility with foundation and structural design;

(9) a description that demonstrates that the site suitability characteristics will meet the following requirements:

(A) the overall hydrogeologic environment of the site, in combination with engineering design, shall act to minimize and control potential radioactive waste migration into surface water and groundwaters;

(B) no new site shall be located in a 100-year floodplain, as designated by the Commission, or a wetland; and

(C) no new site shall be located in the recharge area of a sole source aquifer or a major aquifer unless it can be demonstrated with reasonable assurance that the new site will be designed, constructed, operated, and closed without an unreasonable risk to the aquifer.

(10) minimum criteria for facility design and operation to include:

(A) the building used for processing radioactive wastes shall have a minimum classification of Type II (111) in accordance with National Fire Protection Association 220 titled, "Standards Types of Building Construction";

(i) buildings used for processing or storage of radioactive wastes shall have ventilation and fire protection systems to minimize the release of radioactive materials into the soils, waters, and the atmosphere; and

(ii) facilities and equipment for repackaging leaking and/or damaged containers shall be provided.

(B) the design and operation of the radioactive waste processing or storage facility shall be such that:

(i) releases of non-radiological noxious materials from the facility are minimized; and

(ii) radiation levels, concentrations, and potential exposures off-site due to airborne releases during operations are within the limits established in §289.202 of this title and are maintained as low as reasonably achievable.

(C) the design and operation of the radioactive waste processing or storage facility shall be compatible with the objectives of the site closure and decommissioning funding plan;

(D) the facility shall be designed to confine spills. Independent and diverse engineered barriers shall be provided, as necessary, to complement natural barriers in minimizing potential releases from the facility and in complying with this section;

(E) the location and construction of any new radioactive waste processing facility shall have a buffer zone adequate to permit emergency measures to be implemented following accidents and to address airborne plume dispersions and, as a minimum, shall be such that:

(i) the active components of a Class II facility are located at least 30 meters from the nearest residence as of the date of the license application; and

(ii) the active components of a Class III facility are located at least 30 meters from the nearest property not owned or occupied by the licensee.

(11) a flow diagram of radioactive waste processing operations;

(12) a description and accurate drawings of processing equipment and any required special handling techniques to be employed;

(13) a description of personnel monitoring methods, training, and procedures to be followed to keep employees from ingesting and inhaling radioactive materials, including a description of methods to keep the radiation exposure to levels as low as reasonably achievable;

(14) a description of the site monitoring program to include prelicense data and proposed operational monitoring programs for direct gamma radiation measurements and radioactive and chemical characteristics of the soils, groundwater, surface waters, and vegetation, as applicable;

(A) for radioactive waste storage facilities, the applicant shall address on-site air quality; and

(B) for radioactive waste processing facilities, the applicant shall address on-site and off-site air quality;

(15) spill detection and cleanup plans for the licensed site and for associated transportation of radioactive material;

(16) an operating, safety, and emergency procedures manual that shall provide detailed procedures for receiving, handling, storing, processing, and shipping radioactive waste;

(17) for radioactive waste processing facilities, a description of the equipment to be installed to maintain control over maximum concentrations of radioactive materials in gaseous and liquid effluents produced during normal operations and the means to be employed for

keeping levels of radioactive material in effluents to unrestricted areas as low as reasonably achievable and within the limits listed in §289.202 of this title;

(18) methods of ultimate disposal and decommissioning;

(19) the system for maintaining inventory of receipt, storage, and transfer of radioactive waste; and

(20) demonstration to the agency that the applicant is financially qualified to conduct the licensed activity requested for licensure, including any required decontamination, decommissioning, reclamation, and disposal, before the department issues a license. Each licensee shall demonstrate to the agency that it remains financially qualified to conduct the licensed activity before a license is renewed. Methods for demonstrating financial qualifications are specified in §289.252(ii)(8) of this title. The requirement for demonstration of financial qualification is separate from the requirement specified in subsection (n) of this section for certain applicants or licensees to provide financial assurance in conjunction with a decommissioning funding plan.

(h) Additional environmental requirements for Class III facilities. An application for a license for a class III processing or storage facility shall include environmental information that may be based on reconnaissance level information when appropriate and addresses the following:

(1) description of present land uses and population distribution in the vicinity of the site:

(A) for radioactive waste storage facilities, the description shall address properties adjacent to the site; and

(B) for radioactive waste processing facilities, the description shall address properties adjacent to the site and shall include population distribution within a one-mile radius of the site;

(2) area/site suitability including geology, hydrology, and natural hazards. For radioactive waste processing facilities, area meteorology also shall be addressed;

(3) site and project alternatives including alternative siting analysis;

(4) socioeconomic effects on surrounding communities of operation of the licensed activity and of associated transportation of radioactive material; and

(5) environmental effects of postulated accidents.

(i) Issuance of license.

(1) A license for a radioactive waste processing or storage facility will be issued if the agency finds reasonable assurance that:

(A) the proposed radioactive waste facility will be sited, designed, operated, decommissioned, and closed in accordance with this section;

(B) the issuance of the license will not be inimical to the health and safety of the public or the environment; and

(C) there is no reason to deny the license as specified in subsection (f)(11) of this section.

(2) The agency may also request additional information after the license has been issued to enable the agency to determine whether the license should be modified.

(j) Commencement of major construction. Commencement of major construction is prohibited until 30 days after the agency has given notice that a license is to be granted or renewed, and the environmental analysis is available. If a hearing is requested, the commencement of major construction is prohibited until notice of the contested case hearing is noticed in accordance with the Act. Commencement of major construction subsequent to issuance of the notices is at the economic risk of the applicant.

(k) Commencement of operations. No licensee issued a license under this section may commence operations until the licensee has obtained licenses or permits from other agencies as required by law.

(l) Specific terms and conditions to license.

(1) Each license issued in accordance with this section shall be subject to all the provisions of the Act and applicable rules in this chapter, now or hereafter in effect, and orders of the agency.

(2) No license issued or granted under this section and no right to possess or utilize radioactive material granted by any license issued in accordance with this section shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the agency shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and to applicable rules in this chapter, now and hereafter in effect, and orders of the agency, and shall give its consent in writing.

(3) Each person licensed by the agency in accordance with this section shall confine his use and possession of the radioactive material to the locations and purposes authorized in the license.

(4) A license issued under this section shall include license conditions derived from the evaluations of the application and analyses performed by the agency, including amendments and changes made before a license is issued. License conditions may include, but are not limited to, items in the following categories:

(A) restrictions as to the total radioactive inventory of radioactive waste to be received;

(B) restrictions as to size, shape, and materials and methods of construction of radioactive waste packaging and maximum number of package units stored, at any one time;

(C) restrictions as to the physical and chemical form and radioisotopic content and concentration of radioactive waste;

(D) controls to be applied to restrict access to the site;

(E) controls to be applied to maintain and protect the health and safety of the public and site employees and the environment;

(F) administrative controls, which are the provisions relating to organization, management, and operating procedures; recordkeeping, review and audit; and reporting necessary to assure that activities at the facility are conducted in a safe manner and in conformity with agency rules and license conditions; and

(G) maximum retention time for radioactive waste received at the facility.

(5) Each licensee shall notify the agency, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy.

(6) The notification in paragraph (5) of this subsection shall include:

(A) the bankruptcy court in which the petition for bankruptcy was filed; and

(B) the date of the filing of the petition.

(7) A copy of the petition for bankruptcy shall be submitted to the agency along with the written notification.

(m) Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

(1) Except as provided in subsection (p)(2) of this section, each specific license expires at the end of the day, in the month and year stated in the license.

(2) All license provisions continue in effect beyond the expiration date, with respect to possession of radioactive material until the agency notifies the former licensee in writing that the provisions of the license are no longer binding. During this time, the former licensee shall:

(A) be limited to actions involving radioactive material that are related to decommissioning; and

(B) continue to control entry to restricted areas until the location(s) is suitable for release for unrestricted use in accordance with the requirements in §289.202(ddd) of this title.

(3) Within 60 days of the occurrence of any of the following, each licensee shall provide notification to the agency in writing and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity, so that the building and/or outdoor area is suitable for release in accordance with §289.202(eee) of this title, or submit within 12 months of notification a decommissioning plan, if required by paragraph (6) of this subsection, and begin decommissioning upon approval of that plan:

(A) the license has expired in accordance with this subsection or subsection (s)(3) of this section;

(B) the licensee has decided to permanently cease principal activities, as defined in §289.201(b) of this title, at the entire site or in any separate building or outdoor area;

(C) no principal activities under the license have been conducted for a period of 24 months; or

(D) no principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with §289.202(eee) of this title.

(4) Coincident with the notification required by paragraph (3) of this subsection, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee in accordance with subsection (n) of this section in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance shall be increased, or may be decreased, as appropriate, with agency approval, to cover the detailed cost estimate for decommissioning established in accordance with paragraph (9)(E) of this subsection.

(A) Any licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so by March 1, 1998.

(B) Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site with the approval of the agency.

(5) The agency may grant a request to delay or postpone initiation of the decommissioning process if the agency determines that such relief is not detrimental to the occupational and public health and safety and is otherwise in the public interest. The request shall be submitted no later than 30 days before notification in accordance with paragraph (3) of this subsection. The schedule for decommissioning set forth in paragraph (3) of this subsection may not commence until the agency has made a determination on the request.

(6) A decommissioning plan shall be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the agency and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(A) procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(B) workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(C) procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(D) procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(7) The agency may approve an alternate schedule for submittal of a decommissioning plan required in accordance with paragraph (3) of this subsection if the agency determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the occupational and public health and safety and is otherwise in the public interest.

(8) The procedures listed in paragraph (6) of this subsection may not be carried out prior to approval of the decommissioning plan.

(9) The proposed decommissioning plan for the site or separate building or outdoor area shall include the following:

(A) a description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(B) a description of planned decommissioning activities;

(C) a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(D) a description of the planned final radiation survey;

(E) an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning; and

(F) for decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, a justification for the delay based on the criteria in paragraph (13) of this subsection.

(10) The proposed decommissioning plan will be approved by the agency if the information in the plan demonstrates that the decommissioning will be completed as soon as practicable and that the health and safety of workers and the public will be adequately protected.

(11) Except as provided in paragraph (13) of this subsection, licensees shall complete decommissioning of the site or separate building or outdoor areas as soon as practicable but no later than 24 months following the initiation of decommissioning.

(12) Except as provided in paragraph (13) of this subsection, when decommissioning involves the entire site, the licensee shall

request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

(13) The agency may approve a request for an alternate schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the agency determines that the alternative is warranted by consideration of the following:

(A) whether it is technically feasible to complete decommissioning within the allotted 24 month period;

(B) whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24 month period;

(C) whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(D) whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(E) other site-specific factors that the agency may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, groundwater treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(14) As the final step in decommissioning, the licensee shall do the following:

(A) certify the disposition of all licensed material, including accumulated wastes; and

(B) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in accordance with the radiological requirements for license termination specified in §289.202(ddd) of this title. The licensee shall do the following, as appropriate:

(i) report the following levels:

(I) gamma radiation in units of microroentgen per hour (μR/hr) (millisieverts per hour (mSv/hr)) at 1 meter (m) from surfaces;

(II) radioactivity, including alpha and beta, in units of disintegrations per minute (dpm) or microcuries (μCi) (megabecquerels (MBq)) per 100 square centimeters (cm^2) for surfaces;

(III) μCi (MBq) per milliliter for water; and

(IV) picocuries (pCi) (becquerels (Bq)) per gram (g) for solids such as soils or concrete; and

(ii) specify the manufacturer's name and model and serial number of survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(15) The agency will provide written notification to specific licenses, including former licenses with provisions continued in effect beyond the expiration date in accordance with paragraph (2) of this subsection, that the provisions of the license are no longer binding. The agency will provide such notification when the agency determines that:

(A) radioactive material has been properly disposed;

(B) reasonable effort has been made to eliminate residual radioactive contamination, if present;

(C) a radiation survey has been performed that demonstrates that the premises are suitable for release in accordance with the radiological requirements for license termination specified in §289.202(ddd) of this title or other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the radiological requirements for license termination specified in §289.202(ddd) of this title; and

(D) any outstanding fees in accordance with §289.204 of this title are paid and any outstanding notices of violations of this chapter or of license conditions are resolved.

(16) Each licensee shall submit to the agency all records required by §289.202(nn)(2) of this title before the license is terminated.

(n) Financial assurance and record keeping for decommissioning.

(1) The applicant for or holder of each specific license authorizing the receipt, possession, transport, storage, and processing of radioactive waste from other persons with a half-life greater than 120 days and in quantities exceeding 10^5 times the applicable quantities set forth in §289.252(ii)(2) of this title shall submit a decommissioning funding plan as described in paragraph (4) of this subsection in an amount sufficient to allow the agency to engage a third party to decommission the site(s) specified on the license. The decommissioning funding plan shall also be submitted when a combination of isotopes is involved if R divided by 10^5 is greater than 1 (unity rule), where R is defined as the sum of the ratios of the quantity of each isotope to the applicable value in §289.252(ii)(2) of this title.

(2) The applicant for or holder of each specific license authorizing receipt, possession, transport, storage, and processing of radioactive waste from other persons with a half-life greater than 120 days and in quantities specified in paragraph (3) of this subsection shall:

(A) submit a decommissioning funding plan as described in paragraph (4) of this subsection in an amount sufficient to allow the agency to engage a third party to decommission the site(s) specified on the license; or

(B) submit financial assurance for decommissioning in the amount in accordance with paragraph (3) of this subsection using one of the methods described in paragraph (5) of this subsection in an amount sufficient to allow the agency to engage a third party to decommission the site(s) specified on the license. Upon renewal, the holder of a specific license shall certify that the current financial assurance is adequate to meet the requirements of this subparagraph or submit financial assurance that meets the requirements of this subparagraph. For an applicant, the financial assurance will be obtained after the application has been approved and the license issued, but prior to the receipt of radioactive waste. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (5) of this subsection shall be submitted to the agency before receipt of radioactive waste. If the applicant does not defer execution of the financial instrument, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (5) of this subsection is to be submitted to the agency.

(3) Required amounts of financial assurance. The required amount of financial assurance for decommissioning is determined by quantity of material authorized on the license and is determined as follows:

(A) $850,000 for quantities of material greater than 10^4 but less than or equal to 10^5 times the applicable quantities in §289.252(ii)(2) of this title in unsealed form. (For a combination of radionuclides, if R, as defined in paragraph (1) of this subsection, divided by 10^4 is greater than 1 but R divided by 10^5 is less than or equal to 1.);

(B) $170,000 for quantities of material greater than 10^3 but less than or equal to 10^4 times the applicable quantities in §289.252(ii)(2) of this title in unsealed form. (For a combination of radionuclides, if R, as defined in paragraph (1) of this subsection, divided by 10^3 is greater than 1 but R divided by 10^4 if less than or equal to 1.); or

(C) $85,000 for quantities of material greater than 10^{10} times the applicable quantities in §289.252(ii)(2) of this title in sealed sources or plated foils. (For a combination of radionuclides, if R, as defined in paragraph (1) of this subsection, divided by 10^{10} is greater than one.)

(4) Each decommissioning funding plan shall contain a cost estimate for decommissioning in an amount sufficient to allow the agency to engage a third party to decommission the site(s) specified on the license and a description of the method of assuring funds for decommissioning from paragraph (5) of this subsection, including means of adjusting cost estimates and associated funding levels periodically over the life of the facility. The required amount of financial assurance for decommissioning is determined by the quantity of material authorized by the license. The applicant for or holder of the specific license shall submit with the decommissioning funding plan a signed original of the financial instrument obtained to satisfy the requirements of paragraph (5) of this subsection. Upon approval of the decommissioning funding plan by the agency, the amount of financial assurance shall be adjusted and posted in conformance with agency approval.

(5) Financial assurance for decommissioning shall be provided by one or more of the following methods and shall be reviewed and approved by the agency. The financial instrument obtained shall be continuous for the term of the license.

(A) Prepayment. Prepayment is the deposit prior to issuance of the license into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(B) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in §289.252(ii)(3) of this title. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in §289.252(ii)(4) of this title. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in §289.252(ii)(5) of this title. For nonprofit entities, such as colleges, universities, and nonprofit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in §289.252(ii)(6) of this title. A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning shall contain the following conditions.

(i) The surety method or insurance shall be open-ended or, if written for a specified term, such as five years, shall be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the agency, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance shall also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the agency within 30 days after receipt of notification of cancellation.

(ii) The surety method or insurance shall be payable in the state of Texas to the Radiation and Perpetual Care Fund.

(iii) The surety method or insurance shall remain in effect until the agency has terminated the license.

(C) External sinking fund. An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions shall be in accordance with subparagraph (B) of this paragraph.

(D) Statement of intent. In the case of federal, state, or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount in accordance with paragraph (4) of this subsection, and indicating that funds for decommissioning will be obtained when necessary.

(E) When a governmental entity is assuming custody and ownership of a site, there shall be an arrangement that is deemed acceptable by such governmental entity.

(6) Each person licensed under this section shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the agency. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the agency considers important to decommissioning consists of the following:

(A) records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas, as in the case of possible seepage into porous materials such as concrete. These records shall include any known information on identification of involved nuclides, quantities, forms, and concentrations;

(B) as-built drawings and modifications of structures and equipment in restricted areas where radioactive waste is processed and/or stored, and of locations of possible inaccessible contamination such as buried pipes that may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute

appropriate records of available information concerning these areas and locations;

(C) except for areas containing only sealed sources (provided the sources have not leaked or no contamination remains after any leak) or byproduct materials having only half-lives of less than 65 days, a list contained in a single document and updated every two years, of the following:

(i) all areas designated and formerly designated as restricted areas as defined in §289.201(b) of this title;

(ii) all areas outside of restricted areas that require documentation under subparagraph (A) of this paragraph; and

(iii) all areas outside of restricted areas where current and previous wastes have been buried as documented under §289.202(tt) of this title; and

(D) records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

(7) Any licensee who has submitted an application before January 1, 1995, for renewal of license in accordance with this section shall provide financial assurance for decommissioning in accordance with paragraphs (1) and (2) of this subsection. This assurance shall be submitted when this section becomes effective March 1, 1998.

(o) Emergency plan for responding to a release.

(1) A new or renewal application for each specific license authorizing the receipt, possession, transport, storage, and processing of radioactive waste from other persons in excess of the quantities in §289.252(ii)(7) of this title shall contain either:

(A) an evaluation showing that the maximum dose to a person offsite due to a release of radioactive materials would not exceed 1 rem effective dose equivalent or 5 rems to the thyroid; or

(B) an emergency plan for responding to a release of radioactive waste.

(2) One or more of the following factors may be used to support an evaluation submitted in accordance with paragraph (1)(A) of this subsection:

(A) the radioactive waste is physically separated so that only a portion could be involved in an accident;

(B) all or part of the radioactive waste is not subject to release during an accident because of the way it is stored or packaged;

(C) the release fraction in the respirable size range would be lower than the release fraction shown in §289.252(ii)(7) of this title due to the chemical or physical form of the waste;

(D) the solubility of the radioactive waste would reduce the dose received;

(E) facility design or engineered safety features in the facility would cause the release fraction to be lower than shown in §289.252(ii)(7) of this title;

(F) operating restrictions or procedures would prevent a release fraction as large as that shown in §289.252(ii)(7) of this title; or

(G) other factors appropriate for the specific facility.

(3) An emergency plan for responding to a release of radioactive waste submitted in accordance with paragraph (1)(B) of this subsection shall include the following information:

(A) a brief description of the licensee's facility and area near the site;

(B) an identification of each type of radioactive waste accident for which protective actions may be needed;

(C) a classification system for classifying accidents as alerts or site area emergencies;

(D) identification of the means of detecting each type of accident in a timely manner;

(E) a brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment;

(F) a brief description of the methods and equipment to assess releases of radioactive waste;

(G) a brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying offsite response organizations and the agency; also, responsibilities for developing, maintaining, and updating the plan;

(H) a commitment to and a brief description of the means to promptly notify offsite response organizations and request offsite assistance, including medical assistance for the treatment of contaminated injured onsite workers when appropriate. A control point shall be established. The notification and coordination must be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the agency immediately after notification of the appropriate offsite response organizations and not later than one hour after the licensee declares an emergency. These reporting requirements do not supersede or release licensees of complying with the requirements under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Publication L. 99-499 or other state or federal reporting requirements;

(I) a brief description of the types of information on facility status, radioactive releases, and recommended protective actions, if necessary, to be given to offsite response organizations and to the agency;

(J) a brief description of the frequency, performance objectives, and plans for the training that the licensee will provide workers on how to respond to an emergency, including any special instructions and orientation tours the licensee would offer to fire, police, medical, and other emergency personnel. The training shall familiarize personnel with site-specific emergency procedures. Also, the training shall thoroughly prepare site personnel for their responsibilities in the event of accident scenarios postulated as most probable for the specific site, including the use of team training for such scenarios;

(K) a brief description of the means of restoring the facility to a safe condition after an accident;

(L) provisions for conducting quarterly communications checks with offsite response organizations and biennial onsite exercises to test response to simulated emergencies. Quarterly communications checks with offsite response organizations shall include the check and update of all necessary telephone numbers. The licensee shall invite offsite response organizations to participate in the biennial exercises. Participation of offsite response organizations in biennial exercises, although recommended, is not required. Exercises shall use accident scenarios postulated as most probable for the specific site and the scenarios shall not be known to most exercise participants. The licensee shall critique each exercise using individuals not having direct

implementation responsibility for the plan. Critiques of exercises shall evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques shall be corrected; and

(M) a certification that the applicant has met its responsibilities under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Publication L. 99-499, if applicable to the applicant's activities at the proposed place of processing and/or storage of radioactive waste.

(4) The licensee shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to the agency. The licensee shall provide any comments received within the 60 days to the agency with the emergency plan.

(p) Renewal of license.

(1) Application for renewal of specific licenses shall be filed in accordance with subsection (f) of this section. In any application for renewal, the applicant may incorporate drawings by reference.

(2) In any case in which a licensee, not less than 30 days prior to expiration of the existing license, has filed an application in proper form for renewal or for a new license authorizing the same activities, such existing license shall not expire until the agency has made a final determination on the application.

(3) The licensee is responsible for decommissioning the facility and continued safe storage of any radioactive waste whether an application for continued receipt of wastes is filed or not.

(q) Amendment of license at request of licensee. Applications for amendment of a license shall be filed in accordance with subsection (f) of this section, except that the requirements of subsection (f)(5) of this section may be waived at the discretion of the agency. Such applications shall also specify how the licensee desires his license to be amended and the basis for such amendment.

(r) Agency action on application to renew or amend. In considering a request by a licensee to renew or amend a license, the agency will apply the criteria in subsection (i) of this section.

(s) Modification and revocation of licenses.

(1) The terms and conditions of all licenses shall be subject to amendment, revision, or modification. A license may be suspended or revoked by reason of amendments to the Act, by reason of rules in this chapter, or orders issued by the agency.

(2) Any license may be revoked, suspended, or modified, in whole or in part, for any of the following:

(A) any material false statement in the application or any statement of fact required under provisions of the Act;

(B) conditions revealed by such application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a license on an original application; or

(C) violation of, or failure to observe any of the terms and conditions of the Act, this chapter, the license, or order of the agency.

(3) Each specific license revoked by the agency ends at the end of the day on the date of the agency's final determination to revoke the license, or on the revocation date stated in the determination, or as otherwise provided by the agency order.

(4) Except in cases in which occupational and public health and safety or the environment require otherwise, no license shall be modified, suspended, or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the licensee in writing and the licensee shall have been afforded an opportunity to demonstrate compliance with all lawful requirements.

(t) Waste processing and packaging requirements. All processed radioactive waste offered for transport or disposal shall meet:

(1) all applicable transportation requirements of the agency, the United States Nuclear Regulatory Commission, and of the DOT; and

(2) all applicable disposal facility license conditions.

(u) Environmental assessment. A written analysis of the impact on the human environment will be prepared or secured by the agency for any license for a class III processing or storage facility and shall be available to the public for written comment at least 30 days prior to the beginning of a hearing, if any, on the issuance or renewal of the license.

(v) Waste processing and storage categories of radionuclides.

(1) The following table contains waste processing and storage categories of radionuclides.
Figure: 25 TAC §289.254(v)(1)

(2) Any radionuclide not specifically listed in paragraph (1) of this section shall be assigned to one of the categories in accordance with the following table.
Figure: 25 TAC §289.254(v)(2)

(3) For mixtures of radionuclides, the following shall apply.

(A) If the identity and respective activity of each radionuclide are known, the permissible activity of each radionuclide shall be such that the sum, for all categories present, of the ratio between the total activity for each category to the permissible activity for each category will not be greater than unity.

(B) If the categories of the radionuclides are known but the amount in each category cannot be reasonably determined, the mixture shall be assigned to the most restrictive category present.

(C) If the identity of all or some of the radionuclides cannot be reasonably determined, each of those unidentified radionuclides shall be considered as belonging to the most restrictive category that cannot be positively excluded.

(D) Mixtures consisting of a single radioactive decay chain where the radionuclides are in the naturally occurring proportions shall be considered as consisting of a single radionuclide. The category and activity shall be that of the first member present in the chain, except that if radionuclide "X" has a half-life longer than that of that first member and an activity greater than that of any other member, including the first, at any time during processing, the waste processing and storage category shall be that of nuclide "X" and the activity of the mixture shall be the maximum activity of nuclide "X" during processing.

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 June 14, 2002.

TRD-200203720

Susan Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 458-7236

♦ ♦ ♦

25 TAC §289.260

The Texas Department of Health (department) proposes an amendment to §289.260, concerning the licensing of uranium recovery and byproduct material disposal facilities.

Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 289.260 has been reviewed and the department has determined that the reasons for adopting the section continue to exist; however, revisions to the rule are necessary.

Language is added to clarify methods by which an applicant or licensee shall show financial qualification to conduct the requested/licensed activity. The conditions under which a license application may be denied and the minimum qualifications for a radiation safety officer are included for clarification and for consistency with other licensing sections in this chapter. Language is added requiring facility drawings submitted with an application to be prepared by a professional engineer or engineering firm to ensure accuracy of the drawings. References are updated and minor clarifying language is added/deleted throughout the rule to include *Texas Register* coding errors in the Texas Administrative Code. This amendment is part of the department's continuing effort to update, clarify, and simplify its rules regarding the control of radiation based upon technological advances, public concerns, legislative directives, or other factors.

The department published a Notice of Intention to Review for §289.260 as required by Government Code §2001.039 in the *Texas Register* (26 TexReg 5449) on July 20, 2001. No comments were received by the department on this section.

Mrs. Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, has determined that for each year of the first five years 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 as proposed. There will be no impact on small businesses, micro-businesses, or other persons required to comply with the section as proposed. The requirement to demonstrate financial qualification existed previously and the proposed language clarifies the methods by which to demonstrate financial qualification. There is no anticipated impact on local employment as proposed.

Mrs. McBurney has also determined that for each year of the first five years the proposed section will be in effect, the public benefit anticipated as a result of enforcing the section will be to ensure continued protection of the public, workers, and the environment from unnecessary exposure to radiation by ensuring that applicants/licensees are financially qualified to conduct the licensed activities. There will be no fiscal impact on entities required to comply with the section as proposed. The requirement to demonstrate financial qualification existed previously and the proposed language clarifies the methods by which to demonstrate financial qualification. Other proposed language clarifies what the department has historically accepted as radiation safety officer qualifications and facility drawings and language is being added for consistency with other licensing sections in this chapter.

Comments on the proposal may be presented to Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, telephone (512) 834-6688 or electronic mail at Ruth.McBurney@tdh.state.tx.us. Public comments will be accepted for 30 days following publication of this proposal in the *Texas Register*. In addition, a public meeting to accept oral comments will be held at 10 a.m., Tuesday, July 9, 2002, in Conference Room N218, Texas Department of Health, Bureau of Radiation Control, located at the Exchange Building, 8407 Wall Street, Austin, Texas.

The amendment is proposed under the Health and Safety Code, §401.051, which provides the Texas Board of Health (board) with authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which provides the board with the authority to adopt rules for the performance of each duty imposed by law on the board, the department, and the commissioner of health.

The amendment affects Health and Safety Code, Chapter 401, Chapter 12, and implements Government Code §2001.039.

§289.260. Licensing of Uranium Recovery and Byproduct Material Disposal Facilities.

(a) Purpose. This section provides for the specific licensing of the receipt, possession, use, or disposal of radioactive material in uranium recovery facilities and other operations that [~~which~~] accept byproduct material for disposal [~~byproduct material~~]. No person shall engage in such activities except as authorized in a specific license issued in accordance with [~~pursuant to~~] this section unless otherwise provided for in §289.252 of this title (relating to Licensing of Radioactive Material).

(b) Scope. In addition to the requirements of this section, all licensees, unless otherwise specified, are subject to the requirements of [~~§289.112 of this title (relating to Hearing and Enforcement Procedures)~~ §289.114 ~~of this title (relating to Notices, Instructions, and Reports to Workers; Inspections),~~] §289.201 of this title (relating to General Provisions for Radioactive Material), §289.202 of this title (relating to Standards for Protection Against Radiation from Radioactive Material), §289.203 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections), §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material [~~Material(s)~~] Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.205 of this title (relating to Hearing and Enforcement Procedures), §289.251 of this title (relating to Exemptions, General Licenses, and General License Acknowledgements), §289.252 of this title, and §289.257 of this title (relating to Packaging and Transportation of Radioactive Material).

(c) Definitions. The following words and terms when used in this section [~~part~~] shall have the following meaning unless the context clearly indicates otherwise.

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

(3) Available technology--Technologies and methods for emplacing a final radon barrier on byproduct material piles or impoundments. This term shall not be construed to include extraordinary measures or techniques that would impose costs that are grossly excessive as measured by practice within the industry (or one that is reasonably

analogous), (for example, [e.g.,] by way of illustration only, unreasonable overtime, staffing, or transportation requirements, etc., considering normal practice in the industry; laser fusion of soils; etc.), provided there is reasonable progress toward emplacement of the final radon barrier. To determine grossly excessive costs, the relevant baseline against which costs shall be compared is the cost estimate for tailings impoundment closure contained in the licensee's approved reclamation plan, but costs beyond these estimates shall not automatically be considered grossly excessive.

(4)-(16) (No change.)

(17) Hazardous constituent--Subject to subsection (q)(10)(E) of this section, "hazardous constituent" is a constituent that [which] meets all three of the following tests:

(A) the [The] constituent is reasonably expected to be in or derived from the byproduct material in the disposal area;

(B) the [The] constituent has been detected in the groundwater in the uppermost aquifer; and

(C) the [The] constituent is listed in 10 CFR Part 40, Appendix A, Criterion 13.

(18)-(19) (No change.)

(20) Liner--A continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment that [which] restricts the downward or lateral escape of byproduct material, hazardous constituents, or leachate.

(21) Maximum credible earthquake--That earthquake that [which] would cause the maximum vibratory ground motion based upon an evaluation of earthquake potential considering the regional and local geology and seismology and specific characteristics of local subsurface material.

(22)-(23) (No change.)

(24) Point of compliance--The site-specific location in the uppermost aquifer where the groundwater protection standard shall [must] be met. The objective in selecting the point of compliance is to provide the earliest practicable warning that an impoundment is releasing hazardous constituents to the groundwater. The point of compliance is selected to provide prompt indication of groundwater contamination on the hydraulically downgradient edge of the disposal area.

(25) Principal activities--Activities authorized by the license that [which] are essential to achieving the purpose(s) for which the license is issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(26) Reclamation plan--For the purposes of subsection (q)(16)-(27) of this section, "reclamation plan" is the plan detailing activities to accomplish reclamation of the byproduct material disposal area in accordance with the technical criteria of this section. The reclamation plan shall [must] include a schedule for reclamation milestones that are key to the completion of the final radon barrier, including as appropriate, but not limited to, wind blown tailings retrieval and placement on the pile, interim stabilization (including dewatering or the removal of freestanding liquids and recontouring), and final radon barrier construction. Reclamation of byproduct material shall [must] also be addressed in the closure plan. The detailed reclamation plan may be incorporated into the closure plan.

(27) Security (surety)--The following are examples of security: ["security":]

(A)-(F) (No change.)

(28)-(31) (No change.)

(d) Filing application for specific licenses.

(1) Applications for specific licenses shall be filed in seven [eight] copies on BRC Form 252-2, "Application for Radioactive Material License." [a form prescribed by the agency. Applications for issuance of licenses shall include an environmental report that includes the results of a one-year preoperational monitoring program. Applications for renewal of licenses shall include an environmental report that includes the results of the operational monitoring program.]

(2) The agency may, at any time after the filing of the original application, [and before the expiration of the license,] require further statements or data to enable the agency to determine whether the application should be denied or the [whether a] license should be issued. [granted, modified, or revoked.]

(3) Each application shall be signed by the chief executive officer or other individual delegated the authority to manage, direct, or administer the licensee's activities. [the applicant or licensee or a person legally authorized to act for and on the applicant's or licensee's behalf.]

(4) An application for a license may include a request for one or more activities. The agency may require the issuance of separate licenses for those activities.

(5) The applicant shall demonstrate to the agency that the applicant is financially qualified to conduct the licensed activity, including any required decontamination, decommissioning, reclamation, and disposal, before the agency issues or renews a license. The requirement is different from those in subsection (o) of this section for financial security.

(A) An applicant or licensee shall show financial qualification by submitting one of the following:

(i) the bonding company report or equivalent (from which information can be obtained to calculate a ratio as described in subparagraph (B) of this paragraph) that was used to obtain the financial security instrument used to meet the financial security requirement specified in subsection (o) of this section. However, if the applicant or licensee posted collateral to obtain the financial instrument used to meet the requirement for financial security specified in subsection (o) of this section, the applicant or licensee shall demonstrate financial qualification by one of the methods specified in clause (ii) or (iii) of this subparagraph;

(ii) SEC documentation (from which information can be obtained to calculate a ratio as described in subparagraph (B) of this paragraph), if the applicant or licensee is a publicly-held company; or

(iii) a self-test (for example, an annual audit report, certifying a company's assets and liabilities and resulting ratio (as described in subparagraph (B) of this paragraph) or, in the case of a new company, a business plan specifying expected expenses versus capitalization and anticipated revenues).

(B) Each applicant or licensee must declare its Standard Industry Classification (SIC) code. Several companies publish lists, on an annual basis, of acceptable assets-to-liabilities (assets divided by liabilities) ratio ranges for each type of SIC code. If an applicant or licensee submits documentation of its current assets and current liabilities or, in the case of a new company, a business plan specifying expected expenses versus capitalization and anticipated revenues, and

the resulting ratio falls within an acceptable range as published by generally recognized companies (for example, Almanac of Business and Industrial Financial Ratios, Industry NORM and Key Business Ratios, Dunn and Bradstreet Industry publications, and Manufacturing USA: Industry Analyses, Statistics, and Leading Companies), the agency will consider that applicant or licensee financially qualified to conduct the requested or licensed activity.

(C) The agency will consider other types of documentation if that documentation provides an equivalent measure of assurance of the applicant's or licensee's assets and liabilities and the resulting ratio.

[~~(5) In any application, the applicant may incorporate by reference, information contained in previous applications, statements, or reports filed with the agency, provided that the reference is clear and specific.~~]

[~~(6) Applications and documents submitted to the agency will be made available for public inspection except that the agency may withhold any document or part thereof from public inspection if the applicant or licensee states in writing that disclosure of its content is not required in the public interest and would adversely affect the interest of a person concerned. Exceptions to agency decisions regarding disclosure are subject to the Texas Public Information Act, Government Code, Chapter 552.~~]

(6) [~~(7)~~] An application for a license shall contain written specifications relating to the uranium recovery facility operations [~~,~~] and the disposition of the byproduct material.

(7) [~~(8)~~] Each application shall [~~must~~] clearly demonstrate how the requirements of subsections (d)-(h) and (o)-(r) of this section have been addressed. [~~Failure to clearly demonstrate how these requirements have been addressed shall be grounds for refusing to accept an application for filing.~~]

(8) [~~(9)~~] Each application for a [~~specific~~] license[~~, other than a license exempted from §289.204 of this title,~~] shall be accompanied by the fee prescribed in §289.204 of this title.

(9) [~~(10)~~] Each application shall be accompanied by a completed BRC Form 252-1, (Business Information Form).

(10) [~~(11)~~] Applications for new licenses shall be processed in accordance with the following time periods.

(A) The first period is the [~~a~~] time from receipt of an application by the Division of Licensing, Registration and Standards to the date of issuance or denial of the license or a written notice outlining why the application is incomplete or unacceptable. This time period is 180 days.

(B) The second period is the [~~a~~] time from receipt of the last item necessary to complete the application to the date of issuance or denial of the license. This time period is 180 days.

(C) These time periods are exclusive of any time period incident to hearings and post-hearing activities required by [~~the~~] Government Code, Chapters 2001 and 2002.

(11) [~~(12)~~] Notwithstanding the provisions of §289.204(e)(1) of this title, reimbursement of application fees may be granted in the following manner.

(A) In the event the application is not processed in the time periods as stated in paragraph (10) [~~(11)~~] of this subsection, the applicant has the right to request of the Director of the Radiation Control Program full reimbursement of all application fees paid in that particular application process. If the director [~~Director~~] does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.

(B) Good cause for exceeding the period established is considered to exist if:

(i) the number of applications for licenses to be processed exceeds by 15% or more the number processed in the same calendar quarter the preceding year;

(ii) another public or private entity utilized in the application process caused the delay; or

(iii) other conditions existed giving good cause for exceeding the established periods.

(C) If the request for full reimbursement authorized by subparagraph (A) of this paragraph is denied, the applicant may then request a hearing by appeal to the Commissioner of Health for a resolution of the dispute. The appeal will be processed in accordance with the Formal Hearing Procedures, §§1.21-1.34 of this title (relating to the Texas Board of Health).

(12) Applications for licenses may be denied for the following reasons:

(A) any material false statement in the application or any statement of fact required under provisions of the Texas Radiation Control Act (Act);

(B) conditions revealed by the application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a license on an application; or

(C) failure to clearly demonstrate how these requirements have been addressed.

(e) General requirements for the issuance of specific licenses. A license application will be approved if the agency determines that:

(1) the applicant and all personnel who will be handling the radioactive material are qualified by reason of training and experience to use the material in question for the purpose requested in accordance with these requirements in such a manner as to minimize danger to occupational and [~~protect~~] public health and safety and the environment;

(2) the applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to occupational and [~~protect~~] public health and safety and the environment;

(3) the issuance of the license will not be inimical to occupational and public health and safety nor have a long-term detrimental impact on the environment;

(4) qualifications of the designated radiation safety officer (RSO) are adequate for the purpose requested in the application and include as a minimum:

(A) possession of a high school diploma or a certificate of high school equivalency based on the GED test;

(B) completion of the training and testing requirements specified in this chapter for the activities for which the license application is submitted; and

(C) training and experience necessary to supervise the radiation safety aspects of the licensed activity;

[~~(4) the applicant has demonstrated financial capability to conduct the proposed activity including all costs associated with decommissioning, decontamination, disposal, reclamation, and long-term care and maintenance; and~~]

(5) the applicant satisfies all applicable special requirements in this section; and [.]

(6) there is no reason to deny the license as specified in subsection (d)(12) of this section.

(f) Special requirements for a [specific] license application for uranium recovery and byproduct material disposal facilities. In addition to the requirements [set forth] in subsection (e) of this section, a [specific] license will be issued if the applicant submits the items in paragraph (1) of this subsection for agency approval and meets the conditions in paragraphs (2) and (3) of this subsection [to the agency a satisfactory application as described herein and meets the following other conditions specified.]

(1) An application for a license shall include [an environmental report that addresses] the following:

(A) for new licenses, an environmental report that includes the results of a one-year preoperational monitoring program and for renewal of licenses, an environmental report containing the results of the operational monitoring program. Both shall also include the following:

(i) [(A)] description of the proposed project or action;

(ii) [(B)] area/site characteristics including ecology, geology, topography, hydrology, meteorology, historical and cultural landmarks, and archaeology;

(iii) [(C)] radiological and nonradiological impacts of the proposed project or action, including waterway and groundwater impacts and any long-term impacts;

(iv) [(D)] environmental effects of accidents;

(v) [(E)] byproduct material disposal, decommissioning, decontamination, and reclamation and impacts of these activities; and

(vi) [(F)] site and project alternative;

(B) [(2)] [The applicant shall provide] a closure plan for decontamination, decommissioning, restoration, and reclamation of buildings and the site to levels that would allow unrestricted use and for reclamation of the byproduct material disposal areas in accordance with the technical requirements of subsection (q) of this section;[.]

[(3)] [Unless otherwise exempted, the applicant shall not commence construction at the site until the agency has issued the license. Commencement of construction prior to issuance of the license shall be grounds for denial of a license.]

(C) [(4)] [Prior to issuance of the license, the applicant shall propose, for approval by the agency,] proposal of an acceptable form and amount of financial security consistent with the requirements of subsection (o) of this section; [.]

(D) [(5)] [The applicant shall provide] procedures describing the means employed to meet the requirements of subsections (h)(7) and (8) [(h)(6), (h)(7),] and (q)(15) of this section during the operational phase of any project; [.]

(E) [(6)][An application for a license shall contain] specifications for the emissions control and disposition of the byproduct material; and [.]

(F) [(7)][An application] for disposal of byproduct material from others, [shall include] information on the chemical and radioactive characteristics of the wastes to be received, detailed procedures for receiving and documenting incoming waste shipments, and detailed waste acceptance criteria.

(2) Unless otherwise exempted, the applicant shall not begin construction at the site until the agency has issued the license. Commencement of construction prior to issuance of the license shall be grounds for denial of a license.

(3) Facility drawings submitted in conjunction with the application for a license shall be prepared by a professional engineer or engineering firm. Those drawings shall be final and shall be signed, sealed and dated in accordance with the requirements of the Texas Board of Professional Engineers, 22 Texas Administrative Code, Chapter 131.

(g) Issuance of specific licenses.

(1) When the agency determines [Upon a determination] that an application meets the requirements of the Act [Texas Radiation Control Act (Act)] and the requirements of the agency, the agency will [may] issue a [specific] license authorizing the proposed activity in such form and containing the [such] conditions and limitations as it deems appropriate or necessary.

(2) The agency may incorporate in any license at the time of issuance or thereafter by amendment, additional requirements and conditions with respect to the licensee's receipt, possession, use, and transfer of radioactive material subject to this section[or thereafter by appropriate requirement or order, such additional requirements and conditions] as it deems appropriate or necessary in order to:

(A) minimize danger to occupational and [protect] public health and safety or the environment;

(B) require [such] reports and the keeping of [such] records, and to provide for [such] inspections of activities in accordance with [under] the license as may be appropriate or necessary; and

(C) prevent loss or theft of radioactive material subject to this chapter. [section.]

(3) The agency may also request additional information after the license has been issued to enable the agency to determine whether the license should be modified.

(h) Specific terms and conditions of license.

(1) Each license issued in accordance with this section shall be subject to the applicable provisions of the Act and to applicable rules, now or hereafter in effect, [and to all applicable rules] and orders of the agency.

(2) No license issued in accordance with this section and no right to possess or utilize radioactive material authorized by any license issued in accordance with this section [part] shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the agency shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and to applicable rules, now and hereafter in effect, [and to applicable requirements] and orders of the agency, and shall give its consent in writing.

(3) Each person licensed by the agency in accordance with this section shall confine use and possession of the radioactive [licensed] material to the locations and purposes authorized in the license.

(4) Each licensee shall notify the agency, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy.

(5) The notification in paragraph (4) of this subsection shall include:

(A) the bankruptcy court in which the petition for bankruptcy was filed; and

(B) the date of the filing of the petition.

(6) A copy of the petition for bankruptcy shall be submitted to the agency along with the written notification.

[(4) Each licensee shall notify the agency, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any Chapter of Title 11 (Bankruptcy) of the United States Code (11 USC) by or against:]

[(A) a licensee;]

[(B) an entity (as that term is defined in 11 USC 101(14)) controlling a licensee or listing the license or licensee as property of the estate; or]

[(C) an affiliate (as that term is defined in 11 USC 101(2)) of the licensee.]

[(5) The notification required by paragraph (4) of this subsection must indicate:]

[(A) the bankruptcy court in which the petition for bankruptcy was filed;]

[(B) a copy of the bankruptcy petition; and]

[(C) the date of filing of the petition.]

(7) [(6)] Daily inspection of any byproduct material retention systems shall be conducted by the licensee. General qualifications for [such] individuals conducting [such] inspections shall be approved by the agency. Records of the inspections shall be maintained for review by the agency.

(8) [(7)] In addition to the applicable requirements of §289.202(ww)-(yy) of this title, [and §289.252(r) of this title,] the licensee shall immediately notify the agency of the following:

(A) any failure in a byproduct material retention system that [which] results in a release of byproduct material into unrestricted areas;

(B) any release of radioactive material that [which] exceeds the concentrations for water listed in Table II, Column 2, of §289.202(ggg)(2) of this title and that [which] extends beyond the licensed boundary;

(C) any spill that [which] exceeds 20,000 gallons and that [which] exceeds the concentrations for water listed in Table II, Column 2, of §289.202(ggg)(2) of this title; or

(D) any release of solids that [which] exceeds the [contamination] limits in subsection (i)(4) of this section [§289.202)(ddd) of this title] and that extends beyond the licensed boundary.

(9) [(8)] In addition to the applicable requirements of §289.202(ww)-(yy) of this title, [and §289.252(r) of this title,] the licensee shall notify the agency within 24 hours of the following:

(A) any spill that extends:

(i) beyond the wellfield monitor well ring;

(ii) more than 400 feet from an injection or production well pipe artery to or from a recovery plant; or

(iii) more than 200 feet from a recovery plant; or

(B) any spill that [which] exceeds 2,000 gallons and that [which] exceeds the concentrations for water listed in Table II, Column 2, of §289.202(ggg)(2) of this title.

(10) A licensee shall submit to the agency at five year intervals from the issuance of the license or at the time of renewal, if renewal and reevaluation occur in the same year, continued proof of the licensee's financial qualifications.

(i) Expiration and termination of licenses and decommissioning of sites, separate buildings, or outdoor areas.

(1) Except as provided in paragraph (2)[(4)] of this subsection and subsection (j)(2) of this section, each specific license expires [shall expire] at the end of the day, in the month and year stated in the license.

[(2) Each licensee shall notify the agency immediately, in writing, and request termination of the license when the licensee decides to terminate all activities involving materials authorized under the license. This notification and request for termination of the license must include the reports and information specified in paragraphs (6) and (17) of this subsection. The licensee is subject to the provisions of paragraphs (4)-(18) of this subsection, as applicable.]

[(3) No less than 90 days before the expiration date specified in a specific license, the licensee shall either:]

[(A) submit an application for license renewal under subsection (j) of this section; or]

[(B) notify the agency in writing, under paragraph (2) of this subsection, if the licensee decides to discontinue all activities involving radioactive material.]

(2) [(4)] All license provisions continue [Each specific license continues] in effect[,] beyond the expiration date [if necessary,] with respect to possession of radioactive [source] material until the agency notifies the former licensee in writing that the provisions of the license are no longer binding. [license is terminated.] During this time, the former licensee shall:

(A) be limited to actions involving radioactive material that are related to decommissioning; [limit actions involving source material to those related to decommissioning;] and[,]

(B) continue to control entry to restricted areas until the location(s) is [they are] suitable for release for unrestricted use in accordance with the requirements of paragraph (4) of this subsection. [in accordance with agency requirements.]

(3) [(5)] Within 60 days of the occurrence of any of the following, each licensee shall provide notification to the agency in writing and either begin decommissioning its site, or any separate buildings or outdoor areas that contain residual radioactivity in accordance with the closure plan in subsection (f)(1)(B) [(f)(2)] of this section, so that the buildings or outdoor areas are suitable for release in accordance with paragraph (4) of this subsection [agency requirements,] if:

(A) the license has expired in accordance with paragraph (1) of this subsection; or

(B) the licensee has decided to permanently cease principal activities, as defined in subsection (c)(25) of this section, at the entire site or in any separate building or outdoor area; or

(C) no principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with agency requirements.

(4) Outdoor areas are considered suitable for release for unrestricted use if the following limits are not exceeded.

(A) The concentration of radium-226 or radium-228 in soil, averaged over any 100 square meters (m^2), shall not exceed the background level by more than:

(i) 5 picocuries per gram (pCi/g) (0.185 becquerel per gram (Bq/g)), averaged over the first 15 cm of soil below the surface; and

(ii) 15 pCi/g (0.555 Bq/g), averaged over 15 cm thick layers of soil more than 15 cm below the surface.

(B) The contamination of vegetation shall not exceed 5 pCi/g (0.185 Bq/g), based on dry weight, for radium-226 or radium-228.

(C) The concentration of natural uranium in soil, with no daughters present, averaged over any 100 m^2, shall not exceed the background level by more than:

(i) 30 pCi/g (1.11 Bq/g), averaged over the top 15 cm of soil below the surface; and

(ii) 150 pCi/g (5.55 Bq/g), average concentration at depths greater than 15 centimeters below the surface so that no individual member of the public will receive an effective dose equivalent in excess of 100 mrem (1 mSv) per year.

(5) [~~(6)~~] Coincident with the notification required by paragraph (3) [~~(5)~~] of this subsection, the licensee shall maintain in effect all decommissioning financial security established by the licensee in accordance with subsection (o) of this section in conjunction with a license issuance or renewal or as required by this section. The amount of the financial security shall [~~must~~] be increased, or may be decreased, as appropriate, with agency approval, to cover the detailed cost estimate for decommissioning established in accordance with paragraph (11)(E) [~~(12)(F)~~] of this subsection.

(A) Any licensee who has not provided financial security to cover the detailed cost estimate submitted with the closure plan shall do so on or before September 1, 1998.

(B) Following approval of the closure plan, a licensee may reduce the amount of the financial security, with the approval of the agency, as decommissioning proceeds and radiological contamination is reduced at the site.

(6) [~~(7)~~] In addition to the provisions of paragraph (5) [~~(6)~~] of this subsection, each licensee shall submit an updated closure plan to the agency within 12 months of the notification required by paragraph (3) [~~(5)~~] of this subsection. The updated closure plan shall meet the requirements of subsections (f)(1)(B) [~~(f)(2)~~] and (o) of this section. The updated closure plan shall describe the actual conditions of the facilities and site and the proposed closure activities and procedures.

(7) [~~(8)~~] The agency may grant a request to delay or postpone initiation of the decommissioning process if the agency determines that such relief is not detrimental to the occupational and public health and safety and is otherwise in the public interest. The request shall [~~must~~] be submitted no later than 30 days before notification in accordance with paragraph (3) [~~(5)~~] of this subsection. The schedule for decommissioning [~~set forth~~] in paragraph (3) [~~(5)~~] of this subsection may not begin [~~commence~~] until the agency has made a determination on the request.

(8) [~~(9)~~] A decommissioning plan shall [~~must~~] be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the agency and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(A) procedures [~~Procedures~~] would involve techniques not applied routinely during cleanup or maintenance operations;

(B) workers [~~Workers~~] would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(C) procedures [~~Procedures~~] could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(D) procedures [~~Procedures~~] could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(9) [~~(10)~~] The agency may approve an alternate schedule for submittal of a decommissioning plan required in accordance with paragraph (3) [~~(5)~~] of this subsection if the agency determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the occupational and public health and safety and is otherwise in the public interest.

(10) [~~(11)~~] The procedures listed in paragraph (8)[~~(9)~~] of this subsection may not be carried out prior to approval of the decommissioning plan.

(11) [~~(12)~~] The proposed decommissioning plan for the site or separate building or outdoor area shall [~~must~~] include:

(A) a description of the conditions of the site, separate buildings, or outdoor area sufficient to evaluate the acceptability of the plan;

(B) a description of planned decommissioning activities;

(C) a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(D) a description of the planned final radiation survey;

(E) an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate decommissioning; and

(F) for decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, a justification for the delay based on the criteria in paragraph (15) of this subsection. [~~a justification for the delay based on the criteria in paragraph (16) of this subsection for decommissioning plans calling for completion of decommissioning later than 24 months after plan approval.~~]

(12) [~~(13)~~] The proposed decommissioning plan will be approved by the agency if the information in the plan [~~therein~~] demonstrates that the decommissioning will be completed as soon as practicable and that the occupational health and safety of workers and the public will be adequately protected.

(13) [~~(14)~~] Except as provided in paragraph (15)[~~(16)~~] of this subsection, licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning.

(14) [~~(15)~~] Except as provided in paragraph (15)[~~(16)~~] of this subsection, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

(15) [~~(16)~~] The agency may approve a request for an alternate schedule for completion of decommissioning of the site or separate buildings or outdoor areas[~~area~~], and the license termination if appropriate, if the agency determines that the alternative is warranted by the consideration of the following:

(A) whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(B) whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period; and

(C) other site-specific factors that the agency may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, groundwater treatment activities, monitored natural groundwater restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(16) [~~(17)~~] As the final step in decommissioning, the licensee shall:

(A) certify the disposition of all radioactive [~~licensed~~] material, including accumulated byproduct material;

(B) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in accordance with paragraph (4) of this subsection. [~~in some other manner.~~] The licensee shall, as appropriate;

(i) report the following levels:

(I) gamma radiation in units of microroentgen per hour (μR/hr) (millisieverts per hour (mSv/hr)) at 1 meter (m) from surfaces;

(II) radioactivity, including alpha and beta, in units of disintegrations per minute (dpm) or microcuries (μCi) (megabecquerels (MBq)) per 100 square centimeters (cm^2) for surfaces;

(III) μCi (MBq) per milliliter for water; and

(IV) picocuries (pCi) (becquerels (Bq)) per gram (g) for solids such as soils or concrete; and

~~*f(i)* report levels of gamma radiation in units of microroentgen per hour (micro;R/hr) (millisieverts per hour (mSv/hr)) at 1 meter (m) from surfaces, and report levels of radioactivity, including alpha and beta, in units of disintegrations per minute (dpm) or microcuries (micro;Ci) (megabecquerels (MBq)) per 100 square centimeters (cm[sup]2[/sup]) removable and fixed for surfaces, micro;Ci (MBq) per milliliter for water, and picocuries (pCi) (becquerels (Bq)) per gram (g) for solids such as soils or concrete; and]~~

(ii) specify the manufacturer's name, and model and serial number of survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(17) [~~(18)~~] The agency will provide written notification to specific licensees, including former licensees with license provisions continued in effect beyond the expiration date in accordance with paragraph (2) of this subsection, that the provisions of the license are no longer binding. The agency will provide such notification when the agency determines that: [~~Specific licenses, including expired licenses, will be terminated by license amendment when the agency determines that:~~]

(A) radioactive material [~~source material and byproduct material~~] has been properly disposed;

(B) reasonable effort has been made to eliminate residual radioactive contamination, if present;

(C) a radiation survey has been performed that [~~which~~] demonstrates that the premises are suitable for release in accordance with agency requirements;

(D) other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the requirements of paragraph (4) of this subsection; [~~agency requirements;~~]

(E) all records required by §289.202(nn)(2) of this title have been submitted to the agency; [~~records required by §289.251(l)(4)(C) of this title have been received;~~]

(F) the licensee has paid any outstanding fees required by §289.204 of this title and has resolved any outstanding notice(s) of violation issued to the licensee;

(G) the licensee has met the applicable technical and other requirements for closure and reclamation of a byproduct material disposal site; and

(H) the United States Nuclear Regulatory Commission (NRC) has made a determination that all applicable standards and requirements have been met.

(18) [~~(19)~~] Licenses [~~Specific licenses~~] for uranium recovery and byproduct material disposal are exempt from paragraphs (3)(C), (6), and (7) [~~(5)(C), (7), and (8)~~] of this subsection with respect to reclamation of byproduct material impoundments and/or disposal areas. Timely reclamation plans for byproduct material disposal areas shall [~~must~~] be submitted and approved in accordance with subsection (q)(16)-(27) of this section.

~~[(20) The agency may terminate a specific license upon written request submitted by the licensee to the agency in accordance with this subsection.]~~

(19) [~~(21)~~] A licensee may request that a subsite or a portion of a licensed site be released for unrestricted use before full license termination as long as release of the area of concern will not adversely impact the remaining unaffected areas and will not be recontaminated by ongoing authorized activities. When the licensee is confident that the area of concern will be acceptable to the agency for release for unrestricted use, a written request for release for unrestricted use and agency confirmation of closeout work performed shall [~~must~~] be submitted to the agency. The request should include a comprehensive report, accompanied by survey and sample results that show contamination is less than the limits specified in paragraph (4) of this subsection [~~§289.202(ddd) of this title~~] and an explanation of how ongoing authorized activities will not adversely affect the area proposed to be released. Upon confirmation by the agency that the area of concern is releasable for unrestricted use, the licensee may apply for a license amendment, if required.

(j) Renewal of license.

(1) Request for renewal of specific licenses shall be filed in accordance with subsections (d)(1)-(8) and (10), and (f)(1) of this section. [~~subsection (d) of this section with the exception of subsection (d)(9) of this section.~~] In any application for renewal, the applicant may incorporate drawings by reference.

(2) In any case in which a licensee, not less than 30 [~~90~~] days prior to expiration of the existing license, has filed a request in proper form for renewal or for a new license authorizing the same activities, such existing license shall not expire until the application has been finally determined by the agency.

(k) (No change.)

(l) Agency action on applications to renew or amend. In considering a request by a licensee to renew or amend a [~~the~~] license, the agency will apply the appropriate criteria [~~set forth~~] in subsections (e) and (f) of this section.

(m) Transfer of material.

(1) No licensee shall transfer radioactive material except as authorized in accordance with this chapter. [~~section.~~]

(2) Except as otherwise provided in a license and subject to the provisions of paragraphs (3) and (4) of this subsection, any licensee may transfer radioactive material:

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

(D) to any person authorized to receive such material in accordance with [~~under~~] terms of a general license or its equivalent, [~~or~~] a specific license or equivalent licensing document [~~documents,~~] issued by the agency, the NRC, any agreement state, any licensing state, or to any person otherwise authorized to receive such material by the federal government or any agency of the federal government, [~~thereof,~~] or the agency; [~~, or any agreement state;~~]

(E)-(F) (No change.)

(3) Before transferring radioactive material to a specific licensee of the agency, the NRC, an agreement state, a licensing state, or to a general licensee who is required to register with the agency, [~~the NRC, or an agreement state prior to receipt of the radioactive material,~~] the licensee transferring the radioactive material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(4)-(5) (No change.)

(n) Modification and revocation of licenses.

(1) The terms and conditions of all licenses shall be subject to amendment, revision, or modification. A license may be suspended or revoked by reason of amendments to the Act, [~~or~~] by reason of rules in this chapter, or orders issued by the agency.

(2) Any license may be revoked, suspended, or modified, in whole or in part for any of the following:

(A) [~~for~~] any material false statement in the application or any statement of fact required under provisions of the Act; [~~or~~]

(B) [~~because of~~] conditions revealed by such application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to issue a license on an original application; or

(C) [~~for~~] violation of, or failure to observe any of the [~~applicable~~] terms and conditions of the Act, this chapter, [~~or of~~] the license, [~~or of any requirement~~] or order of the agency.

(3) Except in cases [~~of willful violation of the Act or these requirements or cases~~] in which [~~protection of the~~] occupational and public health and safety or the environment require otherwise, no license shall be modified, suspended, or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the licensee in writing and the licensee shall have been afforded an opportunity to demonstrate [~~or achieve~~] compliance with all lawful requirements.

[~~(4) The agency may terminate a specific license upon written request submitted by the licensee to the agency in accordance with subsection (i) of this section.~~]

(4) [~~(5)~~] Each specific license revoked by the agency expires at the end of the day on the date of the agency's [~~Agency's~~] final determination to revoke the license, or on the revocation [~~expiration~~] date stated in the determination, or as otherwise provided by agency order.

(o) Financial security requirements.

(1) Financial security for decontamination, decommissioning, reclamation, restoration, disposal, and any other requirements of the agency shall be established by each licensee prior to the commencement of operations to assure that sufficient funds will be available to carry out the decontamination and decommissioning of buildings and the site and for the reclamation of any byproduct material disposal areas. The amount of funds to be ensured by such security arrangements shall [~~must~~] be based on agency-approved cost estimates in an agency-approved closure plan for:

(A) decontamination and decommissioning of buildings and the site to levels that [~~which~~] allow unrestricted use of these areas upon decommissioning; and

(B) (No change.)

(2) (No change.)

(3) The security shall [~~must~~] also cover the payment of the charge for long-term surveillance and control for byproduct material disposal areas required by subsection (p)(3) of this section.

(4) (No change.)

(5) The security shall be continuous for the term of the license and shall be payable in the state of Texas to the Radiation and Perpetual Care Fund.

(6) [~~(5)~~] The licensee's security mechanism will be reviewed annually by the agency to assure that sufficient funds would be available for completion of the reclamation plan if the work had to be performed by an independent contractor. The amount of security liability should be adjusted to recognize any increases or decreases resulting from inflation, changes in engineering plans, activities performed, and any other conditions affecting costs.

(7) [~~(6)~~] Regardless of whether reclamation is phased through the life of the operation or takes place at the end of operations, an appropriate portion of security liability shall [~~must~~] be retained until final compliance with the reclamation plan is determined. This will yield a security that is at least sufficient at all times to cover the costs of decommissioning and reclamation of the areas that are expected to be disturbed before the next license renewal. The term of the security mechanism shall [~~must~~] be open ended. [~~unless it can be demonstrated that another arrangement would provide an equivalent level of assurance.~~] This assurance would be provided with a security instrument that is written for a specified period of time (for example, [~~e.g.,~~] five years) yet which shall[~~must~~] be automatically renewed unless the security notifies the agency and the licensee some reasonable time (for example, [~~e.g.,~~] 90 days) prior to the renewal date of their intention not to renew. In such a situation the security requirement still exists and the licensee would be required to submit an acceptable replacement security within a brief period of time to allow at least 60 days for the agency to collect.

(8) [~~(7)~~] Proof of forfeiture shall [~~must~~] not be necessary to collect the security so that in the event that the licensee could not provide an acceptable replacement security within the required time, the security shall be automatically collected prior to its expiration. The conditions described above would have to be clearly stated on any security instrument, [~~which is not open-ended,~~] and shall [~~must~~] be agreed upon by all parties.

(9) [~~(8)~~] Self-insurance, or any arrangement that essentially constitutes self insurance (for example, [~~e.g.,~~] a contract with a state or federal agency), will not satisfy the security requirement since this provides no additional assurance other than that which already exists through license requirements.

(p) Long-term care and maintenance requirements.

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

(3) A minimum charge of $250,000 (1978 dollars) or more, if demonstrated as necessary by the agency, shall be paid into the Radiation and Perpetual Care Fund to cover the costs of long-term care and maintenance. The total charge shall be paid prior to the termination of a license. With agency approval, the charge may be paid in installments. The total or unpaid portion of the charge shall be covered during the term of the license by additional security meeting the requirements of subsection (o) of this section. If site surveillance, control, or maintenance requirements at a particular site are determined, on the basis of a site-specific evaluation, to be significantly greater (for example,[~~e.g.,~~] if fencing or monitoring is determined to be necessary), the agency may specify a higher charge. The total charge shall [~~must~~] be such that, with an assumed 1.0% annual real interest rate, the collected funds will yield interest in an amount sufficient to cover the annual costs of site care, surveillance, and where necessary, maintenance. Prior to actual payment, the total charge will be adjusted annually for inflation. The inflation rate to be used is that indicated by the change in the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics.

(4) (No change.)

(q) Technical requirements.

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

(3) The site selection process shall [~~must~~] be an optimization to the maximum extent reasonably achievable in terms of these site features.

(4)-(5) (No change.)

(6) The applicant's environmental report shall evaluate alternative sites and disposal methods and shall consider disposal of byproduct material by placement below grade. Where full below grade burial is not practicable, the size of retention structures, and size and steepness of slopes associated with exposed embankments shall be minimized by excavation to the maximum extent reasonably achievable or appropriate given the geologic and hydrologic conditions at a site. In these cases, it shall [~~must~~] be demonstrated that an above grade disposal program will provide reasonably equivalent isolation of the byproduct material from natural erosional forces.

(7) To avoid proliferation of small waste disposal sites and thereby reduce perpetual surveillance obligations, byproduct material from in situ extraction operations, such as residues from solution evaporation or contaminated control processes, and wastes from small remote above ground extraction operations shall [~~must~~] be disposed of at existing large mill tailings disposal sites; unless, considering the nature of the wastes, such as their volume and specific activity, and the costs and environmental impacts of transporting the wastes to a large disposal site, such offsite disposal is demonstrated to be impracticable or the advantages of onsite burial clearly outweigh the benefits of reducing the perpetual surveillance obligations.

(8) The following site and design requirements shall be adhered to whether byproduct material is disposed of above or below grade:

(A) the upstream rainfall catchment areas shall [~~must~~] be minimized to decrease erosion potential by flooding that [~~which~~] could erode or wash out sections of the byproduct material disposal area;

(B) (No change.)

(C) the embankment and cover slopes shall be relatively flat after final stabilization to minimize erosion potential and to provide conservative factors of safety assuring long term stability. The objective should be to contour final slopes to grades that [~~which~~] are as close as possible to those that [~~which~~] would be provided if byproduct material was disposed of below grade. Slopes shall not be steeper than 5 horizontal to 1 vertical (5h:1v), except as specifically authorized by the agency. Where steeper slopes are proposed, reasons why a slope steeper than 5h:1v would be as equally resistant to erosion shall be provided, and compensating factors and conditions that [~~which~~] make such slopes acceptable shall be identified;

(D) (No change.)

(E) where a full vegetative cover is not likely to be self-sustaining due to climatic conditions, such as in semi-arid and arid regions, rock cover shall be employed on slopes of the impoundment system. The agency will consider relaxing this requirement for extremely gentle slopes, such as those that [~~which~~] may exist on the top of the pile;

(F) (No change.)

(G) individual rock fragments shall be dense, sound, and resistant to abrasion, and shall [~~must~~] be free from cracks, seams, and other defects that would tend to unduly increase their destruction by erosion and weathering action. Local rock materials are permissible provided the characteristics under local climatic conditions indicate similar long-term performance as a protective layer. Weak, friable, or laminated aggregate may not be used;

(H) rock covering of slopes may not be required where top covers are very thick (on the order of 10 m or greater); impoundment slopes are very gentle (on the order of 10h:1v or less); bulk cover materials have inherently favorable erosion resistance characteristics; [~~and~~] there is negligible drainage catchment area upstream of the pile; [~~,~~] and there is good wind protection;

(I)-(K) (No change.)

(9) Groundwater protection. The following groundwater protection requirements and those in paragraphs (10) and (11) of this subsection and subsection (s) of this section apply during operations and until closure is completed. Groundwater monitoring to comply with these standards is required by paragraphs (28) and (29) of this subsection.

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

(C) The applicant or licensee will be exempted from the requirements of subparagraph (A) of this paragraph if the agency finds, based on a demonstration by the applicant or licensee, that alternate design and operating practices, including the closure plan, together with site characteristics will prevent the migration of any hazardous constituents into groundwater or surface water at any future time. In deciding whether to grant an exemption, the agency will consider:

(i)-(iii) (No change.)

(iv) all other factors that [~~which~~] would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(D)-(E) (No change.)

(10) Byproduct materials shall be managed to conform to the following secondary groundwater protection requirements:

(A) hazardous constituents, as defined in subsection (c)(17) of this section, entering the groundwater from a licensed site shall [~~must~~] not exceed the specified concentration limits in the uppermost aquifer beyond the point of compliance during the compliance period.

(B)-(E) (No change.)

(F) In making any determinations under subparagraphs (E) and (H) of this paragraph about the use of groundwater in the area around the facility, the agency will consider any identification of underground sources of drinking water and exempted aquifers made by the United States Environmental Protection Agency (EPA) and the Texas Natural Resource Conservation Commission (Commission).

(G) (No change.)

(H) Alternate concentration limits to background concentration or to the drinking water limits in subsection (s) of this section that present no significant hazard may be proposed by licensees for agency consideration. Licensees shall provide the basis for any proposed limits including consideration of practicable corrective actions, evidence that limits are as low as reasonably achievable, and information on the factors the agency shall [~~must~~] consider. The agency will establish a site-specific alternate concentration limit for a hazardous constituent, as provided in subparagraph (G) of this paragraph, if it finds that the proposed limit is as low as reasonably achievable, after considering practicable corrective actions, and that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In making the present and potential hazard finding, the agency will consider the factors listed in subparagraph (D) of this paragraph.

(11) If the groundwater protection standards established under subparagraph (D) of this paragraph are exceeded at a licensed site, a corrective action program shall [~~must~~] be put into operation as soon as is practicable, and in no event later than 18 months after the agency finds that the standards have been exceeded. The licensee shall submit the proposed corrective action program and supporting rationale for agency approval prior to putting the program into operation, unless otherwise directed by the agency. The licensee's proposed program shall [~~must~~] address removing or treating in place any hazardous constituents that exceed concentration limits in groundwater between the point of compliance and downgradient licensed site boundary. The licensee shall continue corrective action measures to the extent necessary to achieve and maintain compliance with the groundwater protection standard. The agency will determine when the licensee may terminate corrective action measures based on data from the groundwater monitoring program and other information that provides reasonable assurance that the groundwater protection standard will not be exceeded.

(12) In developing and conducting groundwater protection programs, applicants and licensees shall also consider the following:

(A) (No change.)

(B) mill process designs that [~~which~~] provide the maximum practicable recycle of solutions and conservation of water to reduce the net input of liquid to the byproduct material impoundment;

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

(13)-(15) (No change.)

(16) In disposing of byproduct material, licensees shall place an earthen cover over the byproduct material at the end of the facility's operations and shall close the waste disposal area in accordance with a design that [~~which~~] provides reasonable assurance of control of radiological hazards to the following:

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

(17) In computing required byproduct material cover thicknesses, moisture in soils in excess of amounts found normally in similar soils in similar circumstances shall not be considered. Direct gamma exposure from the byproduct material should be reduced to background levels. The effects of any thin synthetic layer shall not be taken into account in determining the calculated radon exhalation level. Cover shall not include materials that [~~which~~] contain elevated levels of radium. Soils used for near-surface cover shall [~~must~~] be essentially the same, as far as radioactivity is concerned, as that of surrounding surface soils. If non-soil materials are proposed as cover materials, the licensee shall demonstrate that such materials will not crack or degrade by differential settlement, weathering, or other mechanisms over the long term.

(18) As soon as reasonably achievable after emplacement of the final cover to limit releases of radon-222 from uranium byproduct material and prior to placement of erosion protection barriers of other features necessary for long-term control of the tailings, the licensee shall verify through appropriate testing and analysis that the design and construction of the final radon barrier is effective in limiting releases of radon-222 to a level not exceeding 20pCi/m^2s [~~20 pCi/m[sup]2[/sup]s~~] averaged over the entire pile or impoundment using the procedures described in Appendix B, method 115 of 40 CFR Part 61, or another method of verification approved by the agency as being at least as effective in demonstrating the effectiveness of the final radon barrier.

(19) When phased emplacement of the final radon barrier is included in the applicable reclamation plan, as defined in subsection (c)(26) of this section, the verification of radon-222 release rates required in paragraph (30) of this subsection shall [~~must~~] be conducted for each portion of the pile or impoundment as the final radon barrier for that portion is emplaced.

(20) Within 90 days of the completion of all testing and analysis relevant to the required verification in paragraphs (30)(C) and (30)(D) of this subsection, the uranium recovery licensee shall report to the agency the results detailing the actions taken to verify that levels of release of radon-222 do not exceed 20 pCi/m^2s [~~20 pCi/m[sup]2[/sup]s~~] when averaged over the entire pile or impoundment. The licensee shall maintain records documenting the source of input parameters, including the results of all measurements on which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. These records shall be maintained until termination of the license and shall be kept in a form suitable for transfer to the custodial agency at the time of transfer of the site to the state or federal government in accordance with subsection (r) of this section.

(21) Near-surface cover materials may not include waste, rock, or other materials that contain elevated levels of radium. Soils used for near-surface cover shall [~~must~~] be essentially the same, as far as radioactivity is concerned, as surrounding surface soils. This is to ensure that surface radon exhalation is not significantly above background because of the cover material itself.

(22) The design requirements for longevity and control of radon releases apply to any portion of a licensed and/or disposal site unless such portion contains a concentration of radium in land averaged over areas of 100 square meters (m^2) [~~(m[sup]2[/sup])~~], that, as a result of byproduct material, does not exceed the background level by more than:

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

(23) (No change.)

(24) For impoundments containing uranium byproduct materials, the final radon barrier shall [~~must~~] be completed as expeditiously as practicable considering technological feasibility after the pile or impoundment ceases operation in accordance with a written reclamation plan, as defined in subsection (c)(26) of this section, approved by the agency, by license amendment. (The term "as expeditiously as practicable considering technological feasibility" includes "factors beyond the control of the licensee.") Deadlines for completion of the final radon barrier and applicable interim milestones shall [~~must~~] be established as license conditions. Applicable interim milestones may include, but are not limited to, the retrieval of windblown byproduct material and placement on the pile and the interim stabilization of the byproduct material (including dewatering or the removal of freestanding liquids and recontouring). The placement of erosion protection barriers or other features necessary for long-term control of the byproduct material shall [~~must~~] also be completed in a timely manner in accordance with a written reclamation plan approved by the agency by license amendment.

(25) The agency may approve by license amendment a licensee's request to extend the time for performance of milestones related to emplacement of the final radon barrier if, after providing an opportunity for public participation, the agency finds that the licensee has adequately demonstrated in the manner required in paragraph (18) of this subsection that releases of radon-222 do not exceed an average of 20 pCi/m^2s. [~~20 pCi/m[sup]2[/sup]s~~] If the delay is approved on the basis that the radon releases do not exceed 20 pCi/m^2s, [~~20 pCi/m[sup]2[/sup]s~~] a verification of radon levels, as required by paragraph (18) of this subsection, shall [~~must~~] be made annually during the period of delay. In addition, once the agency has established the date in the reclamation plan for the milestone for completion of the final radon barrier, the agency may by license amendment extend that date based on cost if, after providing an opportunity for public participation, the agency finds that the licensee is making good faith efforts to emplace the final radon barrier, the delay is consistent with the definition of "available technology," and the radon releases caused by the delay will not result in a significant incremental risk to the public health.

(26) The agency may authorize by license amendment, upon licensee request, a portion of the impoundment to accept uranium byproduct material, or such materials that are similar in physical, chemical, and radiological characteristics to the uranium mill tailings and associated wastes already in the pile or impoundment, from other sources during the closure process. No such authorization will be made if it results in a delay or impediment to emplacement of the final radon barrier over the remainder of the impoundment in a manner that will achieve levels of radon-222 releases not exceeding 20 pCi/m^2s [~~20 pCi/m[sup]2[/sup]s~~] averaged over the entire impoundment. The verification required in paragraph (18) of this subsection may be completed with a portion of the impoundment being used for further disposal if the agency makes a final finding that the impoundment will continue to achieve a level of radon-222 release not exceeding 20 pCi/m^2s [~~20 pCi/m[sup]2[/sup]s~~] averaged over the entire impoundment. After the final radon barrier is complete except for the continuing disposal area, only byproduct material will be authorized for disposal, and the disposal will be limited to the specified existing disposal area. This authorization by license amendment will only be made after providing opportunity for public participation. Reclamation of the disposal area, as appropriate, shall [~~must~~] be completed in a timely manner after disposal operations cease in accordance with paragraph (16) of this subsection. These actions are not required to be complete as part of meeting the deadline for final radon barrier construction.

(27)-(28) (No change.)

(29) The licensee shall establish a detection monitoring program needed for the agency to set the site-specific groundwater protection standards in paragraph (10)(D) of this subsection. For all monitoring under this paragraph, the licensee or applicant will propose, as license conditions for agency approval, which constituents are to be monitored on a site-specific basis. The data and information shall provide a sufficient basis to identify those hazardous constituents that [~~which~~] require concentration limit standards and to enable the agency to set the limits for those constituents and compliance period. They may provide the basis for adjustments to the point of compliance. The detection monitoring program shall [~~must~~] be in place when specified by the agency in orders or license conditions. Once groundwater protection standards have been established in accordance with paragraph (10)(D) of this subsection, the licensee shall establish and implement a compliance monitoring program. In conjunction with a corrective action program, the licensee shall establish and implement a corrective action monitoring program to demonstrate the effectiveness of the corrective actions. Any monitoring program required by this paragraph may be based on existing monitoring programs to the extent the existing programs can meet the stated objective for the program.

(30) Systems shall be designed and operated so that all airborne effluent releases are as low as is reasonably achievable. The primary means of accomplishing this shall be by means of emission controls. Institutional controls, such as extending the site boundary and exclusion area, may be employed to ensure that offsite exposure limits are met, but only after all practicable measures have been taken to control emissions at the source.

(A) During operations and prior to closure, radiation doses from radon emissions from surface impoundments of byproduct materials shall [~~must~~] be kept as low as is reasonably achievable.

(B) (No change.)

(C) To control dusting from byproduct material, that portion not covered by standing liquids shall be wetted or chemically stabilized to prevent or minimize blowing and dusting to the maximum extent reasonably achievable. This requirement may be relaxed if byproduct material are effectively sheltered from wind, as in the case of below-grade disposal. Consideration shall be given in planning byproduct material disposal programs to methods for phased covering and reclamation of byproduct material impoundments. To control dusting from diffuse sources, applicants/licensees shall develop written operating procedures specifying the methods of control that [~~which~~] will be utilized.

(D) (No change.)

(E) Byproduct materials shall [~~must~~] be managed so as to conform to the applicable provisions of 40 CFR 440, as codified on January 1, 1983.

(31) (No change.)

(32) The agency may find that the proposed alternatives meet the agency's requirements if the alternatives will achieve a level of stabilization and containment of the sites concerned and a level of protection for the public health and safety and the environment from radiological and nonradiological hazards associated with the sites, which

is equivalent to, to the extent practicable, or more stringent than the level that [~~which~~] would be achieved by the requirements of subsections (o)-(r) of this section and the standards promulgated by the EPA [~~Environmental Protection Agency~~] in 40 CFR Part 192, Subparts D and E.

(33) (No change.)

(34) Any proposed alternatives to the specific requirements in subsections (o)-(r) of this section shall [~~must~~] meet the requirements of 10 CFR 150.31(d).

(35) (No change.)

(r) Land ownership of byproduct material disposal sites.

(1) (No change.)

(2) Unless exempted by the NRC, title to land (including any affected interests therein) that [~~which~~] is used for the disposal of byproduct material or that [~~which~~] is essential to ensure the long-term stability of the disposal site and title to the byproduct material shall be transferred to the State of Texas or the United States prior to the termination of the license. Material and land transferred shall be transferred without cost to the State of Texas or the United States. In cases where no ongoing site surveillance will be required, surface land ownership transfer requirements may be waived. For licenses issued before November 8, 1981, the NRC may take into account the status of the ownership of the [~~such~~] land and interests therein, and the ability of a licensee to transfer title and custody thereof to the State.

(3) Any uranium recovery facility license shall [~~must~~] contain [~~such~~] terms and conditions as the agency determines necessary to assure that, prior to termination of the license, the licensee will comply with ownership requirements of this subsection for sites used for tailings disposal.

(4) (No change.)

(5) If the NRC, subsequent to title transfer, determines that use of the surface or subsurface estates, or both, of the land transferred to the state or federal government will not endanger the public health and safety or the environment, the NRC may permit the use of the surface or subsurface estates, or both, of such land in a manner consistent with the provisions of this section. If the NRC permits the [~~such~~] use of such land, it will provide the person who transferred the [~~such~~] land with the first refusal with respect to the [~~such~~] use of such land.

(s) (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 June 14, 2002.

TRD-200203715
Susan Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 458-7236

♦ ♦ ♦

PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 411. STATE AUTHORITY RESPONSIBILITIES
SUBCHAPTER B. INTERAGENCY AGREEMENTS

25 TAC §411.59

The Texas Department of Mental Health and Mental Retardation (department) proposes amendments to §411.59, governing memorandum of understanding (MOU) on transition planning for students receiving special education services.

The amendments to §411.59 adopt by reference a new rule of the Texas Education Agency (TEA) at 19 TAC §89.1110, governing memorandum of understanding on individual transition planning for students receiving special education services, which will replace an existing agency rule concerning the same issues. The amendments to §411.59 also add "individual" in the section title and in subsection (a) to be consistent with the TEA rule, and add the names of other state agencies who are parties to the new MOU. The new TEA rule and the repeal of the existing TEA rule are published for public comment elsewhere in this issue of the *Texas Register*.

The new TEA rule contains the text of a new memorandum of understanding (MOU) between the department, TEA, and 11 other state agencies. The new MOU addresses the respective roles and responsibilities of participating agencies in the sharing of information about, and coordination of services to, eligible students with disabilities receiving transition services. The new MOU establishes definitions, better addresses information sharing and agency participation, and clarifies and adds provisions relating to regional and local collaboration, cross-agency training, and dispute resolution. Other terms of the new MOU provide for the MOU to be reviewed and considered for expansion, modification, or amendment at any time the executive officers of the parties agree or at least every four years.

Texas Education Code (TEC), §29.011, requires that TEA, the department, and the Texas Rehabilitation Commission (TRC), by a cooperative effort, develop and by rule adopt an MOU. TEC, §29.011, specifies that TEA shall coordinate the development of the MOU and that the three agencies may request other appropriate agencies to participate in the development of the MOU. Accordingly, the proposed MOU includes the participation of the following agencies: Texas Commission for the Blind, Texas Commission for the Deaf and Hard of Hearing, Texas Department of Health, Texas Department of Housing and Community Affairs, Texas Department of Human Services, Texas Department of Protective and Regulatory Services, Texas Higher Education Coordinating Board, Texas Juvenile Probation Commission, Texas Workforce Commission, and Texas Youth Commission.

Cindy Brown, Chief Financial Officer, has determined that for each year of the first five year period that the amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local government. It is not anticipated that the proposed amendments will have an adverse economic effect on small businesses or micro-businesses. It is not anticipated that there will be any additional economic cost to persons required to comply with the amendments. It is not anticipated that the amendments will affect a local economy.

David Rollins, Acting Director, Long Term Services and Supports, has determined that for each year of the first five-year period the amendments are in effect, the public benefit expected will be that successful transition of students with disabilities to post-secondary adult life endeavors are facilitated when all appropriate agencies which may be responsible for providing and/or paying for transition services coordinate efforts. It is critical that delivery of transition services is a coordinated set of activities, focused on identified individual outcomes, that includes all appropriate adult service agencies and stakeholders. Better coordinated transition service delivery systems result in increased opportunities for students to achieve their post-secondary goals for adult life benefiting the individual, his or her family, and the community. Additionally, better coordinated services are more cost effective for the state by reducing costly duplicative efforts by multiple agencies.

Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, no later than September 13, 2002. In addition, TEA has scheduled public hearings around the state in August and September for TEA to accept public comment concerning the MOU. Information about the hearings is posted on the TEA website at tea.state.tx.us.

The amendments are proposed under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and under TEC, §29.011, which requires the department to adopt the MOU by rule.

The amendments will affect the Texas Education Code, §29.011.

§411.59. Memorandum of Understanding (MOU) on Individual Transition Planning for Students Receiving Special Education Services.

(a) Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts by reference a rule of the Texas Education Agency (TEA) contained in 19 TAC §89.1110 (relating to Memorandum of Understanding on Individual Transition Planning for Students Receiving Special Education Services).

(b) The TEA rule contains the text of an MOU between TDMHMR, TEA, Texas Commission for the Blind, Texas Commission for the Deaf and Hard of Hearing, Texas Department of Health, Texas Department of Housing and Community Affairs, [~~Texas Workforce Commission,~~] Texas Department of Human Services, Texas Department of Protective and Regulatory Services, Texas Higher Education Coordinating Board, Texas Juvenile Probation Commission, Texas Rehabilitation Commission, Texas Workforce Commission, and Texas Youth Commission [~~the Commission for the Blind~~] . The MOU concerns the provision of services necessary to prepare students enrolled in special education programs for a successful transition to life outside the public school system, and is required by the Texas Education Code, §29.011.

(c) Copies of the MOU are filed in the Office of Policy Development, TDMHMR, 909 West 45th Street, Austin, Texas 78756, and may be reviewed during regular business hours.

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 June 17, 2002.

TRD-200203770

Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 206-5232

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 81. INTERACTION WITH THE PUBLIC

37 TAC §81.45

The Texas Youth Commission (TYC) proposes an amendment to §81.45, concerning Volunteers and Volunteer Council. The amendment to the section changes the position title from chief of volunteer services to administrator of community relations.

Don McCullough, 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 a change in the job title to be consistent with job duties. 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, §61.096 Liability of Volunteers, which provides the Texas Youth Commission with the authority to use the resources provided by community volunteers.

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

§81.45. Volunteers and Volunteer Council.

(a) Purpose. The purpose of this rule is to establish a volunteer program to expand youth opportunities for educational and recreational experiences and to provide youth with increased social interactions.

(b) Volunteer Council. A volunteer council will be located in each city where a TYC facility exists. Volunteer councils will be organized as nonprofit corporations with tax exempt status. The councils' role includes informing the community about TYC, advising TYC of community interests and concerns, advocating for juveniles, and assisting in providing resources for juveniles.

(c) Volunteer Program.

(1) The administrator of community relations[~~chief of volunteer services~~] shall administer TYC volunteer programs.

(2) Volunteers will be recruited, screened, and selected from all cultural and socioeconomic segments of the community.

(3) Volunteers will be oriented to the program and receive training before being assigned to work with youth.

(4) Volunteers must agree in writing to abide by federal, state and agency laws, policies and rules of confidentiality.

(5) Volunteers will be systematically, officially registered and provided proper identification as volunteers.

(6) Volunteers shall not perform professional services for TYC unless certified or licensed to perform those services.

(d) Youth as Volunteers. Qualified youth will be encouraged and assisted in participating in volunteer activities in the community.

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 June 14, 2002.

TRD-200203709
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 424-6301

♦ ♦ ♦

CHAPTER 85. ADMISSION AND PLACEMENT
SUBCHAPTER B. PLACEMENT PLANNING

37 TAC §85.45

The Texas Youth Commission (TYC) proposes an amendment to §85.45, concerning Parole of Undocumented Foreign Nationals. The amendment to the section makes minor changes for clarification and simplifies a procedure of notification to juvenile courts concerning the status of juveniles under the Texas Youth Commission's authority.

Don McCullough, 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 streamlining notification processes for more efficient work. 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, §61.081, Release Under Supervision, which provides the Texas Youth Commission with the authority to release youth under supervision with proper notification to the committing court.

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

§85.45. Parole of Undocumented Foreign Nationals.

(a) Purpose. The purpose of this rule is to establish a procedure whereby Texas Youth Commission (TYC) works with the United States Immigration and Naturalization Service (INS) for parole release of youth who are undocumented foreign nationals.

(b) Applicability. Procedures herein apply to all programs releasing TYC youth who are undocumented nationals.

(c) Explanation of Terms Used. Undocumented Foreign Nationals - youth who do not have legal residence in the United States as determined by the INS.

(d) All residential programs are required to notify the INS of the presence of an undocumented foreign national youth at the facility.

(e) Undocumented foreign nationals shall not be considered for parole release unless and until the INS has determined that the youth will not be deported. Refer to (GAP) §85.43 of this title [~~section~~] (relating to Home Placement). Undocumented foreign nationals will not be placed in a minimum restriction parole location (home or home substitute) until a copy of the referral letter from the residential program to INS is received by the assigned parole officer.

(f) In anticipation of completion of required release criteria and not less than 30 days prior to anticipated release, the releasing authority shall inform INS of the pending release of any undocumented foreign national youth and request a residency and deportation status determination. Thirty (30) days before parole release the TYC staff of the releasing program shall:

(1) complete the parole release packet and schedule a date for release;

(2) send to the INS in the region, written notice of the release date, request for confirmation of the date and of transportation, and request that INS meet with the youth prior to the date and send a copy of the notice to the assigned parole officer;

(3) notify the assigned parole officer and appropriate consulate of release arrangements; and send the family notification of parole release, and make reasonable attempts to provide translation where necessary; and

(4) send notification of parole release to the appropriate authorities. [~~, Notification to Juvenile Court form, CCF-181.~~]

(g) On the day of parole release, INS is responsible for transporting the youth to a port of entry.

(h) If the release of a youth is canceled for any reason, the releasing program shall immediately notify INS, parole officer, and other affected parties.

(i) If the youth is not deported by INS, the parole office and institutional placement coordinator will proceed with placement options.

(j) The case of a deported youth must be transferred to a designated caseload and supervised by a parole officer responsible for the youth in the committing county.

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 June 11, 2002.

TRD-200203650
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 424-6301

♦ ♦ ♦

CHAPTER 87. TREATMENT

SUBCHAPTER A. PROGRAM PLANNING

37 TAC §87.15

The Texas Youth Commission (TYC) proposes an amendment to §87.15, concerning Title IV-E Foster Care Youth. The amendment to the section will make one minor grammatical correction.

Don McCullough, 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 that TYC will participate in the federal foster care funding program. 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, §61.0761 Family Programs, which provides the Texas Youth Commission with the authority to participate in programs that will benefit youth.

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

§87.15. Title IV-E Foster Care Youth

(a) Texas Youth Commission (TYC) staff shall ensure that the agency participates in the Federal Title IV-E foster care funding program in compliance with all federal and state regulations[~~regualtions~~] set by the Texas Department of Protective and Regulatory Services, the agency administering the program.

(b) All TYC youth placed in halfway houses or contract care facilities will be screened for eligibility for the Title IV-E program.

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

Filed with the Office of the Secretary of State on June 14, 2002.

TRD-200203706
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 424-6301

♦ ♦ ♦

SUBCHAPTER B. SPECIAL NEEDS OFFENDER PROGRAMS

37 TAC §87.91

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

The Texas Youth Commission (TYC) proposes the repeal of §87.91, concerning Family Reintegration of Sex Offenders. The section will be repealed in order to allow for a new section.

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

Mr. McCullough also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be an improved release process for reintegrating sex offenders into the community. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. No private real property rights are affected by adoption of the repeal.

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 repeal is proposed under the Human Resources Code, §61.0813 Sex Offender Counseling and Treatment, which provides TYC with the authority to treat and release under supervision, youth classified as sex offenders.

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

§87.91. Family Reintegration of Sex Offenders.

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 June 14, 2002.

TRD-200203708
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 424-6301

♦ ♦ ♦

37 TAC §87.91

The Texas Youth Commission (TYC) proposes new §87.91, concerning Family Reintegration of Sex Offenders. The new section has been rewritten to include the purpose of the rule is to provide protection for victims or potential victims when a documented sex offender returns to the home where the victim or potential victim resides. The purpose was also changed to include that the rule applies to offenders who have been adjudicated for a sexual offense or as a result of a plea bargain for the arrest of a sexual offense. Also included in this section are explanation of terms used to define family, victim, and potential victim. Nine new requirements for family reintegration have been added to this policy.

Don McCullough, 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 an improved

system of reintegrating sex offenders into the community as well as providing protection to victims and potential victims. 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 new section is proposed under the Human Resources Code, §61.0813 Sex Offender Counseling and Treatment, which provides TYC with the authority to provide counseling and specific release conditions for juvenile sex offenders.

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

§87.91. Family Reintegration of Sex Offenders.

(a) Purpose. The purpose of this rule is to provide protection for the victim or potential victim of documented sex offenders who are returning home and the victim or potential victim lives in the home. This rule also applies to offenders who have been adjudicated for a sexual offense or as a result of a plea bargain for the arrest of a sexual offense.

(b) Explanation of Terms Used.

(1) Family - As used herein, shall refer to the family members who live in the designated home placement, including the victim or potential victim(s).

(2) Victim - shall refer to a person who, as the result of the sexual offense, suffers a pecuniary loss, personal injury, or harm.

(3) Potential Victim - shall refer to a person who has a profile similar to the victim of the delinquent's sexual offense, such as gender, age, etc., or who has a profile that triggers the delinquent's deviant or abusive sexual arousal patterns.

(c) Requirements for Family Reintegration

(1) The parole officer conducts a home evaluation and completes a checklist of risk factors associated with sexual re-offending.

(2) The primary service worker (PSW) contacts the Texas Department of Protective and Regulatory Services (TDPRS) 90 days prior to the youth's scheduled release to determine whether there is an open or closed Child Protective Service (CPS) case and to consider any concerns of CPS staff related to the victim or other vulnerable children in the home.

(3) If the victim is in treatment, the PSW notifies the victim's therapist that the offender is returning to the home where the victim resides.

(4) The offender has demonstrated sufficient progress in treatment to be ready to return home as evidenced by the completion of Phase 4 of the Resocialization Program and/or completion of the Sex Offender Treatment Program (SOTP).

(5) The offender must have provided the family with his/her success plan that contains specific plans to cope with high-risk situations that will ensure the victim/potential victim's safety in the home.

(6) The residential PSW, the parole officer, youth and family develop the youth's family reintegration and transition plans and are all in agreement with the plan.

(7) The parole officer completes the parole individual case plan and parole conditions and a checklist that identifies strategies to minimize risk factors for sexual re-offending.

(8) For those youth that have received primary sex offender specialized treatment, aftercare services are secured for the youth while on parole.

(9) A parole officer conducts at least one contact per month in the home while the youth is on double intensive, intensive, or moderate surveillance. At least one in home contact per quarter must be made while the youth is on minimum surveillance.

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 June 14, 2002.

TRD-200203707
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 424-6301

♦ ♦ ♦

CHAPTER 91. PROGRAM SERVICES
SUBCHAPTER A. BASIC SERVICES

37 TAC §91.21

The Texas Youth Commission (TYC) proposes an amendment to §91.21, concerning Moral Values, Worship, and Religious Education. The amendment to the section combines two previous subsections to clarify that youth will be given the opportunity to participate in religious programs and services while in a TYC facility. Only when a documented threat to safety of persons or the activity disrupts the order of the facility will participation be limited.

Don McCullough, 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 a clear commitment by TYC for youth to participate in religious programs and services. 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, §61.046 Religious Training, which provides the Texas Youth Commission with the authority to provide for the religious and spiritual training of children in its custody according to the childrens' individual choices.

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

§91.21. Moral Values, Worship, and Religious Education.

(a) Purpose. The purpose of this rule is to establish guidelines for providing youth with the opportunity and encouragement to develop and internalize a set of personal moral values.

(b) Texas Youth Commission (TYC) shall provide youth the opportunity to participate in religious education programs and services for youth.

(c) Participation in religious services and counseling shall be voluntary.

(d) Arbitrary and discriminatory restrictions of religious freedoms are prohibited.

(e) Halfway house and contract residential programs shall provide for reasonable access to religious programs, counseling, and other such resources in the community.

(f) Youth will be given the opportunity to participate in religious programs and services. Participation shall be limited only when documentation indicates a threat to the safety of persons involved or the activity disrupts order in the facility.

[(f) Participation in religious programs and services shall be limited only when documentation indicates a threat to the safety of persons involved or the activity disrupts facility order and/or discipline.]

[(g) Youth will be given the opportunity to participate in the practices of their declared religious faiths limited only by documentation showing threat to the safety of persons involved in such activity or that the activity itself disrupts order in the facility.]

(g) [(h)] Youth in TYC operated facilities may request that a specific religious practice or item be made available to him or her. A youth's request is subject to an assessment and approval process.

(h) [(i)] TYC shall provide access to adult clergy.

(i) [(j)] TYC shall encourage the participation of volunteer religious groups and individuals in its religious services and programs.

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 June 11, 2002.

TRD-200203655
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 424-6301

♦ ♦ ♦

CHAPTER 93. YOUTH RIGHTS AND REMEDIES

37 TAC §93.31

The Texas Youth Commission (TYC) proposes an amendment to §93.31, concerning Complaint Resolution System. The amendment to the section eliminates the application subsection making all complaints follow this rule. A paragraph was added indicating that the person receiving the complaint would place verbal complaints in writing. Other amendments to the section are minor grammatical corrections and clarifications.

Don McCullough, 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 a better system of addressing complaints. 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, §61.045 Operations of Programs and Facilities, which provides the Texas Youth Commission with the authority to operate effective programs and facilities and be responsive to the public and the clientele it serves.

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

§93.31. Complaint Resolution System.

(a) Purpose. This section should be implemented in a way that best achieves the following public purposes:

(1) to provide a simple trustworthy way for a youth, the youth's parents, or other persons to voice complaints about a youth's care and treatment;

(2) to respond to all complaints promptly and thoroughly with corrective measures or information that aids understanding; and

(3) to achieve the foregoing purposes in a manner that contributes positively to the resocialization process and results in on-going improvement in agency programs and services.

(b) Explanation of Terms Used.

(1) Complaint--any dissatisfaction expressed by any person with regard to youth care, treatment, or conditions that is within the agency's jurisdiction to correct.

(2) Tracking number--[means] a number that is recorded for each complaint to confirm its filing and track its progress.

[(c) Application. This section does not apply to complaints about:]

[(1) alleged abuse or neglect that are handled according to the provisions of (GAP) §93.33 of this title (relating to Alleged Mistreatment);]

[(2) disciplinary actions that are handled according to the provisions of (GAP) §95.3 of this title (relating to Rules of Conduct, Contraband, and Dress);]

[(3) phase system progress; and]

[(4) security or detention referrals that are handled according to the provisions of (GAP) §97.37 of this title (relating to Security Intake).]

(c) [(d)] Filing Complaints.

(1) Complaints shall be in writing and given to the person who has been designated at the youth's placement to receive them.

(2) If a complaint is made verbally and the complainant does not wish to put the complaint in writing, the person receiving the complaint will assist in reducing the complaint to writing and will ensure it is given to the appropriate person.

(3) [~~(2)~~] Reasonable restrictions may be imposed on the time, place, and manner of filing to preserve order and maintain attention during instructional or treatment activities.

(4) [~~(3)~~]Youth or their parents shall be provided assistance when necessary in writing a complaint and in ensuring [~~seeing to it~~] that the complaint is filed correctly.

(5) [~~(4)~~] A complaint has been filed correctly when the person who has been designated at the youth's placement to receive complaints has assigned it a tracking number.

(6) [~~(5)~~] No one shall be retaliated against in any way for filing a complaint. No reference to the filing of a complaint shall be included in the youth's records.

(7) [~~(6)~~] Youth with limited English proficiency will be allowed to file and make complaints in languages other than English.

(d) [~~(c)~~] Resolving Complaints.

(1) The staff [~~person or team leader~~] who is assigned to resolve a complaint shall be a person [~~or team leader~~] at the youth's placement who:

(A) has the authority to implement an appropriate corrective measure;

(B) has the responsibility to recommend changes in agency policies or procedures that would be needed to implement an appropriate corrective measure; or

(C) has knowledge or access to information that can aid understanding.

(2) The staff [~~person or team leader~~] who is assigned to resolve a complaint may employ whatever methods the person determines necessary and appropriate to reach a successful resolution of the complaint, such as:

(A) conducting personal interviews of the youth, the youth's parents, or others who might provide helpful information;

(B) researching previous resolutions of the same or similar complaints;

(C) using mediation, dispute resolution or other problem-solving techniques; or

(D) consulting with other persons who might be affected by or contribute to a successful resolution.

(3) A complaint is successfully resolved when the response results in corrective measures or in the provision of information that aids understanding.

(4) The response to a complaint shall be in writing and shall indicate the tracking number and a brief summary of any factual determinations that are made, corrective measures that are taken, or information that is given to aid understanding.

(5) Complaints filed by youth with limited English proficiency must be resolved. Each facility must designate a group of persons who are proficient in other languages to be responsible for translating and resolving complaints made in languages other than [~~that~~] English. If no staff members at [~~of~~] the facility are proficient in the language used in the complaint, [~~the complaint shall be translated into English. Facility staff members may~~] appropriate staff will contact the complaints coordinator in central office, who can assist in securing an English translation of the complaint. The staff member responsible for resolving the complaint shall prepare a written response to the complaint. The response shall be translated into the youth's native language, with the help of the complaints coordinator.

(e) [~~(f)~~] Appeal to the Executive Director.

(1) A youth or the youth's parents may appeal an unsatisfactory response or the lack of response to a complaint that has been assigned a tracking number.

(2) There is a lack of response to a complaint if no response [~~to it~~] is received within 15 working days of filing.

(3) Appeals shall be handled under the provisions of (GAP) §93.53 of this title (relating to Appeal to Executive Director).

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

Filed with the Office of the Secretary of State on June 11, 2002.

TRD-200203654
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 424-6301

♦ ♦ ♦

37 TAC §93.53

The Texas Youth Commission (TYC) proposes an amendment to §93.53, concerning Appeal to Executive Director. The amendment to the section adds a paragraph indicating that a youth may appeal directly to the executive director when a decision has been made to extend his/her length of stay in the security program if the youth has been in the program for 240 continuous hours or longer.

Don McCullough, 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 increased due process for youth in TYC custody. 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, §61.045 Operations of Programs and Facilities, which provides the Texas Youth Commission with the authority to establish responsible programs for the welfare, custody and rehabilitation of youth.

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

§93.53. Appeal to Executive Director.

(a) Purpose. The purpose of this rule is to permit Texas Youth Commission (TYC) youth, their parents or guardians, and TYC or contract program employees to appeal decisions made by TYC or contract program employees to the TYC executive director.

(b) An appeal to the executive director may be filed after all preliminary levels of appeal have been exhausted, concerning any TYC or contract program employee decision regarding a complaint.

(c) A direct appeal to the executive director may be filed in matters limited to:

(1) parole revocation;

(2) reclassification;

(3) classification;

(4) a disciplinary transfer or assigned disciplinary length of stay under (GAP) §95.11 of this title (relating to Disciplinary Transfer/Assigned Minimum Length of Stay Consequence);

(5) behavior management program length of stay and extension under (GAP) §95.17 of this title (relating to Behavior Management Program);

(6) aggression management program length of stay under (GAP) §95.21 of this title (relating to Aggression Management Program);

(7) a disapproved home evaluation;

(8) the results of an alleged mistreatment investigation under (GAP)[~~,~~] §93.33 of this title (relating to Alleged Mistreatment);

(9) an appeal of a level IV hearing when a youth is being detained in a location other than a TYC operated institution;

(10) a result of the second and subsequent level IV hearing pursuant to (GAP) §95.59 of this title (relating to Level IV Hearing Procedure) when a youth is in an institution detention program;

(11) a decision to extend the youth's stay in the security program, if the youth has already been in the security program for 240 continuous hours or longer;

(12) [~~(11)~~] a decision from a mental health status review hearing pursuant to (GAP) §95.71 of this title (relating to Mental Health Status Review Hearing Procedure); or

(13) [~~(12)~~] a decision from a Title IV-E hearing.

(d) All appeals to the executive director must be filed within six (6) months of the decision being appealed. Appeals filed after that time may be considered[~~,~~] at the discretion of the executive director.

(e) The executive director shall respond to each appeal, in writing, within 30 working days after receipt of the appeal. When the response cannot be completed within 30 working days, a delay letter explaining that the decision is delayed but will be forthcoming is sent to the complainant. Failure to respond to an appeal within this time period will constitute an exhaustion of administrative remedy for purposes of appeal to the courts, but will not be construed as acceptance or rejection of any contention made in the appeal.

(f) Opinions are distributed to the youth, the youth's attorney or representative, if any, and certain TYC staff.

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

Filed with the Office of the Secretary of State on June 11, 2002.

TRD-200203653

Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 424-6301

♦ ♦ ♦

CHAPTER 95. YOUTH DISCIPLINE

SUBCHAPTER A. DISCIPLINARY PRACTICES

37 TAC §95.11

The Texas Youth Commission (TYC) proposes an amendment to §95.11, concerning Disciplinary Transfer/Assigned Minimum Length of Stay/Demotion of Phase Consequence. The amendment to the section changes the title of the rule to add that a demotion of a youth's phase may be a consequence for negative behavior. A youth's resocialization phase progression may be affected by negative behavior. The amendment to the rule adds that phase demotion is now a disciplinary option for youth who violate rules.

Don McCullough, 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 continued accountability and disciplinary options for youth in TYC programs. 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 Determination of Treatment, which provides the Texas Youth Commission with the authority to provide adequate treatment and disciplinary practices for youth in its care.

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

§95.11. Disciplinary Transfer/Assigned Minimum Length of Stay/Demotion of Phase Consequence.

(a) Purpose. The purpose of this rule is to provide for the movement of a Texas Youth Commission (TYC) youth to an appropriate placement [~~and/or~~] assignment of a minimum length of stay, and/or demotion of one or more behavior phases as disciplinary consequences for behavior that violates rules. Disciplinary transfer, [~~and~~] assignment of a disciplinary minimum length of stay, and demotion of one or more behavior phases are considered major consequences.

(b) Applicability.

(1) The due process necessary to effect this rule is found in (GAP) §95.55 of this title (relating to Level II Hearing Procedure).

(2) Additional procedures and restrictions are applied prior to any movement of a sentenced offender youth. See [~~(GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders). Also see~~] (GAP) §85.37 of this title (relating to Sentenced Offender Disposition).

(c) Explanation of Terms Used. A High risk offense - is any major rule violation which may result in a classification other than general offender or violator of CINS probation.

(d) Criteria and Disposition for Disciplinary Transfer, [~~and~~] Disciplinary Assigned Minimum Length of Stay, and Demotion of One or More Behavior Phases.

(1) If it is found at a level II hearing that the youth has failed on two or more occasions to comply with the conditions of release under supervision and/or a written reasonable request of staff that is either present in the Individual Case Plan (ICP) or is validly related to previous high risk behavior, a youth may be:

(A) transferred to a placement of equal or more restriction than the youth's most recent permanent placement, or

(B) assigned a disciplinary minimum length of stay but only at the present placement.

(2) If it is found at a level II hearing that the youth has committed any major rule violation [~~other than that set out in paragraph (1) of this subsection~~], the youth may be:

(A) transferred to a placement of equal or more restriction than the youth's most recent permanent placement; [~~and/or~~]

(B) assigned a disciplinary minimum length of stay; and/or [~~,~~]

(C) demoted two or more resocialization phases in the behavior area.

(3) An assigned disciplinary minimum length of stay under this policy shall only be for offenses that meet criteria and shall not exceed six (6) months.

(4) If the hearing manager determines there are extenuating circumstances incidental to the violation(s) proved at a level II hearing, the youth shall not be transferred or assigned a disciplinary minimum length of stay, but the hearing manager shall notify the administrator responsible for the program to which the youth is assigned so an appropriate disciplinary action may be taken.

(e) Additional Disposition Options. Pursuant to a level II hearing herein, certain youth in TYC institutions or secure contract programs, who are assessed a disposition under this rule may also be assessed other eligible dispositions, but only if criteria have been met and if specifically requested in the level II hearing request pursuant to this policy. If extenuating circumstances are found by the hearing manager pursuant to a level II hearing herein, other eligible dispositions may be assessed if the hearing manager decides that such dispositions are appropriate despite the finding of extenuation in the present level II hearing. Disposition options are listed.

(1) Aggression Management Program. A placement in the Aggression Management Program (AMP) may be requested for a youth who is currently assigned to a TYC operated institution under requirements of (GAP) §95.21 of this title (relating to Aggression Management Program). All policy and program requirements of (GAP) §95.21 will apply to the assignment in AMP.

(2) Behavior Management Program.

(A) A placement in the Behavior Management Program (BMP) may be requested for certain youth under requirements of (GAP) §95.17 of this title (relating to Behavior Management Program). All policy and program requirements of (GAP) §95.17 will apply to the assignment in a BMP.

(B) A maximum length of stay in BMP shall run concurrently with any new assigned minimum length of stay under this policy.

(f) Restrictions.

(1) A youth on parole status shall not be moved or transferred into a placement of high restriction under this rule.

(2) When local authorities make a written request to defer an allegation to their jurisdiction for prosecution, TYC will cancel the directive, unless a due process hearing will be scheduled on other allegation(s). A due process hearing on any allegation(s) shall be scheduled within seven days (excluding weekends and holidays).

(3) A level II hearing should be held prior to a disciplinary transfer. When good cause compels a pre-hearing movement of the youth, the hearing shall be held within three consecutive days after the movement.

(4) A youth assigned a disciplinary minimum length of stay may remain in the current program or be transferred and remain in the new placement until the assigned disciplinary length of stay and other program completion criteria are completed.

(5) The assigned disciplinary minimum length of stay may be reduced based on the youth's behavior and progress toward goals.

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 June 11, 2002.

TRD-200203651
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 424-6301

♦ ♦ ♦

CHAPTER 97. SECURITY AND CONTROL

SUBCHAPTER A. SECURITY AND CONTROL

37 TAC §97.29

The Texas Youth Commission (TYC) proposes an amendment to §97.29, concerning Escape/Abscondence and Apprehension. The amendment to the section further explains the definition of escape. Escape will be defined as a youth having specific intent to escape, commits an act amounting to more than mere preparation, but fails to effect the intended escape.

Don McCullough, 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 greater protection for the public and increased accountability for youth in TYC custody. 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, §61.093 Escape and Apprehension, which provides the Texas Youth Commission with the authority to apprehend youth who have escaped from a facility or broken specific conditions of release.

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

§97.29. Escape/Abscondence and Apprehension.

(a) Purpose. The purpose of this rule is to acknowledge a relationship with TYC, law enforcement, and Texas/National Crime Information Center (TCIC/NCIC) with regard to reporting and apprehending youth in TYC custody who escape or abscond from their assigned location, supervision, or who fail to report as required.

(b) Applicability. This rule applies to all youth in TYC jurisdiction whether supervised by TYC staff or contract staff.

(c) Explanation [~~Definition~~] of Terms Used.

(1) Failure to report--[~~occurs~~] when a youth assigned to home level restriction fails on two or more occasions to report as required by the youth's most recent case plan.

(2) Abscond--[~~occurs~~] when a youth assigned to home level of restriction leaves any designated location without permission of staff and his/her whereabouts are unknown by the supervising staff.

(3) Escape--[~~occurs~~] when a youth assigned to a minimum, medium, or high level restriction facility:

(A) leaves the property of a TYC facility or contract program or other designated location without permission of staff; [~~or~~]

(B) fails to return at the designated time unless excused by the facility/program administrator; or [.]

(C) with specific intent to escape, commits an act amounting to more than mere preparation, but fails to effect the intended escape.

(d) When a youth escapes or absconds, or fails to report, Texas Youth Commission (TYC) staff will make concerted efforts to apprehend the youth with assistance of law enforcement officials, staff and other affected parties.

(e) Directives to Apprehend shall be issued by an agency staff according to Texas/National Crime Information Center (TCIC/NCIC) policy and procedures and DPS/FBI guidelines.

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 June 11, 2002.

TRD-200203652
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 424-6301

♦ ♦ ♦

37 TAC §97.40, §97.43

The Texas Youth Commission (TYC) proposes an amendment to §97.40, concerning Security Program, and an amendment to §97.43, concerning Institution Detention Program. The amendments to §97.40, Security Program, include minor grammatical corrections as well as correction to position titles that have changed. The other amendment to the section includes an admission process and an extended stay requirement that states when a youth's behavior meets admission criteria; the incident shall be documented on an incident report form and used as evidence in a level III hearing. The section was also amended to state that an extension decision may be appealed to the executive director rather than to the deputy executive director. The amendments to §97.43, Institution Detention Program, include minor grammar corrections as well as a requirement that a detention hearing need not be held if a youth is under indictment pending a trial for referral to criminal court or sentenced offenders awaiting transfer to the Texas Department of Criminal Justice Institution Division if the hearing date is set to take place within a reasonable period of time from the date of detention.

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

Mr. McCullough also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be increased accountability and due process procedures for youth. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of the rules.

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 amendments are proposed under the Human Resources Code, §61.045 Operations of Programs and Facilities, which provides the Texas Youth Commission with the authority to determine the most effective methods of treatment and discipline for youth in its care.

The proposed rules affect the Human Resource Code, §61.034.

§97.40. Security Program.

(a) Purpose. The purpose of this rule is to provide for a security program in Texas Youth Commission (TYC) institutions and secure contract programs for the placement of out of control youth when specific criteria are met and to establish program operation requirements. Assurance that youth is sufficiently in control to be returned to general population is affirmed by compliance with the standardized program or rules of the security program, which are supplied to the youth upon admission to security intake.

(b) Applicability.

(1) This rule does not apply to:

(A) 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);

(B) 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);

(C) the use of the same or adjacent space when used specifically as disciplinary segregation. See (GAP) §95.17 of this title (relating to Behavior Management Program);

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

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

(2) When a level III hearing is conducted to determine admission or an extension to the security program, this policy needs to be read in conjunction with (GAP) §95.57 of this title (relating to Level III Hearing Procedure).

(c) Admission Criteria. A youth may be admitted to the security program if there is reason to believe, based on overt acts by the youth, and/or under the following circumstances:

(1) the youth is a serious and continuing escape risk; or

(2) the youth is a serious and immediate physical danger to [~~himself/herself or~~] others and staff cannot protect them [~~the youth or others~~] except by admitting the youth to security program; or

(3) the confinement is necessary to prevent imminent and substantial destruction of property; or

(4) the confinement is necessary to control behavior that creates disruption of the youth's current program; or

(5) the youth is not complying with the standardized program or rules of the security unit while in security intake or in the security program; or

(6) upon the youth's own request, unless campus-wide self referral has been disallowed by the superintendent or designee.

(d) Admission Process.

(1) A decision-maker is appointed by the superintendent to conduct a level III hearing to determine whether admission criteria have been met. As a result of the hearing, the youth shall be either:

(A) released to the general population; or

(B) admitted to the security program for up to 24 hours.

(2) The following staff may be appointed to be the decision-maker: superintendent, assistant superintendent, administrative duty officer (ADO), program administrator (PA), institution placement coordinator (IPC), principal, psychologist, caseworker, or designated juvenile correctional officer (JCO) VI [~~V~~] trained in the security policy and procedure to admit youth to the program. The director of security may not admit a youth to security.

(3) The youth's behavior that meets the admission criteria shall be documented on the Incident Report form, CCF-225, to be used as evidence in the level III hearing.

(4) [~~(3)~~] Based upon a finding of true to the admission criteria, and no extenuating circumstances, the youth will be admitted into the security program.

(5) [~~(4)~~] The director of security or designee will review all admission decisions within one (1) working day to determine if admission criteria have been met. If criteria have not been met or policy and procedures not followed, the youth will be returned to the general population. The director of security or designee shall not have been involved in the level III hearing.

(6) [~~(5)~~] The youth will be notified in writing of his/her right to appeal. The appeal of an admission to the security program will be to the superintendent, assistant superintendent, or the ADO as long as they were not the decision-maker for admission. The youth is notified in writing of the outcome of the appeal.

(7) [~~(6)~~] The youth's advocate will be assigned by the decision-maker for the level III due process hearing. Whenever practical, the advocate may be a person chosen by the youth.

(8) [~~(7)~~] The youth may be released from the security program by the director of security or designated staff authorized to admit youth in this policy.

(e) Restrictions.

(1) A youth shall not remain in the security program more than 24 hours from admission to the program solely on the basis of the behavior for which he was admitted to security intake or security program.

(2) A youth shall not remain in the security program more than 24 hours from admission without the required extended stay due process hearing protections.

(f) Extended Stay Requirements.

(1) A youth's stay in the security program may be extended beyond the 24 hours from admission to the program if there are reasonable grounds to believe that one of the admission criteria to the security program is continuing. The youth's behavior that meets the admission/extension criteria shall be documented on the Incident Report form, CCF-225, to be used as evidence in the level III hearing.

(2) Extended confinement due process protections will be provided to determine whether reasonable grounds exist for the youth to remain in the security program longer than 24 hours.

(A) A level III hearing is afforded the youth before security program confinement is extended past 24 hours.

(B) A decision-maker is appointed by the superintendent to determine the reasons for the extended confinement and to make a decision on the facts presented.

(C) The following staff may be appointed to be the decision-maker: superintendent, assistant superintendent, ADO, PA, IPC, principal, psychologist, caseworker, or designated JCO VI [~~V~~] trained in the security policy and procedure to extend youth in the program. The director of security may not be the decision-maker.

(D) Based upon a finding of true to the admission criteria, and no extenuating circumstances, the youth's stay in the security program may be extended up to an additional 24 hours.

(E) The director of security or designee will review the 24-hour extension decision within one (1) working day to determine if admission criteria continue to exist based on current behavior. If criteria have not been met or policy and procedures have not been followed, the youth will be returned to the general population. The director of security or designee shall not have been involved in the level III hearing.

(F) The youth will be notified in writing of his/her right to appeal. The appeal of an extension to the security program will be to the superintendent, assistant superintendent or the ADO as long as they were not the decision-maker for admission or extension. The youth is notified in writing of the outcome of the appeal.

(3) After the initial level III due process extension hearing, up to five subsequent level III hearings may be conducted as set forth in paragraph (2) of this subsection, every 24 hours thereafter for additional extensions of up to 24 hours for up to 168 hours from admission into the security program.

(4) After 168 hours, a due process extension level III hearing will be conducted as set forth in paragraph (2) of this subsection for an additional extension of up to 72 hours for up to 240 hours from admission into the security program.

(A) The appropriate director of juvenile corrections will review the 72-hour extension decision within one (1) working day to determine if admission criteria continue to exist based on current behavior. If the criteria have not been met or policy and procedures have not been followed, the youth will be returned to the general population.

(B) The youth will be notified in writing of his/her right to appeal. The extension decision may be appealed to the assistant deputy executive director for juvenile corrections and the youth is notified in writing of the outcome of the appeal.

(5) After 240 hours, a due process extension level III hearing will be conducted as set forth in paragraph (2) of this subsection every 72 hours thereafter for only two additional extensions of up to 72 hours each.

(A) The assistant deputy executive director for juvenile corrections will review the 72-hour extension decision within one working day if admission criteria continue to exist based on current behavior. If the criteria have not been met or policy and procedures not followed, the youth will be returned to the general population.

(B) The youth will be notified in writing of his/her right to appeal. The extension decisions may be appealed to the [~~deputy~~] executive director and the youth is notified in writing of the outcome of the appeal.

(6) After 384 hours (16 days), the youth shall be either released back to the general population or the assistant deputy executive director for juvenile corrections must recommend other alternatives.

(7) If due process extension hearings are not timely held the youth shall be released from the security program.

§97.43. Institution Detention Program.

(a) Purpose. The purpose of this rule is to establish criteria and procedures for detaining appropriate Texas Youth Commission (TYC) youth in an Institution Detention Program (IDP) operated within each TYC institution or secure contract program, who have charges against them pending or filed, or are awaiting a due process hearing or trial, or awaiting transportation subsequent to a due process hearing or trial.

(b) Applicability.

(1) This rule applies to TYC youth detained in TYC operated institutions or secure contract programs for pre-hearing or post-hearing pending transportation.

(2) This rule does not apply to:

(A) TYC youth detained in community detention facilities. See (GAP) §97.41 of this title (relating to Community Detention);

(B) 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);

(C) 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);

(D) the use of the same or adjacent space when used specifically as disciplinary segregation. See (GAP) §95.17 of this title (relating to Behavior Management Program);

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

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

(c) Explanation of Terms Used. Detention Review Hearing--the TYC level IV hearing required by this policy.

(d) Criteria for Placement in an Institution Detention Program.

(1) Designated staff will conduct a review to determine whether admission criteria have been met.

(2) Admission Criteria for Detention Up To 72 Hours.

(A) A youth assigned to a TYC-operated institution may be admitted to the IDP program (for up to 72 hours):

(i) if the youth is awaiting transportation subsequent to a due process hearing or trial; or

(ii) if a due process hearing or trial has been requested in writing or charges are pending or have been filed; and

(iii) there are reasonable grounds to believe the youth has committed a violation; and

(iv) one of the following applies:

(I) suitable alternative placement within the facility is unavailable due to on-going behavior of the youth that creates disruption of the routine of the youth's current program; or

(II) the youth is likely to interfere with the hearing or trial process; or

(III) the youth represents a danger to [~~himself/herself or~~] others; or

(IV) the youth has escaped or attempted escape as defined in (GAP) §97.29 of this title (relating to Escape/Abscondence and Apprehension).

(B) A youth who is assigned to a placement other than a TYC operated institution or secure contract program may be detained in a TYC operated IDP (up to 72 hours):

(i) if a due process hearing or trial has been requested in writing; and

(ii) based on current behavior or circumstances and all detention criteria must have been met as defined in (GAP) §97.41 of this title (relating to Community Detention).

(C) A youth may appeal the admission decision to the IDP through the youth complaint system as defined in (GAP) §93.31 of this title (relating to Complaint Resolution System).

(3) Admission Criteria for Detention Beyond 72 Hours.

(A) A youth who is assigned to a TYC-operated institution may be detained in the IDP beyond 72 hours based on current behavior or circumstances, and all other criteria in paragraph (2) of this subsection have been met.

(B) A youth who is assigned to a placement other than a TYC-operated institution may be detained in a TYC-operated IDP beyond 72 hours based on current behavior or circumstances and all detention criteria in (GAP) §97.41 of this title (relating to Community Detention) have been met.

(4) A hearing will be scheduled as soon as practical but no later than seven (7) days, excluding weekends and holidays, from the date of the alleged violation.

(A) A due process hearing or trial is considered to be scheduled if a due process hearing date and time has been set or trial is pending.

(B) A youth whose due process hearing or trial has been held may be detained without a level IV hearing when the youth is waiting for transportation:

(i) to the Texas Department of Criminal Justice Institution Division (TDCJ-ID) [~~TDCJ, ID~~] following a transfer hearing; or

(ii) to a different placement following a level I or II hearing.

(C) Transportation should be arranged immediately to take place within 72 hours and anything past that must have superintendent's approval.

(e) Detention Hearings Required for Any Youth Held in an Institution Detention Program.

(1) A youth, who meets admission criteria, may be detained in an IDP for up to 72 hours.

(2) For extensions beyond 72 hours, an initial detention review hearing (level IV hearing) must be held on or before 72 hours from admission to the IDP, or the next working day.

(3) Subsequent detention review hearings must be held within ten working days from the previous detention review hearing when a due process hearing or trial is not held and continued detention is necessary and appropriate based upon current behavior or circumstances that meet criteria [~~unless youth is under indictment pending trial~~]. See (GAP) §95.59 of this title (relating to Level IV Hearing Procedure).

(4) A detention review hearing is not required for: [~~youth detained pending transportation pursuant to subsection (d)(3)(D) of this section.~~]

(A) youth under indictment pending trial pursuant to (GAP) §95.5 of this title (relating to Referral to Criminal Court);

(B) youth detained pending transportation as defined in this policy; or

(C) sentenced offenders awaiting a transfer hearing to TDCJ-ID as defined in GAP §85.37 of this title (relating to Sentenced Offender Disposition), if the hearing date is set to take place within a reasonable period of time from the date of detention.

(5) Institution or a designated community staff will hold the required level IV detention review hearings. The primary service worker (PSW) for youth not assigned to an institution[~~,~~] will coordinate with institution staff to ensure that hearings are timely held or waived properly.

(6) If a level IV hearing is not timely held or is not properly waived, the youth shall be released from the IDP.

(7) The youth is notified in writing of his/her right to appeal the level IV hearing.

(f) Release from institution detention is determined by the outcome of a hearing or trial or upon the decision not to hold a hearing. If the youth is pending transportation, the youth is released from detention upon transport.

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 June 14, 2002.

TRD-200203705
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 424-6301

♦ ♦ ♦

CHAPTER 99. GENERAL PROVISIONS
SUBCHAPTER C. MISCELLANEOUS

37 TAC §99.90

The Texas Youth Commission (TYC) proposes an amendment to §99.90, concerning Vehicle Fleet Management. The amendment to the section indicates there is a cap on the size of the vehicle fleet. Other amendments to this section will prohibit drivers and passengers from smoking, using tobacco, consuming, or transporting alcohol in state owned vehicles.

Don McCullough, 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 that the expectation is that vehicles are a workplace and drivers and passengers are expected to refrain from tobacco and/or alcohol use while using state owned property. 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, §61.034, which provides the Texas Youth Commission with the broad rulemaking authority.

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

§99.90. Vehicle Fleet Management.

(a) Purpose. The purpose of this policy is to establish the authority and responsibility for management and operation of the Texas Youth Commission (TYC) vehicle fleet and to adopt the rules and procedures mandated in the State of Texas General Services Commission (GSC) Office of Vehicle Fleet Management's (OVFM) State Vehicle Fleet Management Plan in accordance with Section 2171.104, Government Code.

(b) Explanation of Terms Used.

(1) Fleet Manager - a TYC employee in the central office business services department who is responsible for day-to-day agency-wide fleet management. Responsibilities include guidance to central

office and field fleet motor pool operations and maintenance, data collection and reporting, and acting as the central point of contact with the GSC OVFM.

(2) Office of Vehicle Fleet Management (OVFM) - the primary office at the GSC that developed, under direction of the Council on Competitive Government, the State Vehicle Fleet Management Plan and is responsible for the development and implementation of actions for improving administration and operation on the state's vehicle fleet. The OVFM has the authority to review agencies' vehicle utilization and receive data relative to agencies' fleet operations and maintenance. It has ultimate authority to establish and also to reduce an agency's vehicle authorization levels based on defined utilization criteria.

(3) Vehicle Control Officer (VCO) - a TYC employee responsible to manage the assigned vehicle fleet at each agency location and act as liaison and point of contact with the agency fleet manager.

(4) Vehicle Utilization Board (VUB) - a special TYC board appointed by the deputy executive director and chaired by the director of business services with members from the TYC finance and juvenile corrections departments that oversee development and implementation of TYC fleet management policy. Make recommendations to the executive committee relative to agency vehicle fleet matters such as vehicle authorization levels, purchasing and replacement.

(5) Mission Critical Vehicles - the vehicles assigned to individuals identified in key mission critical positions required by the executive director to commute in designated vehicles.

(6) Administrative Support Vehicles - the vehicles assigned to agency locations, including sedans and van[~~,~~] that are used to transport staff to training, meetings and other specific staff responsibilities off-site.

(7) Maintenance and Supply Vehicles - the assigned trucks and cargo vans used for the conduct of the basic logistics support (maintenance, supply, purchasing, delivery, etc.) function.

(8) Student Security and Client Support Vehicles - the vans used in conjunction with the campus security or youth transport functions.

(9) Special Requirements Vehicles - the heavy equipment or special purpose vehicles, such as dump trucks, fire trucks, and staked flatbed trucks, specifically authorized at some TYC locations because of unique circumstances or need.

(c) Applicability. This rule applies to all TYC staff, state-employed contract nurses, and volunteers under certain circumstances.

(d) Fleet Management Structure.

(1) The TYC executive committee will provide executive level oversight and support and be the final approval authority for major vehicle fleet decisions relative to policy, authorization levels, and appropriations requests based on the recommendations of the TYC VUB and agency fleet manager.

(2) The deputy executive director will appoint members to a cross-functional agency VUB.

(3) The fleet manager will make purchasing, replacement, repair, assignment and use, disposal decisions and recommendations to the VUB and executive committee as appropriate. Coordinates the rotation of authorized vehicles between agency locations based on mission and utilization requirements.

(4) The VCO will be the fleet manager in central office, business manager at the institutions, superintendent at the halfway houses, and quality assurance administrator/parole supervisor at the service areas. VCO's are responsible for maintenance and repair of vehicles, scheduling use of motor pool vehicles, collecting and reporting fleet data, securing and issuing keys and fuel cards and documenting return of same. The VCO is required to sign the Agreement for Vehicle Control Officer form, BSD-807 and submit the form to the fleet manager in central office.

(e) Vehicle Fleet Size. TYC will comply with all purchasing restriction as outlined in the State Vehicle Management Plan. TYC will not exceed the current vehicle fleet size that is mandated by OVFM, except in cases of legislatively mandated program changes, federal program initiatives, or documented need resulting from program growth or changes that would increase the authorized fleet size. The fleet manager [~~Fleet Manager~~] must certify in writing to OVFM any vehicles purchased due to legislatively mandated program changes, federal program initiatives, or need resulting from program growth or changes. All such waiver requests must be received in writing from the executive director and documentation must fully specify the mandate or need to exceed the vehicle cap.

(f) Explanation of Motor Pool.

(1) TYC will form statewide motor pools based on the primary function or utilization of each vehicle. Each agency vehicle will be assigned within an agency motor pool at a specific location and made available for checkout for official duty purposes where applicable. Each agency location will be authorized a specific number of vehicles within each designated utilization pool based on relative size or unique mission requirements. Vehicles will be rotated among locations and pools as necessary to meet utilization and efficiency criteria. Sub-pools may be formed at a location for more efficient management or utilization purposes. The following statewide pools will be formed.

(A) Mission Critical Vehicles. The executive director will assign vehicles to individual agency staff only after a written determination is made that it is critical to mission requirements. No personal use of these vehicles is authorized other than commuting or de minims use (such as a stop for personal errand on the way between a business delivery and the employee's home) while commuting. TYC will report to the OVFM the information required by the State Vehicle Fleet Management Plan on each vehicle by February 28, 2001 and thereafter as individual assignments occur.

(B) Administrative Support Vehicles. Pool vehicles will be made available for employee check out as needed with local responsibility for prioritizing their use in the event of conflicting requirements. Administrative vehicle utilization can be augmented with leased or rental vehicles within mission and budget requirements.

(C) Maintenance and Supply Vehicles. All agency locations are encouraged to minimize the requirements for registered motor vehicles and place more reliance on low speed utility conveyances such as golf carts, "Gators" or "Mules" for these functions.

(D) Student Security and Client Support Vehicles. The vans used in conjunction with the campus security or youth transport functions. Statewide youth transportation vehicles will be part of this pool. Vehicles will be outfitted with security enclosures where needed.

(E) Special Requirements Vehicles. The heavy equipment or special purpose vehicles, such as dump trucks, fire trucks, and staked flatbed trucks, specifically authorized at some TYC locations because of unique circumstances or need.

(2) Individual Vehicle Assignments. The executive director may assign state owned vehicles to an individual or executive employee on a regular basis only with written documentation that the assignment is critical to the mission of the agency. The following information must be reported to the OVFM as individual assignments

occur. For specific policy and procedures regarding state vehicle assignment(s) refer to (PRS) §43.15 of this title (relating to State Vehicle Assignments).

(A) Vehicle identification number, license plate number, year, make, and model;

(B) name and position of the individual to whom it is assigned unless a determination is made by the executive committee that there is a law enforcement or security determination and the vehicle has been issued alias license plates; and

(C) reason the assignment is critical to the mission of the agency.

(3) TYC will establish and maintain the general minimum mileage criteria for its pooled vehicles based on the guidelines provided by OVFM. The agency fleet manager will track utilization and initiate actions to rotate vehicles between locations or pools to meet minimum utilization criteria. The agency fleet manager will identify unique requirements and justification for specific other minimum use criteria for OVFM consideration and waiver. The fleet manager will provide responses and justification to OVFM within 30 days of receipt of quarterly vehicle utilization reports.

(4) TYC will use one or more of the state contracted vendor cards for retail fuel dispensing services. Fuel cards will be issued for specific vehicles, not specific drivers. Unless specifically prohibited by manufacturer warranty or recommendations, all TYC vehicles operating on gasoline shall use regular unleaded gasoline. TYC employees will use self-service islands when refueling at retail fueling stations.

(5) TYC will establish vehicle replacement goals based on the purpose, age and mileage criteria published in the OVFM State Vehicle Management Plan.

(6) TYC will out-source maintenance and repair of fleet assets unless it is demonstrated to be more economical to perform those functions in-house. TYC will develop interagency agreements to obtain maintenance, repairs and fuel where feasible.

(7) TYC may dispose of vehicles identified as excess by the OVFM through the GSC Surplus Property Division process or through other approved surplus property disposal processes. TYC must certify the successful disposal of vehicles identified excess vehicles by OVFM within six months from notification. Vehicles identified for disposal by GSC are not eligible for replacement.

(8) TYC will capture and submit, through the fleet manager, fleet data to OVFM based on the criteria and timetable established in the State Vehicle Management Plan. TYC will maintain detailed supporting documentation for all reporting requirements. TYC will use the standardized vehicle reporting log developed by OVFM unless a different form is specifically approved by OVFM.

(g) Driving Requirements.

(1) Authorized Drivers. Persons authorized to drive a state owned vehicle, privately owned vehicle, or a leased vehicle on TYC business shall do so in a responsible manner obeying all state laws and in compliance with the following rules. This policy applies to vehicles that [~~which~~] are [~~to be~~] driven on public roads, highways and on the grounds of TYC facilities. For specific procedures regarding authorized drivers refer to (PRS) §43.13 to this title (relating to Driving Requirements).

(2) General Driver Rules.

(A) State vehicles shall be used only for official business. Official business may include travel directly to an employee's home the night before official travel begins or travel directly from an employee's home to his/her work site the morning after official travel ends when such is authorized by the employee's supervisor and will expedite the employee's travel or otherwise make the most efficient use of the employee's time. See (PRS) §43.13 to this title (relating to Driving Requirements).

(B) State owned vehicles will be available to TYC staff, volunteers, and contract nurses to transport youth at TYC staffed facilities in emergencies.

(C) Drivers and passengers are not permitted to smoke or use tobacco while operating or traveling in a state owned vehicle.

(D) Drivers and passengers are not permitted to consume or transport alcohol while operating or traveling in a state owned vehicle.

(3) Vehicle Accident. If the driver is involved in an accident, he/she should notify his/her supervisor and the VCO immediately. If the accident occurs on a public thoroughfare, the proper authorities must be notified. See (PRS) §43.13 to this title (relating to Driving Requirements).

(4) Use of Fuel Cards. TYC gasoline fuel cards assigned by TYC are to be used only for purchase of gasoline, standard preventive maintenance items (oil and filter changes, etc.) and car washes. TYC issued fuel cards may be used only in state owned vehicles and vehicle(s) leased for state proposes. See (PRS) §43.13 to this title (relating to Driving Requirements).

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

Filed with the Office of the Secretary of State on June 14, 2002.

TRD-200203704
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 424-6301

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 3. TEXAS WORKS

The Texas Department of Human Services (DHS) proposes to amend §3.301, concerning responsibilities of clients and the Texas Department of Human Services (DHS), §3.1104, concerning failure to comply with Title IV-A employment program, and §3.1203, concerning work requirement, in its Texas Works chapter. The purpose of the amendment to §3.301 is to clarify that DHS eligibility workers monitor participation and completion of parenting skills for non-Choices clients. The purpose of the amendment to §3.1104 is to clarify that the caretaker or second parent is cited as the Temporary Assistance for Needy Families (TANF) client who is required to comply with the Title IV-A Employment Program. The purpose of the amendment to §3.1203 is to allow food stamp recipients to be exempt from the work requirement if they reside in a county covered under Texas' 15% exemption allowance, as described in 7 U.S.C. 2015(o)(6).

James R. Hine, Commissioner, has determined that for the first five-year period the proposed sections will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Hine also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be the availability of more precise rules. There will be no effect on small or micro businesses as a result of enforcing or administering the sections, because the amendments update and clarify policy and do not affect businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections. There will be no anticipated effect on local employment in geographic areas affected by these sections.

Questions about the content of this proposal may be directed to Eric McDaniel at (512) 438- 2909 in DHS's Texas Works section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-208, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

SUBCHAPTER C. THE APPLICATION PROCESS

40 TAC §3.301

The amendment is proposed under the Human Resources Code, Chapters 22 and 33, which authorizes the DHS to administer public and nutritional assistance programs.

The amendment implements the Human Resources Code, §§22.001-22.036 and §§33.001-33.027.

§3.301. Responsibilities of Clients and the Texas Department of Human Services (DHS).

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

(d) Additional state and client responsibilities are explained by eligibility staff to households as a condition of TANF eligibility in Texas as specified in paragraphs (1)-(5) of this subsection.

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

(4) Penalties for noncompliance with requirements. Failure to comply results in the penalties specified in subparagraphs (A)-(D) of this paragraph.

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

(D) Penalty periods. DHS starts penalty periods beginning with the earliest month benefits can be adjusted. The penalty for noncompliance with Human Resources Code, §31.0031(d)(4), is imposed for the time period specified in §3.1104 and §3.1105 of this title (relating to Failure to Comply with Title IV-A Employment Program and Reestablishing Eligibility). The penalty for noncompliance with Human Resources Code, §31.0031(d)(3), is imposed for three consecutive months, or fewer than three months, if the recipient returns to that job or another comparable job, according to the regulations applicable to the Food Stamp Program, as specified in 7 Code of Federal Regulation §273.7(n)(5)(ii), relating to voluntary quit. The penalty for noncompliance with Human Resources Code, §31.0031(d)(5), is imposed for six consecutive months. The penalties for noncompliance with requirements specified in Human Resources Code, §31.0031(d)(1), (2), (6), (7), and (8), remain in effect until the month after the noncompliance ends. DHS considers noncompliance with these requirements to have ended as specified in:

(i) - (iii) (No change.)

(iv) Human Resources Code, §31.0031(8). For recipients participating in the Choices program, the case manager monitors and ensures the client participates and completes the parenting skills program. The case manager determines compliance. The DHS eligibility worker monitors participation and completion of parenting skills for [~~performs these actions for either Choices or~~] non-Choices clients.

(E) (No change.)

(5) (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 June 14, 2002.

TRD-200203712
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 438-3734

♦ ♦ ♦

SUBCHAPTER K. EMPLOYMENT SERVICES

40 TAC §3.1104

The amendment is proposed under the Human Resources Code, Chapters 22 and 33, which authorizes the DHS to administer public and nutritional assistance programs.

The amendment implements the Human Resources Code, §§22.001-22.036 and §§33.001-33.027.

§3.1104. Failure to Comply with Title IV-A Employment Program.

(a) A Temporary Assistance for Needy Families (TANF) client who is certified for TANF as the caretaker or second parent [~~a child~~] and who does not comply with the Title IV- A Employment Program requirements and cannot establish good cause is sanctioned using one or more of the circumstances specified in paragraphs (1)-(3) of this subsection:

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

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

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

Filed with the Office of the Secretary of State on June 14, 2002.

TRD-200203713
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 438-3734

♦ ♦ ♦

SUBCHAPTER L. WORK REGISTRATION

40 TAC §3.1203

The amendment is proposed under the Human Resources Code, Chapters 22 and 33, which authorizes the DHS to administer public and nutritional assistance programs.

The amendment implements the Human Resources Code, §§22.001-22.036 and §§33.001-33.027.

§3.1203. Work Requirement.

Pursuant to the requirements in §6 of the Food Stamp Act of 1977 (codified at 7 United States Code (U.S.C.) §2015), as amended by the Balanced Budget Act of 1977, Public Law Number 105-133, the Texas Department of Human Services (DHS) restricts food stamp eligibility of an individual to three months in a 36 month period if the individual does not meet the work requirements defined in 7 U.S.C. §2015 (o)(1) and (2). Individuals are exempt if they meet the specifications described in [~~7 USC §2015(o)(1), if they are not offered employment and training services through the Texas Workforce Commission (TWC), if they meet the specifications described in~~] 7 U.S.C. §2015(o)(3), [~~or~~] if they reside in a federally approved waiver area to which this provision does not apply as described in 7 U.S.C. §2015(o)(4), or if they reside in a county covered under Texas' 15% exemption allowance, as described in 7 U.S.C. 2015(o)(6).

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 June 14, 2002.

TRD-200203714
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: July 28, 2002
For further information, please call: (512) 438-3734

♦ ♦ ♦

WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register.***

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. LICENSE FEES AND BOAT AND MOTOR FEES

31 TAC §53.10

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed amended section, submitted by the Texas Parks and Wildlife Department has been automatically withdrawn. The amended section as proposed appeared in the December 14, 2001 issue of the *Texas Register* (26 TexReg 10230).

Filed with the Office of the Secretary of State on June 17, 2002.

TRD-200203775

♦ ♦ ♦

SUBCHAPTER K. BOATING INDUSTRY REGULATIONS

31 TAC §§53.100 - 53.105

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed new sections, submitted by the Texas Parks and Wildlife Department has been automatically withdrawn. The new sections as proposed appeared in the December 14, 2001 issue of the *Texas Register* (26 TexReg 10231).

Filed with the Office of the Secretary of State on June 17, 2002.

TRD-200203776

♦ ♦ ♦

CHAPTER 59. PARKS

SUBCHAPTER A. PARK ENTRANCE AND PARK USER FEES

31 TAC §59.2, §59.3

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed amended sections, submitted by the Texas Parks and Wildlife Department has been automatically withdrawn. The amended sections as proposed appeared in the December 14, 2001 issue of the *Texas Register* (26 TexReg 10237).

Filed with the Office of the Secretary of State on June 17, 2002.

TRD-200203777

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.286

The Comptroller of Public Accounts has withdrawn from consideration the proposed amendment to §3.286 which appeared in the May 3, 2002, issue of the *Texas Register* (27 TexReg 3719).

Filed with the Office of the Secretary of State on June 11, 2002.

TRD-200203642
Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
Effective date: June 11, 2002
For further information, please call: (512) 475-0387

♦ ♦ ♦

ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 daysafter the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federalstatute or regula tion requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 72. STATE SEAL

1 TAC §72.40

The Office of the Secretary of State adopts amendments to §72.40, concerning definitions for the State Seal, without changes to the text as published in the May 10, 2002, issue of the *Texas Register* (27 TexReg 3869) and will not be republished. The amendments will update statutory references to conform to a codification of statutes. This is a non-substantive change.

House Bill 2812, 77th Legislature, Regular Session, repealed Article 6139f, Revised Civil Statutes. In its place the bill created a new Chapter 3101 of the Government Code concerning State Symbols. These amendments replace references to the old article numbers with the new Chapter 3101 citation.

No comments were received regarding the amendments.

The amendments are adopted under the Business and Commerce Code, §17.08(d), which provides the Secretary of State with the authority to adopt rules concerning the private use of the state seal, and Government Code, §3101.001(f) and §3101.002(b) which requires the Secretary of State to adopt rules concerning standard designs for the state seal, reverse of the state seal, and the state arms.

The amendments affect Texas Government Code, §3101.

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 June 14, 2002.

TRD-200203718
David Roberts
General Counsel
Office of the Secretary of State
Effective date: July 4, 2002
Proposal publication date: May 10, 2002
For further information, please call: (512) 463-5562

♦ ♦ ♦

CHAPTER 81. ELECTIONS

SUBCHAPTER I. CAMPAIGN REPORTING AND DISCLOSURE

1 TAC §§81.200 - 81.202, 81.210

The Office of the Secretary of State, Elections Division, adopts the repeal of §§81.200 - 81.202 and §81.210, concerning campaign reporting and disclosure without changes to the proposal as published in the December 21, 2001, *Texas Register* (26 TexReg 10461) and will not be republished.

These rules are obsolete because the responsibility for campaign reporting and disclosure filings was transferred from the Secretary of State to the Texas Ethics Commission.

No comments were received concerning the proposed repeal.

The repeal is adopted under the Election Code, Chapter 31, Subchapter A, §31.003, which provides the Secretary of State with authority to promulgate rules to obtain uniformity in the interpretation and application of the Election Code.

The Election Code, Title 7, is affected by this repeal.

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 June 13, 2002.

TRD-200203691
David Roberts
General Counsel
Office of the Secretary of State
Effective date: July 3, 2002
Proposal publication date: December 21, 2001
For further information, please call: (512) 463-5562

♦ ♦ ♦

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8063

The Health and Human Services Commission (HHSC) adopts amendments to §355.8063, concerning reimbursement methodology for inpatient hospital services, with changes to the proposed text as published in the February 15, 2002, issue of the *Texas Register* (27 TexReg 1060).

Section 355.8063 is amended to describe the provision of supplemental payments to certain high-volume hospitals. The amendments will function by describing the methodology to be used to identify and reimburse high-volume hospitals.

The proposed text in the February 15, 2002, issue of the *Texas Register* also described certain cost containment initiatives developed in response to Article II, §33 of the Special Provisions Relating to All Health and Human Services Agencies contained in the General Appropriations Act (Act of May 22, 2001, 77th Leg., R.S.). These initiatives are withdrawn in favor of an alternative proposal for cost savings, which was developed in cooperation with the hospital industry, including the Texas Hospital Association and the Hospital Payment Advisory Committee. The alternative proposal will be published in a future issue of the *Texas Register*.

The adopted rule reflects the deletion of the cost containment proposals described above and clarification of the scope of the supplemental payments included in the proposed amendment. The revisions are as follows:

The proposed amendment to subsection (n)(2) of §355.8063, which temporarily would suspend application of a cost-of-living index, is withdrawn.

The proposed amendment to subsection (p)(1), which would establish a temporary limit on the day outlier payment adjustment, is withdrawn.

The proposed amendment to subsection (p)(2), which would establish a temporary limit on the cost outlier payment adjustment, is withdrawn.

Proposed subsection (t)(1) is revised to correctly identify which Texas counties with a publicly-owned hospital or a hospital affiliated with a hospital district are eligible for the supplemental payments proposed under new subsection (t).

HHSC received comments from the Texas Association of Public and Non-Profit Hospitals and a law firm.

The following comments were received during the comment period concerning the proposed amendment.

Comment: One commenter inquired whether HHSC intended to have only one hospital from the counties listed in subsection (t)(1) eligible to receive supplemental high volume payments.

Response: HHSC revised subsection (t)(3) to clarify that only one publicly owned hospital or hospital affiliated with a hospital district in each county listed in subsection (t)(1) will be eligible to receive supplemental high volume payments.

Comment: One commenter inquired whether HHSC intended to remove the inflation factor adjustment in calculating the default Standard Dollar Amount for "Newly Enrolled Hospitals," "Newly Constructed Hospitals," "Out-of-State Hospitals."

Response: As noted above, proposed subsection (n)(2) as published in the February 15, 2002, issue of the *Texas Register* is withdrawn in favor of an alternative proposal for meeting Medicaid cost containment mandates contained in the General Appropriations Act (Article II, §33 of the Special Provisions Relating to All Health and Human Services Agencies contained in the General Appropriations Act) (Act of May 22, 2001, 77th Leg., R.S.). The alternative proposal will be published in a future issue of the *Texas Register*.

Comment: One commenter requested HHSC clarify subsection (t)(5) concerning the meaning of fully offsetting Medicaid payments against the "hospital specific limit".

Response: HHSC revised subsection (t)(5) to describe how the "hospital specific limit", the "Medicaid Shortfall", and the "cost of services to uninsured patients" will be adjusted by Medicaid payments in excess of Medicaid cost.

The amendments are adopted under authority granted to HHSC by §531.033, Government Code, which authorizes the Commissioner of Health and Human Services to adopt rules necessary to implement HHSC's duties, and under §531.021(a), Government Code, which authorizes HHSC to administer federal medical assistance (Medicaid) program funds.

§355.8063. Reimbursement Methodology for Inpatient Hospital Services.

(a) Introduction. Except as otherwise specified in subsection (q) of this section, the Texas Medical Assistance Program (Medicaid) reimburses hospitals, except in-state children's hospitals, for covered inpatient hospital services using a prospective payment system. In-state children's hospitals are reimbursed for covered inpatient hospital services using the methodology described in subsection (o) of this section. For hospitals other than in-state children's hospitals, the department or its designee groups hospitals into payment divisions using the average base year payment per case in each hospital after adjusting each hospital's base year payment per case by a case mix index, a cost-of-living index, and a budgetary reduction factor of 10%. The budgetary reduction factor for admissions occurring in state fiscal year 1990 (September 1, 1989, through August 31, 1990) is 7.0% and the budgetary reduction factor for admissions occurring in state fiscal year 1991 (September 1, 1990, through August 31, 1991) is 5.5%. For admissions occurring in state fiscal year 1992 (September 1, 1991, through August 31, 1992) and subsequent state fiscal years, a budgetary reduction factor is not applied. The payment divisions are separated into $100 increments. If a payment division has less than ten observations for Medicaid data, the department or its designee considers that payment division to be statistically invalid. Hospitals within that payment division are placed into the nearest valid payment division.

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

(1) Diagnosis-related group (DRG)--The taxonomy of diagnoses as defined in the Medicare DRG system or as otherwise specified by the department or its designee.

(2) Case mix index--The hospital-specific average relative weight.

(3) Relative weight--The arithmetic mean of the dollars for a specific DRG divided by the arithmetic mean of the dollars for all cases.

(4) Standard dollar amount--The weighted mean base year payment for all hospitals in a payment division after adjusting each hospital's base year payment per case by a case mix index, a cost-of-living

index, and a budgetary reduction factor of 10%. The budgetary reduction factor for admissions occurring in state fiscal year 1990 (September 1, 1989, through August 31, 1990) is 7.0% and the budgetary reduction factor for admissions occurring in state fiscal year 1991 (September 1, 1990, through August 31, 1991) is 5.5%. For admissions occurring in state fiscal year 1992 (September 1, 1991, through August 31, 1992) and subsequent state fiscal years, a budgetary reduction factor is not applied. The department or its designee establishes a minimum standard dollar amount of $1,600 and applies it to those hospitals whose standard dollar amount is less than the minimum. The department or its designee applies cost-of-living indexes to the standard dollar amounts established for the base year to calculate standard dollar amounts for prospective years. A cost-of-living index is not applied to the minimum standard dollar amount.

(5) Base year--A 12-consecutive-month period of claims data selected by the department or its designee as the basis for establishing the payment divisions, standard dollar amounts, and relative weights. The department or its designee selects a new base year at least every three years.

(6) Base year payment per case--The payment that would have been made to a hospital if the department or its designee reimbursed the hospital under similar methods and procedures used in Title XVIII of the Social Security Act, as amended, effective October 1, 1982, by Public Law 97-248. In calculating the base year payment per case, the department or its designee uses the interim rate established at tentative or final settlement, if applicable, of the most recent cost reporting period up to and including the cost reporting period associated with the base year.

(7) Interim rate--Total reimbursable Title XIX inpatient costs, as specified in paragraph (6) of this subsection, divided by total covered Title XIX inpatient charges per tentative or final cost reporting period. Beginning with 1985 hospital fiscal year cost reporting periods, the interim rate established at tentative settlement includes incentive/penalty payments to the extent that they continue to be permitted by federal law and regulation and continue to be included on Title XVIII cost reports.

(8) New hospital--A facility that has been in operation under present and previous ownership for less than three years and that initially enrolls as a Title XIX provider after the current base year. A new hospital must have been substantially constructed within the five previous years from the effective date of the prospective rate period.

(9) Children's hospital--A hospital within Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(10) Out-of-state children's hospital--A hospital outside of Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(c) Calculating relative weights and standard dollar amounts. The department or its designee uses recent Texas claims data to calculate both the relative weights and standard dollar amounts. A relative weight is calculated for each DRG and applied to all payment divisions. A separate standard dollar amount is calculated for each payment division. Except for border hospitals with a Texas Medicaid provider number beginning with an H and out-of-state children's hospitals, the department or its designee uses the overall arithmetic mean base year payment per case, including the cost of living update as specified in subsection (n) of this section, as the standard dollar amount to reimburse out-of-state hospitals. The overall arithmetic mean base year payment per case, including the cost of living update as specified in subsection (n) of this section, is also used as the standard dollar amount to reimburse military hospitals providing inpatient emergency services for admissions on or after October 1, 1993. The calculation of the standard dollar amount for out-of-state children's hospitals is described in subsection (r) of this section. Except for new hospitals, the overall arithmetic mean base year payment per case, including the cost of living update as specified in subsection (n) of this section, is also used as the standard dollar amount to reimburse hospitals that initially enroll as a Title XIX provider after the current base year. The standard dollar amount for new hospitals is the lesser of the overall arithmetic mean base year payment per case plus three percentile points, including the cost of living update as specified in subsection (n) of this section, or the hospital's average Medicaid cost per Medicaid discharge based on the tentative or final settlement, if applicable, of the hospital's first 12-month cost reporting period occurring after the hospital's enrollment as a Title XIX provider. In the event that the new hospital is a replacement facility for a hospital that is currently enrolled as a Title XIX provider, the hospital is reimbursed by using either the standard dollar amount of the existing provider or the standard dollar amount for new hospitals, whichever is greater. The use of the hospital's average Medicaid cost per Medicaid discharge, after adjusting for case-mix intensity, as its standard dollar amount is applied prospectively to the beginning of the next prospective year and is applicable only if the tentative or final settlement is completed and available at least 60 days before the beginning of the prospective year. The hospital's Medicaid costs are determined using similar methods and procedures used in Title XVIII of the Social Security Act, as amended, effective October 1, 1982, by Public Law 97-248. When two or more Title XIX participating providers merge, the department or its designee combines the Medicaid inpatient costs, as described in this subsection, of each of the individual providers to calculate a standard dollar amount, effective at the start of the next prospective period, to be used to reimburse the merged entity. Acquisitions and buyouts do not result in a recalculation of the standard dollar amount of the acquired provider unless acquisitions or buyouts result in the purchased or acquired hospital becoming part of another Medicaid participating provider. When the department or its designee determines that the department or its designee has made an error that, if corrected, would result in the standard dollar amount of the provider for which the error was made changing to a new payment division, either higher or lower, the department or its designee moves the provider into the correct payment division, and the department or its designee reprocesses claims paid using the initial, incorrect standard dollar amount that was in effect for the current state fiscal year by using the existing standard dollar amount of the payment division in which the provider was moved. In the determination of the corrected payment division, the department or its designee uses the relative weights that are currently in effect for the state fiscal year. The correction of this error condition only applies to the current state fiscal year payments. No corrections are made to payment rates for services provided in previous state fiscal years. If a specific DRG has less than ten observations for Medicaid data, the department or its designee uses the corresponding Medicare relative weight, except for DRGs relating to organ transplants. Relative weights for organ transplant DRGs with less than ten observations may be developed using Medicaid-specific data. The relative weights include organ procurement costs for both solid and nonsolid organs. The department or its designee makes no distinction between urban and rural hospitals and there is no federal/national portion within the payment.

(d) Add-on payments. There are no separate add-on payments. The department or its designee:

(1) includes capital costs in the standard dollar amount for each payment division;

(2) includes the cost of indirect medical education in the standard dollar amount for each payment division;

(3) includes the cost of malpractice insurance in the standard dollar amount for each payment division; and

(4) includes return on equity in the standard dollar amount for each payment division.

(e) Calculating the payment amount. The department or its designee reimburses each hospital for covered inpatient hospital services by multiplying the standard dollar amount established for the hospital's payment division by the appropriate relative weight. The patient's DRG classification is primarily based on the patient's principal diagnosis. The resulting amount is the payment amount to the hospital.

(f) Patient transfers. If a patient is transferred, the department or its designee establishes payment amounts as specified in paragraphs (1)-(4) of this subsection. If appropriate, the department or its designee manually reviews transfers for medical necessity and appropriate payment.

(1) If the patient is transferred to a skilled nursing facility or intermediate care facility, the department or its designee pays the transferring hospital the total payment amount of the patient's DRG.

(2) If the patient is transferred to another hospital, the department or its designee pays the receiving hospital the total payment amount of the patient's DRG. The department or its designee pays the transferring hospital a DRG per diem. The DRG per diem is based on the following formula: (DRG relative weight x standard dollar amount) / DRG mean length of stay (LOS) x LOS. The LOS is the lesser of the DRG mean LOS, the claim LOS, or 30 days. The 30-day factor is not used in establishing a DRG per diem amount for a medically necessary stay of a recipient less than age one in a Title XIX participating hospital or a recipient less than age six in a disproportionate share hospital as defined by the department.

(3) If the department or its designee determines that the transferring hospital provided a greater amount of care than the receiving hospital, the department or its designee reverses the payment amounts. The transferring hospital is paid the total payment amount of the patient's DRG and the receiving hospital is paid the DRG per diem.

(4) The department or its designee makes multiple transfer payments by applying the per diem formula to the transferring hospitals and the total DRG payment amount to the discharging hospital.

(g) Split billing. The department or its designee does not allow interim billings by providers. The hospital may bill the department or its designee when the patient exceeds his 30-day inpatient hospital limit or is discharged. The department or its designee bases payment on the diagnosis codes known at billing. The payment is final.

(h) Rebasing the standard dollar amounts. The department or its designee rebases the standard dollar amount for each payment division at least every three years. The relative weights are recalibrated whenever the standard dollar amounts are recalculated. The standard dollar amounts are not rebased on an interim basis unless the department or its designee determines that special circumstances warrant rebasing.

(i) Recalibrating the relative weights. The department or its designee recalibrates the relative weights whenever the standard dollar amounts are rebased.

(j) Revising the diagnosis related groups. The department or its designee parallels the taxonomy of diagnoses as defined in the Medicare DRG prospective payment system unless a revision is required based on Texas claims data or other factors as determined by the department or its designee.

(k) Appeals.

(1) A hospital may appeal individual claims as specified in other department rules. As specified in subparagraphs (A), (B), and (C) of this paragraph, a hospital may also appeal mechanical, mathematical, and data entry errors in base year claims data and incorrectly computed subsequent adjustments to the hospital's base year claims data because of the base year's tentative or final settlement.

(A) If a hospital believes that the department or its designee made a mechanical, mathematical, or data entry error in computing the hospital's base year claims data, the hospital may request a review of the disputed calculation by the department or, at the department's direction, its designee. A hospital may not request a review if the disputed calculation is the result of the hospital's submittal of incorrect data or the result of the department's or its designee's application of an interim rate to the base year claims data derived from a cost reporting period occurring before the base year. Upon the provider hospital's request, the department or its designee provides the applicable available data used in calculating the hospital's base year claims data to the provider hospital. The hospital must submit a specific written request for review and appropriate specific documentation supporting its contention that there has been a mechanical, mathematical, or data entry error to the department or its designee. Except as specified in subparagraph (C) of this paragraph, the request must be submitted within 60 days after the hospital receives initial notification of its payment division and standard dollar amount. The department or its designee conducts the review as quickly as possible and notifies the hospital of the results. If the hospital is dissatisfied with the results of the review, the hospital may request a formal hearing under the procedures, including the expedited processing provisions, contained in Chapter 1 of this title (relating to the Texas Board of Health), except that, in the event of any conflict, the procedures contained in this section apply. Except as specified in subparagraph (C) of this paragraph, if the review or appeal is completed at least 60 days before the beginning of the next prospective year, any adjustment required after the completion of the review or appeal is applied to that next prospective year. If the review or appeal is not completed at least 60 days before the beginning of the next prospective year, any adjustment required after the completion of the review or appeal is applied only to the subsequent prospective year. The base year claims data used by the department or its designee pending the review or appeal is the base year claims data established by the department or its designee.

(B) If a hospital believes that the department or its designee incorrectly computed subsequent adjustments to the hospital's base year claims data because of the base year's tentative or final settlement, the hospital may request a review of the disputed calculation related to the tentative or final settlement by the department or, at the department's direction, its designee. The hospital's request may also include a request to review the tentative or final settlement. The hospital must submit a specific written request for review and appropriate specific documentation supporting its contention that the tentative or final settlement is incorrect to the department or its designee. Except as specified in subparagraph (C) of this paragraph, the request must be submitted within 60 days after the hospital receives notification of a tentative or final settlement of the base year data. The department or its designee conducts the review as quickly as possible and notifies the hospital of the results. If the hospital is dissatisfied with the results of the review, the hospital may request a formal hearing under the procedures, including the expedited processing provisions, contained in Chapter 1 of this title (relating to the Texas Board of Health), except that, in the event of any conflict, the procedures contained in this section apply. Except as specified in subparagraph (C) of this paragraph, if the review or appeal is completed at least 60 days before the beginning of the next prospective year, any adjustment required after the completion of the review or appeal is applied to that next prospective year. If

the review or appeal is not completed at least 60 days before the beginning of the next prospective year, any adjustment required after the completion of the review or appeal is applied only to the subsequent prospective year. The interim rate applied to the base year claims data pending the review or appeal is the interim rate established by the department or its designee.

(C) If a hospital believes that the department or its designee incorrectly computed the hospital's 1985 base year claims data as specified in subparagraph (A) of this paragraph, the hospital may submit a specific written request for review and appropriate specific documentation supporting its contention within 60 days after the effective date of this section. If a hospital believes that the department or its designee incorrectly computed the tentative or final settlement of the cost reporting period associated with the 1985 base year as specified in subparagraph (B) of this paragraph, the hospital may submit a specific written request for review and appropriate specific documentation supporting its contention within 60 days after the effective date of this section. The hospital must follow the process described in subparagraphs (A) or (B) of this paragraph, as appropriate. If the review or appeal is completed by December 31, 1987, any adjustment required after the completion of the review or appeal is applied to the March 1, 1988, adjustment described in subsection (n) of this section. If the review or appeal is not completed by December 31, 1987, any adjustment required after the completion of the review or appeal is applied to the next prospective year.

(2) A hospital may not appeal the prospective payment methodology used by the department or its designee, including:

(A) the payment division methodologies;

(B) the DRGs established;

(C) the methodology for classifying hospital discharges within the DRGs;

(D) the relative weights assigned to the DRGs; and

(E) the amount of payment as being inadequate to cover costs.

(l) Cost reports. Each hospital must submit a cost report at periodic intervals as prescribed by Medicare or as otherwise prescribed by the department or its designee. The department or its designee uses data from these reports in rebasing years, in making adjustments as described in subsection (n) and subsection (q) of this section, and in completing cost settlements for children's hospitals.

(m) Cost settlements. If a hospital has already begun its fiscal year on September 1, 1986, cost settlement for that portion of the hospital's fiscal year which occurs before September 1, 1986, is based on reimbursement for covered inpatient hospital services under similar methods and procedures used in the Social Security Act, Title XVIII, as amended, effective October 1, 1982, by Public Law 97-248. Except as otherwise specified in subsection (q) of this section, there are no cost settlements for services provided to recipients admitted as inpatients to hospitals reimbursed under the prospective payment system on or after the implementation date of the prospective payment system.

(n) Adjustments to base year claims data.

(1) Beginning with 1985 hospital fiscal year cost reporting periods, the department or its designee adjusts each hospital's base year claims data and resulting payment division and standard dollar amount to reflect the interim rate established at tentative and final settlement, if applicable, of the cost reporting period associated with the base year. The adjustments are applied only to claims data for months within the base year that coincide with months within the hospital's cost reporting period. The claims data for months within the base year that do not coincide with months within the hospital's cost reporting period remain unchanged until the tentative or final settlement of the cost reporting period containing those months has been completed. The adjustments are applied to the next prospective year beginning September 1, 1988, except as specified in subparagraphs (A), (B), and (C) of this paragraph.

(A) If the tentative or final settlement is not completed and available at least 60 days before the beginning of the next prospective year, any adjustment required because of the settlement is applied to the subsequent prospective year.

(B) If a review or appeal of a tentative or final settlement is not completed at least 60 days before the beginning of the next prospective year, the interim rate applied to the claims data on which the hospital's payment division and standard dollar amount are established is the interim rate established at tentative or final settlement by the department or its designee. Any adjustment required after the completion of the review or appeal is applied only to the subsequent prospective year.

(C) The department or its designee makes a March 1, 1988, adjustment to each hospital's 1985 base year claims data and resulting payment division and standard dollar amount to reflect the interim rate established at tentative and final settlement, if applicable, of the cost reporting period associated with the 1985 base year. Any additional adjustments required as a result of reviews and appeals described in subsection (k) of this section and completed by December 31, 1987, are also reflected in the March 1, 1988, adjustment. Future adjustments as described in this subsection and subsection (k) of this section are made at the beginning of each prospective year.

(2) The department or its designee updates the standard dollar amount each year for each payment division by applying a cost-of-living index to the standard dollar amount established for the base year. The index used to update the standard dollar amounts is the greater of:

(A) the Health Care Financing Administration's (HCFA) Market Basket Forecast (PPS Hospital Input Price Index) based on the report issued for the federal fiscal year quarter ending in March of each year, adjusted for the state fiscal year by summing one-third of the annual forecasted rate of the index for the current calendar year and two-thirds of the annual forecasted rate of the index for the next calendar year; or

(B) an amount determined by selecting the lesser of the following two measures:

(i) the change in total charges per case for the latest year available compared to total charges per case for the previous year; or

(ii) the change in the Texas medical consumer price index-urban (that is, the arithmetic mean of the Houston and Dallas/Fort Worth medical consumer price indices for urban consumers) for the latest year available compared to the Texas medical consumer price index-urban for the previous year.

(o) Reimbursement to in-state children's hospitals. The department or its designee reimburses in-state children's hospitals under similar methods and procedures used in the Social Security Act, Title XVIII, as amended, effective October 1, 1982, by Public Law 97-248, except for the cost of direct graduate medical education. The department or its designee establishes target rates and stipulates payments per discharge, incentives, and percentage of payments. The department or its designee uses each hospital's 1987 final audited cost reporting period (fiscal year ending during calendar year 1987) as its target base period. The target base period for hospitals recognized by Medicare as children's hospitals after the implementation of this subsection is the

hospital's first full 12-month cost reporting period occurring after its recognition by Medicare. The department or its designee annually increases each hospital's target amount for the target base period by the cost-of-living index described in subsection (n) of this section. The department or its designee selects a new target base period at least every three years. The department or its designee bases interim payments to each hospital upon the interim rate derived from the hospital's most recent tentative or final Medicaid cost report settlement. If a Title XIX participating hospital is subsequently recognized by Medicare as a children's hospital after the implementation of this subsection, the hospital must submit written notification to the department or its designee and include adequate documentation and claims data. Upon receipt of the written notification from the hospital, the department or its designee reserves the right to take 90 days to convert the hospital's reimbursement to the reimbursement methodology described in this subsection.

(p) Day and cost outliers. Effective for inpatient hospital services provided on or after July 1, 1991, the HHSC or its designee pays day or cost outliers for medically necessary inpatient services provided to clients less than age one in all Title XIX participating hospitals and clients less than age six in disproportionate share hospitals, as defined by the HHSC, that are reimbursed under the prospective payment system. For purposes of outlier payment adjustments, disproportionate share hospitals are defined as those hospitals identified by the HHSC during the previous state fiscal year as disproportionate share hospitals. If an admission qualifies for both a day and a cost outlier, only the outlier resulting in the highest payment to the hospital is paid. (Note: This subsection does not address reimbursement for the provision of other necessary inpatient hospital services under the Early and Periodic Screening, Diagnosis, and Treatment Program, as required by the Omnibus Budget and Reconciliation Act of 1989.)

(1) To establish day outliers, the HHSC or its designee first removes from the current base year data those admissions whose actual lengths of stay are greater than or equal to plus or minus three standard deviations from the arithmetic mean length of stay for each DRG. The HHSC or its designee then recomputes the arithmetic mean length of stay and the standard deviations for each DRG. Inpatient days, which exceed two standard deviations beyond the arithmetic mean length of stay for the DRG are eligible for a day outlier. Payment is based on 70% of a per diem amount of a full DRG payment. The per diem amount is established by dividing the full DRG payment amount by the arithmetic mean length of stay for the DRG.

(2) To establish cost outliers, the HHSC or its designee first determines what the amount of reimbursement for the admission would have been if the HHSC or its designee reimbursed the hospital under similar methods and procedures used in the Social Security Act, Title XVIII, as amended, effective October 1, 1982, by Public Law 97-248, Tax Equity and Fiscal Responsibility Act (TEFRA). The HHSC or its designee then determines the outlier threshold by using the greater of the full DRG payment amount multiplied by 1.5 or an amount determined by selecting the lesser of the universe mean of the current base year data multiplied by 11.14, or the hospital's standard dollar amount multiplied by 11.14. The hospital's standard dollar amount is the amount that the HHSC or its designee uses to reimburse the hospital under the prospective payment system. The outlier threshold is subtracted from the amount of reimbursement for the admission established under the TEFRA principles. The HHSC or its designee multiplies any remainder by 70% to determine the actual amount of the cost outlier payment.

(3) If a recipient less than age one is admitted to and remains in a hospital past his or her first birthday, medically necessary inpatient days and hospital charges after the child reaches age one are included in calculating the amount of any day or cost outlier payment.

(q) Hospitals with 100 or fewer licensed beds. The policies in this subsection apply only to hospital fiscal years beginning on or after September 1, 1989, and are applicable only to hospitals with 100 or fewer licensed beds at the beginning of the hospital's fiscal year. At tentative cost settlement of the hospital's fiscal year (with subsequent adjustment at final cost settlement, if applicable), the department or its designee determines what the amount of reimbursement during the fiscal year would have been if the department or its designee reimbursed the hospital under similar methods and procedures used in Title XVIII of the Social Security Act, as amended, effective October 1, 1982, by Public Law 97-248, Tax Equity and Fiscal Responsibility Act (TEFRA). This determination is made without imposing a TEFRA cap. If the amount of reimbursement under the TEFRA principles is greater than the amount of reimbursement received by the hospital under the prospective payment system, the department or its designee reimburses the difference to the hospital.

(r) Reimbursement to out-of-state children's hospitals. For admissions on or after September 1, 1991, the standard dollar amount for out-of-state children's hospitals is calculated as specified in this subsection. The department or its designee calculates the overall average cost per discharge for in-state children's hospitals based on tentative or final settlement of cost reporting periods ending in calendar year 1990. The overall average cost per discharge is adjusted for intensity of service by dividing it by the average relative weight for all admissions from in-state children's hospitals during state fiscal year 1990 (September 1, 1989 through August 31, 1990). The adjusted cost per discharge is updated each year by applying the cost-of-living index described in subsection (n) of this section. The resulting product is the standard dollar amount to be used for payment of claims as described in subsection (e) of this section. The department or its designee selects a new cost reporting period and admissions period from the in-state children's hospitals at least every three years for the purpose of calculating the standard dollar amount for out-of-state children's hospitals.

(s) Reimbursement of inpatient direct graduate medical education (GME) costs. The Medicaid allowable inpatient direct graduate medical education cost, as specified under similar methods and procedures used in the Social Security Act, Title XVIII, as amended, effective October 1, 1982, by Public Law 97-248, is calculated for each hospital having inpatient direct graduate medical education costs on its tentative or final audited cost report. Those inpatient direct medical education costs are removed from the calculation of the interim rate described in subsection (b)(7) of this section and are used in the calculation of the provider's standard dollar amount described in subsection (c) of this section. Those allowable inpatient direct graduate medical education costs for services delivered to Medicaid eligible patients with inpatient admission dates on or after September 1, 1997, will be subject to the cost determination and settlement provisions as described in this subsection. No Medicaid inpatient direct graduate medical education cost settlement provisions are applied to inpatient hospital admissions prior to September 1, 1997. Providers with Medicaid allowable inpatient direct graduate medical education costs as described in this subsection will receive an interim monthly payment based upon one-twelfth of their inpatient direct graduate medical education cost from their most recent tentative or final audited cost report. The interim payment amount as described in this subsection will not be updated during the state fiscal year to reflect new tentative or final cost report settlements. These payments are subject to settlement at both tentative and final audit of provider cost reporting periods covering the state fiscal year.

(t) Notwithstanding other provisions of this subchapter and subject to the availability of funds, supplemental payments will be

made each state fiscal year in accordance with this subsection to eligible hospitals that serve high volumes of Medicaid and uninsured patients.

(1) Supplemental payments are available under this subsection for inpatient hospital services provided by a publicly-owned hospital or hospital affiliated with a hospital district in Bexar, Dallas, El Paso, Harris, and Tarrant counties on or after July 6, 2001.

(2) State funding for supplemental payments authorized under this paragraph will be limited to and obtained through intergovernmental transfers of local or hospital district funds. The supplemental payments described in this paragraph will be made in accordance with the applicable regulations regarding the Medicaid upper limit provisions codified at 42 C.F.R. §447.272.

(3) In each county listed in subsection (t)(1) of this section, the publicly-owned hospital or hospital affiliated with a hospital district that incurs the greatest amount of cost for providing services to Medicaid and uninsured patients, will be eligible to receive supplemental high volume payments. The supplemental payments authorized under this paragraph are subject to the following limits:

(A) In each state fiscal year the amount of any inpatient supplemental payments and outpatient supplemental payments may not exceed the hospital's "hospital specific limit," as determined under §355.8065(f)(2)(D) of this chapter (relating to Reimbursement to Disproportionate Share Hospitals (DSH)); and

(B) The amount of inpatient supplemental payments and fee-for-service Medicaid inpatient payments the hospital receives in a state fiscal year may not exceed Medicaid inpatient billed charges for inpatient services provided by the hospital to fee-for-service Medicaid recipients in accordance with 42 CFR §447.271.

(4) An eligible hospital will receive quarterly supplemental payments. The quarterly payments will be limited to one-fourth of the lesser of:

(A) The difference between the hospital's Medicaid inpatient billed charges and Medicaid payments the hospital receives for services provided to fee-for-service Medicaid recipients. Medicaid billed charges and payments will be based on a twelve consecutive-month period of fee-for-service claims data selected by HHSC; or

(B) The difference between the hospital's "hospital specific limit," as determined under §355.8065(f)(2)(D) of this chapter (relating to Reimbursement to Disproportionate Share Hospitals (DSH)) and the hospital's DSH payments as determined by the most recently finalized DSH reporting period.

(5) For purposes of calculating the "hospital specific limit" in subsection (t)(4)(B) of this section, the "cost of services to uninsured patients, " as defined by Texas Administrative Code §355.8065(b)(5) and "Medicaid shortfall," as defined by Texas Administrative Code §355.8065(b)(16), will be adjusted as follows:

(A) The amount of Medicaid payments (including inpatient and outpatient supplemental payments) that exceed Medicaid cost will be subtracted from the "Medicaid shortfall."

(B) The amount of the "Medicaid shortfall," as adjusted in accordance with subsection (t)(5)(A) of this section, will be subtracted from the "cost of services to uninsured patients" to ensure that, during any state fiscal year, a hospital does not receive more in total Medicaid payments (inpatient and outpatient rate payments, graduate medical education payments, supplemental payments and disproportionate share hospital payments) than its cost of serving Medicaid patients and patients with no health insurance.

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 June 17, 2002.

TRD-200203751
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Effective date: July 7, 2002
Proposal publication date: February 15, 2002
For further information, please call: (512) 424-6576

♦ ♦ ♦

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 3. BOLL WEEVIL ERADICATION PROGRAM

SUBCHAPTER D. REQUIREMENTS FOR PARTICIPATION IN THE ERADICATION PROGRAM AND ADMINISTRATIVE PENALTY ENFORCEMENT

4 TAC §3.72

The Texas Department of Agriculture (the department) adopts amendments to §3.72, concerning reporting requirements for participation in the boll weevil eradication program, without changes to the proposal published in the April 26, 2002 issue of the *Texas Register* (27 TexReg 3417). The amendments are adopted to provide a more equitable and consistent method for the reporting of cotton location and acreage in active boll weevil eradication zones. Moreover, the ability of the Texas Boll Weevil Eradication Foundation to be better informed of where all cotton is grown within an active eradication zone will result in a more efficient eradication program which will, in turn, reduce the cost of eradicating boll weevils as well as reduce the cost of mitigating possible damage from a reinfestation of boll weevils into areas previously eradicated. More specifically, the amendments are adopted to clarify reporting requirements found at subsections 3.72 (b) and (c) for cotton growers within an active boll weevil eradication zone. A new subsection (d) is added and provides that the Texas Boll Weevil Eradication Foundation (Foundation) may send a written inquiry directly to a grower who has previously failed to report cotton acreage and location to the Foundation or the Farm Service Agency or a grower who the Foundation has probable cause to believe has planted cotton in an active eradication zone without reporting as required by §3.72. This new subsection is adopted to allow for an alternative, more proactive method for the Foundation to gather necessary acreage and location information from certain growers planting cotton in an eradication zone. New subsection (e) provides that falsely reporting acreage or location of cotton may result in the assessment of an administrative penalty. This new subsection is adopted to make cotton growers aware that falsely reporting information may result in enforcement action being taken against a grower in the same manner as against a grower failing to report acreage and location.

Comments in favor of the proposal were submitted by the Southern Rolling Plains Cotton Growers Association, Inc. and the Texas Boll Weevil Eradication Foundation.

The amendments to §3.72 are adopted under the Texas Agriculture Code §74.120, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary to carry out the purposes of Chapter 74, Subchapter D.

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 June 17, 2002.

TRD-200203766
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: July 7, 2002
Proposal publication date: April 26, 2002
For further information, please call: (512) 463-4075

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 62. CAREER COUNSELING SERVICES

16 TAC §62.80

The Texas Department of Licensing and Regulation ("Department") adopts an amendment to 16 Texas Administrative Code, §62.80, concerning the fees for the Career Counseling Services program. Section 62.80 is adopted with changes to the proposed text as published in the March 22, 2002, issue of the *Texas Register* (27 TexReg 2164).

The Department is required by Texas Occupations Code, Chapter 51, §51.202 to set fees in amounts reasonable and necessary to cover the costs of administering programs, which include the Career Counseling Services program. The fees currently in place are below the amounts needed to cover program costs in current and future periods. Without the proposed increase in fee revenues, there could be an adverse impact on the administration and enforcement of the Career Counseling Services program.

The Department proposed to increase the fees for an original certificate of authority and a renewal certificate of authority from $1,000 to $2,400 each. The Texas Commission of Licensing and Regulation, at their May 23, 2002 meeting voted to change the proposed fee increase from $2,400 to $2,000.

The Department drafted and distributed the proposed rule amendment to persons internal and external to the agency. The Department wishes to thank these persons for participating in its rulemaking process and submitted comments. Below is a summary of comments received and the Department's response.

Comment: The increase of $1,000 in the certificate fee for the Career Counseling Services program is excessive. *Department Response: Disagrees.* The suggested increase in the certificate fee is required to allow the Department to properly administer and effectively enforce the Career Counseling Services program. Currently the certificate fee is set at $1,000 which is an amount insufficient to cover the costs of administering the Career Counseling Services program.

Comment: The increase of $1,000 in the certificate fee for the Career Counseling Services program is unreasonable and exclusionary and will be harmful to many small career counseling services companies. It would be more equitable and better serve the Department's need to cover administrative costs if each and every career counselor in large firms were charged the same fee. *Department's Response: The Department disagrees.* The Department must determine the amount of the certificate fee for each occupation it regulates based on the cost to administer that program. The increase in the fee for the certificate is reasonable and necessary to cover the costs of administering the program, and is therefore warranted by the Texas Occupation Code, Chapter 51.202. Currently the statute requires that the owner of a Career Counseling Service Company must be the holder of a certificate issued by the Department. In order to require every career counselor in every firm to become certified by the Department, it would require a change to the statute by the legislature.

The cost of compliance and the anticipated economic effect on small businesses and other persons who are required to comply with this section as adopted will be an increase of $1,000 per year for persons filing a request with the Department for an original certificate of authority or a renewal certificate of authority. The fee changes will take effect September 1, 2002. They will apply to licenses and certificates that expire on or after September 1, 2002. They also will apply to all applications (both initial and renewal) filed with the Department on or after September 1, 2002. The adopted fee increase should enhance the future administration and enforcement of the Career Counseling Services program.

The amendment is adopted under Texas Occupations Code, Chapter 51, §51.202 which authorizes the Texas Commission of Licensing and Regulation to set fees in amounts reasonable and necessary to cover the costs of administering the programs and activities under its jurisdiction which includes the Career Counseling Services program.

The statutory provisions affected by the adoption are those set forth in Texas Civil Statutes, Article 5221a-8 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the adoption.

§62.80. Fees.

(a) Original and renewal certificate of authority fee--$2,000.

(b) Late fee--$50.

(c) Reprint fee--$25.

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 June 17, 2002.

TRD-200203773

William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: September 1, 2002
Proposal publication date: March 22, 2002
For further information, please call: (512) 463-7348

♦ ♦ ♦

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER B. LICENSING OF SALES AGENTS

The Texas Lottery Commission adopts amendments to 16 TAC §§401.152, 401.153, 401.155 - 401.157, and 401.159, the repeal of §§401.151, 401.154, and 401.158; and new §401.158 and §401.160. New §401.160 is adopted with changes to the proposed text as published in the May 10, 2002, issue of the *Texas Register* (27 TexReg 3885). The changes are to correct an incorrect reference to a rule provision in 16 TAC §401.160(e) and to correctly reflect the reference to subsection (g) of 16 TAC §401.160 as well as to incorporate by reference the applicability of §401.160(g) to §401.158 and §401.160. The amendments to §§401.152, 401.153, 401.155 - 401.157, and 401.159, repeal of §§401.151, 401.154, and 401.158; and new §401.158 are adopted without changes and will not be republished.

The rulemaking is on rules contained within Subchapter B. Specifically, the amendments make the rules consistent with existing law and clarify current agency practices and procedures relating to the licensing of sales agents.

The amendments, repeal, and new rules eliminate redundant or obsolete language, update rules to current agency practice, and provide guidance to licensees, administrative law judges, and the commission regarding the imposition of administrative penalties against licensees. In addition, the adoption of amendments to §401.153 by adding subsection (e), promotes efficiency and reduces costs to the agency by allowing for agency discretion in the placement of particular types of lottery terminals and/or other lottery equipment at licensed locations. Additionally, the repeals eliminate language that is redundant to language in the State Lottery Act or other Commission rules, inconsistent with corresponding language in the State Lottery Act, inconsistent with current agency practice, or because provisions of the rule are being revised so significantly that it is more efficient to repeal the rule and adopt a new rule.

No comments were received regarding adoption of the amendments, repeals, and new rules.

Government Code §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature (1999), requires each state agency to review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedures Act). 16 TAC Chapter 401 has been reviewed in its entirety and the Commission determined that reasons for adopting certain sections continue to exist. The certain sections that have been readopted pursuant to Commission Order No. 00-0004, dated January 28, 2000, are set out in Exhibit "A" to the Order. The notice of the proposed rule review was published in the November 12, 1999, issue of the *Texas Register*, (24 TexReg 10149.) No comments were received regarding the agency's rule review of Chapter 401. The adoption of this rulemaking is consistent with and the result of the agency's rule review.

Specifically, the repeal to delete the existing 16 TAC §401.151 is because the language in the rule is redundant to language in the State Lottery Act. 16 TAC §401.154 is repealed because the language in this rule is better suited to be incorporated into other rules. For example, subsections (a) and (b) are being moved to §401.153(e) and subsection (c) is moved to §401.152(d). 16 TAC §401.158 is revised so significantly that it is more efficient to repeal the rule and propose new rule, §401.158. The new rule §401.158 incorporates, in one rule, the reasons for disciplinary action against a licensee. 16 TAC §401.160 sets out a standard penalty chart the agency will use in determining an appropriate administrative penalty against a licensee.

16 TAC §§401.151, 401.154, 401.158

The repeals are adopted under Government Code, Chapter 466, §466.015 which authorizes the Commission to adopt all rules necessary to administer the State Lottery Act and to adopt rules governing the establishment and operation of the lottery, and under Government Code, §467.102 which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The repeal affects Government Code, Chapter 466.

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 June 11, 2002.

TRD-200203662
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: July 1, 2002
Proposal publication date: May 10, 2002
For further information, please call: (512) 344-5113

♦ ♦ ♦

16 TAC §§401.152, 401.153, 401.155 - 401.160

The amendments and new rules are adopted under Government Code, §466.015 which authorizes the Commission to adopt all rules necessary to administer the State Lottery Act and to adopt rules governing the establishment and operation of the lottery, and under Government Code, §467.102 which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

§401.160. Standard Penalty Chart.

(a) The commission, through the director of the Lottery Operations Division, may offer settlements to persons charged with violating the provisions of the State Lottery Act or rules of the commission. Settlement of those cases, unless otherwise provided for elsewhere in this rule, shall be in compliance with the following standard penalty chart. A settlement will be in the form of an Agreement and Consent Order of the commission.

(b) A repeat violation by a licensee justifies the penalty for a second or third violation if it occurs within 12 months of the first violation. Violations need not be the same or similar in nature to previous violations to be considered repeat violations.

(c) A penalty for an alleged repeat violation shall not be assessed unless the alleged violation occurs after the licensee has been notified, in writing, of the first alleged violation. Notwithstanding the preceding sentence, if an alleged violation is discovered during an undercover operation, then no notice of any prior alleged violations may be necessary to assess a penalty for a repeat violation. The requirement that written notice be given to a licensee shall not be interpreted to require that a notice of hearing for the violation be delivered to the licensee.

(d) The list of violations in the standard penalty chart is not an exclusive list of violations of the commission or rules of the commission. The commission is authorized to assess penalties for any violation of any of the foregoing statutes or rules for which a penalty is not provided on the chart. Any penalty assessed for a violation not provided for on the standard penalty chart shall be approved by the director of the Lottery Operations Division or his/her designee prior to its assessment.

(e) Any person responsible for assessing a penalty for a violation may deviate from the standard penalty chart if mitigating circumstances are involved and consideration will be given to all the factors listed in subsection (g) of this section. If a recommendation deviating from the standard penalty chart is made, it must be made in writing and be filed with the case report. Final approval shall be made by the director of the Lottery Operations Division or his/her designee.

(f) The standard penalty chart does not bind an administrative law or the commission as to penalties for any violation determined to have occurred by the facts presented in an administrative hearing and the record of that proceeding shall be the determining factor as to the sufficiency of the penalty assessed.

(g) Based upon consideration of the following factors, the commission may impose penalties other than the penalties recommended in §401.158 of this title (relating to Provisional License) and/or this section:

(1) Severity of the offense;

(2) Danger to the public;

(3) Number of repetition of offenses;

(4) Number of complaints previously found justified against the licensee;

(5) Length of time the licensee has held a license;

(6) Actual damage, physical or otherwise, caused by the violations;

(7) Deterrent effect of the penalty imposed;

(8) Attempts by licensee to correct or stop violations or refusal by licensee to correct or stop violations;

(9) Penalties imposed for related offenses; or

(10) Any other mitigating or aggravating circumstances.

Figure: 16 TAC §401.160(g)(10)

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 June 11, 2002.

TRD-200203661
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: July 1, 2002
Proposal publication date: May 10, 2002
For further information, please call: (512) 344-5113

♦ ♦ ♦

CHAPTER 402. BINGO REGULATION AND TAX

16 TAC §402.554

The Texas Lottery Commission adopts the repeal of §402.554, relating to instant bingo without changes to the proposal as published in the May 10, 2002, issue of the *Texas Register* (27 TexReg 3890) and will not be republished.

The rule provided for play of pull-tab bingo in Texas. Contemporaneous with the repeal of this section, the Commission adopts new §402.554 because the changes to the rule are so substantial that it is less confusing to the reader of the rules to adopt a new rule. The new §402.554 will provide new game styles and generate additional revenue for charitable organizations and the State of Texas.

No comments were received regarding repeal of this section.

The repeal is adopted under the Government Code, §467.102 and the Occupations Code, §2001.054 which provide the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The repeal implements Occupations Code, Chapter 2001.

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 June 11, 2002.

TRD-200203663
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: July 1, 2002
Proposal publication date: May 10, 2002
For further information, please call: (512) 344-5113

♦ ♦ ♦

16 TAC §402.554

The Texas Lottery Commission adopts new §402.554 relating to pull-tab bingo with changes to the proposed text as published in the May 10, 2002, issue of the *Texas Register* (27 TexReg 3891). The changes are in response to comment received and are throughout the rule. Specifically, the new section identifies the different forms of pull-tab bingo that can be played in Texas. The new section sets out the standards that must be met for approval of pull-tab bingo tickets, the reasons for disapproval of pull-tab bingo tickets, manufacturing requirements, sales and redemption requirements, authority to inspect the pull-tab bingo tickets, records requirements, and the different styles of play.

The new section authorizes different play styles of pull-tab bingo tickets that will have the potential to generate additional revenue

for charitable organizations that will be distributed for charitable purposes and additional revenue to the State of Texas. Also, bingo players will have the opportunity to play new game styles.

The agency received comments both oral and written. The Commission conducted a public hearing on May 31, 2002 to receive comment on the new rule. All comment was generally in favor of the proposed new rule.

One commenter offered the following comments on behalf of the National Association of Fundraising Ticket Manufacturers (NAFTM). Specifically, subsection (a)(14) defines "prize amount" and appears to require the manufacturer to determine the fair market value of a non-cash item (i.e. a merchandise prize). The rule, as proposed, does not accurately reflect how merchandise prizes are valued and fails to account for those prizes that may be supplied by distributors or by the organization conducting the game. The manufacturer devises the payout structure for the game, which specifies the number of prizes and the various prize amounts. For example, in a merchandise game, the manufacturer may build a game so that there are the following prize amounts: $500; $250; $250; and many smaller cash prizes. These top three prizes are designed to be merchandise prizes. The merchandise prizes may be supplied by the manufacturer, the distributor or by the organization itself. Whoever supplies the prize should be required to establish the fair market value of the prize and the fair market value must be consistent with the prize structure developed for the game. The commenter offered alternative language as follows: "Prize amount. The value of cash and/or the fair market value of merchandise which is awarded as a prize. A collectible item is considered merchandise for determining allowable prize amounts. If a manufacturer or distributor supplies a merchandise prize, the manufacturer or distributor must determine the fair market value of the merchandise prize, otherwise the fair market value of a merchandise prize must be determined by the authorized organization." The commenter suggests that in this revised version, it makes sense to refer to merchandise since that term is already defined in the proposed rule.

Agency response: The Commission agrees with commenter's suggested new language. The intent provides for greater flexibility and clarification of who can provide merchandise prizes while ensuring that the fair market value of said prize is maintained and the merchandise prizes are consistent with the prize structure developed for the game by the manufacturer.

Comment: The commenter also offered comments relating to subsection (b). Specifically, the commenter indicated that the subsection addresses the approval of pull-tab bingo tickets and specifies the information that must be printed on the ticket to ensure approval. The commenter indicated that subsection (b)(3)(A) requires each ticket to bear an impression of the commission's seal and the words "Texas Lottery Commission" engraved around the margin. The commenter proposes the deletion of this requirement. The commenter indicated that Texas is only one of two states in the nation that requires each ticket in a deal to bear a seal (the other is New Hampshire). The seal is unnecessary as a regulatory tool, and has a tendency to limit the variety of pull-tab bingo games available for sale in Texas. Pull-tab bingo games all bear serial numbers, which can be tracked by the manufacturers for at least a period of three years. As virtually every other regulatory jurisdiction has found, a seal provides no assurance that the game is approved nor legitimately sold. It can, in fact, provide false assurance to an investigator who relies only on the presence of the seal and does not examine the serial number or the sales invoice for the game. The commenter encourages the Commission to review the standards developed by the North American Gaming Regulators Association (NAGRA), for pull-tabs. The standards are comprehensive and have been adopted in virtually every jurisdiction that authorizes and regulates pull-tab bingo. The standards do not require a ticket seal nor do they require any individual ticket marking for security purposes. The standards rely on serial number reporting, a mechanism that has been proven effective in a myriad of jurisdictions. One of the primary motives for adoption of the proposed rule is to increase the type of pull-tab bingo games available for Texas charities. The existence of the seal is an example of an overly restrictive rule that, if eliminated, would benefit charities by increasing the variety of existing types of instant bingo games in the state. This, in concert with the addition of new types of games, could have a very beneficial effect on the charities' ability to raise funds with pull-tab bingo tickets. Pull-tab bingo tickets specially printed for Texas bearing the TLC seal are of little market value in another state. Therefore, manufacturers tend to produce only that amount of product that is likely to be sold in Texas and tend to limit the volume of the product to avoid being laden with excessive inventory. Elimination of the TLC seal would open the door to Texas charities to a greater variety of pull-tab bingo games. Greater variety typically translates into greater sales. Greater sales means more money for charity.

Agency response: The Commission disagrees with the commenter's suggestion. The Commission has examples of tickets bearing regulatory language or seals from states such as California, Connecticut and Michigan, in addition to New Hampshire. Several of those jurisdictions indicated that the reason they required their language or seal to be placed on pull-tab tickets was as a result of illegal pull-tab games being provided in their state. The Commission disagrees with the commenter's suggestion that the seal "...provides no assurance that the game is approved...." In fact, the Commission believes that the absence of the seal on a ticket provides a very clear indication to agency staff, licensees and players that a game may not be authorized for use in this state. The Commission believes that each manufacturer should be prepared to manufacture pull-tab bingo tickets specific to a particular jurisdiction's requirements. As recently as the May 2002, edition of the Bingo Manager Magazine, a representative from a manufacturer is quoted as saying "...each region has its own regulations that must be met to win government approval before the tickets can be offered for sale." Bingo Manager is published monthly as a supplement to Gaming Products & Services magazine. Bingo Manager focuses on new products and services and management trends for the profitable operation of bingo halls, charitable gaming operations, high stakes bingo operations and Native American Bingo Operations. Because of the high degree of connectivity between high stakes bingo and Native American gaming, Bingo Manager is provided to Tribal Councils throughout the North American continent as well as the management of all bingo or pull-tab related gaming operations. Information relating to the circulation of Bingo Manager is as follows:

CIRCULATION

Circulation is 10,000

Business Analysis of Circulation

Casinos 46%

High-Stakes Bingo 11%

Charitable Bingo 15%

Native American Casinos ...7%

Riverboat Casinos 4%

Cruise Ships.....3%

Regulators.....4%

Manufacturers and Distributors.....7%

Other (Route, Technicians, Consultants).....3%

Additionally, the commenter compared the state seal to the serial number which is an invalid comparison. The Commission disagrees with the commenter's statements regarding the limitations on the type of pull-tabs that would be available to the Texas market due to the seal requirement. The commenter did not provide specific information. The commenter provided no specific information regarding the direct benefits that charities would receive in the form of reduced costs from the manufacturer for pull-tabs should the seal be eliminated. Finally, the commenter suggested that the Commission review the standards developed by the North American Gaming Regulators Association (NAGRA), for pull-tabs. The Commission, through its staff, did review the NAGRA standards and determined that the standards provided by NAGRA "...are intended to provide regulatory guidance to jurisdictions...." (emphasis added) Additionally the NAGRA standards refer to "minimum information" to be printed on a pull-tab ticket. The Commission believes that the NAGRA standards and minimum requirements have been incorporated into this rule. The Commission also believes that the NAGRA standards were not intended to be definitive or limiting in nature but were intended to provide for each jurisdiction's unique requirements. Finally, the Commission finds the commenter's statement that "...manufacturers tend to produce only that amount of product that is likely to be sold in Texas and tend to limit the volume of the product to avoid being laden with excessive inventory" to be inconsistent with comments made by manufacturers, some of whom are licensed in Texas, in the August 2001 edition of Bingo Manager magazine. This article talks about manufacturers producing games specific to a regional preference and the fact that "very different" player preferences exist from state to state. This would seem to indicate that manufacturers are accustom to producing products specific to a market.

Some commenters also offered comment regarding subsection (b)(3)(E) and indicated that it specifies additional information that must be printed on each pull-tab bingo ticket. The commenters are not opposed to including on each ticket the prize amount, the number of winners for each prize amount, or the cost per ticket. However, the commenters are opposed to the inclusion of the ticket count on each individual ticket. Again, like the seal, this requires specialized printing only for the State of Texas. No other state requires the ticket count for the deal to appear on each ticket in the deal. The standards adopted by the North American Gaming Regulators Association (NAGRA) for Pull-tabs do not require the ticket count to be printed on each ticket. The ticket count is included on the flare for the game and each game is packaged with a matching, accompanying flare. A player interested in the ticket count of the game only has to look at the flare for the information. Agency response: The Commission disagrees with the commenter. As previously mentioned, the NAGRA standards for pull-tabs reference the minimum information to be included on a ticket. (emphasis added) The commenter states that a player interested in the ticket count of the game only has to look at the flare for the information. The rule does not require that the flare be posted in all incidents. Therefore, the Commission believes that, by including the ticket count on each individual ticket, the ticket count provides the player additional information regarding the games they purchase. Finally, the commenter's statement that "no other state requires the ticket count for the deal to appear on each ticket in the deal" is inaccurate. Commission staff have in their possession tickets from another state that contain the ticket count on each ticket.

Comment: Some commenters also offered comment regarding subsection (b)(7) and indicated that it requires a manufacturer to notify the Commission if an approved pull-tab bingo game is discontinued or no longer manufactured for sale in Texas. The commenters encourage the deletion of this requirement because a manufacturer may put a game on a "discontinued" list at some point in time, but may have significant amounts of inventory of the product that is destined for sale into Texas. In addition, a discontinued product may be in the hands of a distributor or distributors for many months or even years before it is sold to an organization. This language is difficult to interpret, difficult to enforce and rife with the potential for inconsistency. It is also unnecessary. No other state has such a requirement. In the alternative, the commenter encourages the Commission to develop language that makes it clear that a manufacturer's decision to discontinue production of a particular game does not mean that the game may not continue to be sold from inventory. The commenters offer the following language to be added to this subsection: "Notification that a game has been discontinued does not preclude a manufacturer, distributor or authorized organization from continuing to sell any deals produced prior to the date the game was discontinued." Another commenter also offered alternative language to say "if a pull-tab is no longer available to sell in Texas".

Agency response: The Commission disagrees with commenters' suggestion that this requirement is unnecessary and should be deleted from the rule. Manufacturers currently comply with this provision and notify the Commission when a game is discontinued or no longer produced. The Commission does agree with the language to be added to subsection (b)(7) clarifying the fact that inventory produced or sold prior to the discontinue date may continued to be sold. The specific language with which the Commission agrees and will include in the rule, as part of subsection (b)(7), is: "Notification that a game has been discontinued does not preclude a manufacturer, distributor or authorized organization from continuing to sell any deals produced prior to the date the game was discontinued." The Commission also will include language in subsection (b)(7) that states: "A manufacturer may reactivate a discontinued game by submitting a request to the commission with a statement that the artwork for the discontinued game has not changed and by submitting the appropriate number of deals for testing from the next print run from the reactivated game. If the manufacturer does want to reactivate a game and make changes to the artwork then the artwork must be resubmitted for approval."

Comment: The commenter also offered comment regarding subsection (d)(11) and indicated that it appears to combine the requirements of (7) and (10). Sealing the deal and shrink wrapping the deal are separate and distinct acts and should not be combined or confused. Sealing a product will ensure its integrity. Shrink wrap exists to protect the flare, which is affixed to the outside of the container under the shrink wrap, and to minimally protect the container. It is not a substitute for sealing the deal with a tamper resistant seal or tape. Shrink wrap occasionally rips during normal handling and shipping without any negative effect on the product. The commenter encourages the Commission to

revise this subdivision as follows: "A manufacturer in selling or providing pull-tab bingo tickets to a distributor shall shrink-wrap each deal completely in a clear wrapping material."

Agency response: The Commission agrees with the commenter in part. Subsection (d)(10) relates the minimum prize payout of the pull-tab bingo ticket and not to the packaging requirements. The commenter's suggestion will be incorporated in the rule to clarify the difference between the sealing of the deal and the shrink wrapping of the deal.

Comment: The commenter also offered comment regarding subsection (d)(12)(C) and indicated that this subsection prevents the determination of a winning or losing ticket by any means other than the physical removal of the perforated tabs. This language is inconsistent with the event ticket games and sign up games where the winners are determined by the opening of a seal, the draw of a bingo ball or the spin of a paddle wheel. The commenter recommends that the language be revised as follows: "prevent the determination of a winning or losing instant pull-tab bingo ticket by any means other than the physical removal of the perforated window tabs by the player....."

Agency response: The Commission disagrees with the commenter's remarks relating to the inconsistency with the event ticket or sign up game. Each game, even an event ticket, requires the player to open the tabs on a pull tab ticket.

Comment: The commenter also suggests deletion of Subdivision (d)(11)(D) that requires the Commission's seal to be place on each ticket only by a licensed manufacturer for all the reasons noted above.

Agency response: The Commission disagrees with the commenter's suggestion for the reasons the Commission has previously stated regarding the Commission's seal requirement.

Comment: The commenter also offered comment on subsection (h) that dictates the style of play for pull-tab bingo games. Paragraph (6) describes "event ticket". The commenter recommends that this provision be revised as follows: "Event ticket. A form of pull-tab bingo where the winner(s) are determined by some subsequent action such as a bingo ball draw, spin of a paddle wheel, opening of a seal on a flare(s) or any other method so long as that method has designated numbers, letters, or symbols that conform to the randomly selected numbers or symbols. An event ticket game must contain more than two (2) instant winners." The commenter indicated that the revisions make it clear that event games are a form of pull-tab bingo so that all of the various construction standards apply. The revision also incorporates the definition of "bingo ball draw" and uses "paddle wheel" as the spinning wheel. Again, paddle wheel is controlled, "spinning wheel" is not.

Agency response: The Commission disagrees with the commenter because it seems that what commenter suggests is taking current language contained in the rule and rearranging it, resulting in no substantive change.

The commenter also indicated that, as a general comment, the commenter had reviewed State Board of Insurance v. Deffebach, 631 S.W.2d 794 (Texas Ct. App. 1982). Adoption of the suggested revisions noted above would not violate the standards set forth in that case. The above changes, if adopted, would be the result of public comment on the proposed rule, would not affect different subjects of regulation nor affect new parties.

Agency response: The Commission agrees.

Another commenter offered comment on behalf of 953 clients. The comment contained in the chart format references the proposed rule after the commenter formatted it to include line and page number for convenience in connection with comments relating to recommended clean up changes.

Figure: 16 TAC Chapter 402--Preamble

Agency response: The Commission agrees and the suggested changes have been made to the rule.

Comment: The commenter also offered the following comment. The rule should allow a manufacturer to place the information that is required on a pull tab on either the front of the pull tab or the reverse, but should not require any particular information to be placed on either the front or the reverse of the pull tab. In other words, as long as the minimum required information is on the pull tab, it should not matter what information is on the front of the pull tab or reverse, so long as the minimum required information is on the pull-tab. In this way, manufacturers could create different and innovative products.

Agency response: The Commission disagrees with the commenter's suggestion. The requirement to have certain information placed in a specific location creates consistency among tickets printed by a variety of manufacturers. The language in the rule is consistent with current manufacturing standards in the State of Texas. Allowing individual manufacturers to decide where to place information would create inconsistencies among tickets This consistency creates a sense of uniformity to players when they purchase pull-tab bingo tickets... Players accustom to finding information in a specific location could be potentially confused Additionally, the uniformity is beneficial from an audit perspective because auditors will be able to know exactly where to look for the requisite information.

Comment: Eliminate the word "paddle" in connection with wheel. The concept of a paddle wheel ticket is that the ticket is drawn by the spinning of a wheel, not necessarily a paddle wheel.

Agency response: The Commission agrees.

Comment: Add the following new language as subsection (h)(8): Multiple Part Event or Multiple Part Instant Ticket. An event ticket that is broken apart and sold in sections by a licensed authorized organization. Each section of the ticket consists of a separate deal with its own corresponding payout structure, serial number, and winner verification.

This new language would allow the use of pull-tab tickets that are popular in California. The sale of these tickets goes quickly, resulting in a quick determination of winners, thereby creating new excitement.

Agency response: The Commission agrees with the commenter's suggestion.

Comment: Content restrictions.

In subsection (c)(1), first sentence, strike the words "the integrity or".

The Commission should not be the politically correct police. In the past, the Commission has rejected pull tabs that: a) contain the words "gringo bingo"; b) have a frosted mug symbol; c) have a symbol bearing the likeness of a gun; d) have a symbol bearing the likeness of a hunting scope with crosshairs; and e) have a symbol that contains the likeness of a knife. Guns, hunting scopes, and knives are all legal to sell, possess, and use in the State of Texas. The same is true for a frosted mug beverage, be

it a beer or a root beer. These items are readily advertised in newspapers, magazines, on billboards, the Internet, and by the Texas Parks & Wildlife Department publication. The symbols are contained in comic books that are marketed and sold to kids all over the state and this country. It is indeed a slippery slope the Commission has climbed when it is deciding what language or symbols are approved as opposed to letting the market decide.

One of the Commission's most popular lottery scratch off tickets currently is the Harley Davidson motorcycle game. In certain circles, motorcycles have a negative connotation. If the Commission is going to reject guns and/or knives, then my clients believe the Commission should likewise reject the Harley Davidson scratch off game.

The commenter suggests that the Commission has no statutory authority to reject pull tab symbols that contain a frosted mug and a weapon of any sort. The Commission's statutory language found in §2001.051 states that "the Commission has broad authority and shall exercise strict control and close supervision over all bingo conducted in this state so that bingo is fairly conducted and the proceeds derived from bingo are used for an authorized purpose." The commenter indicates there is no legislative authority for the Commission to act as the thought police, politically correct police, or the good taste police and is unaware of any legislative history that would suggest that the Commission has this authority.

Agency response: With regard to the suggestion that subsection (b)(3)(G) be deleted because many of the symbols prohibited in this subsection are readily available to persons of all ages, that the symbols are subject to interpretation and that the elimination of these symbols may adversely affect the number and type of games offered in Texas, the commenters provided no substantial alternative language nor did the commenters provide specific information regarding the number or types of games that may be affected. The Commission disagrees with the commenters' suggestion to delete this subsection. The May 2002 edition of Bingo Manager magazine states in part: "One thing you have to stay away from in designing pull tabs is poor taste, " says Arrow International's Bill Fulton, vice president of marketing. "Some may think being a little risque helps sell tickets, but you must remember your market. Pull tabs have to promote the good things charitable gaming does, which range from churches and schools raising money for sports uniforms to service organizations helping acquire equipment for a neighborhood health center. A negative product detracts from the fun and worthy goals of charitable gaming." Additionally, pursuant to Government Code, §467.101, the Commission has broad authority and shall exercise strict control and close supervision over all activities authorized and conducted in Texas under Occupations Code, Chapter 2001. The Commission believes that certain artwork on a pull-tab submitted for approval should not be approved for use in Texas because it is objectionable and affects the integrity of the bingo game. Examples include profanity and nudity and may include other artwork that is objectionable. The Commission is mindful that charitable bingo in Texas is gambling and, as such, should be and is subject to strict control and close supervision. The Commission, if it disapproves art work on the basis that the art work is objectionable, is doing so because it believes, in part, that it adversely impacts the integrity of the bingo gaming operations. Further, the placement of the Texas Lottery Commission seal on bingo paper and pull-tab products serves as an indication to licensees and the public that those products have been inspected and approved by the State of Texas. Specifically that those products meet certain standards in terms of construction, packaging and other controls such as minimum prize payouts and the random placement of pull-tabs within a deal to ensure no player has an unfair advantage over another as it relates to the selection of a winning pull-tab. The placement of objectionable graphics on pull-tabs could be seen as an endorsement by the state of those graphics.

The commenter has referenced certain symbols and stated that those products are legal in the state and are advertised. However the commenter fails to mention that those products, such as guns and alcoholic beverages, contain limitations and restrictions imposed on the state. For example, there are countless restrictions regarding alcohol in Texas such as age limits, restrictions on the sale of alcohol, and restrictions on the service of alcohol. Regarding the comments in connection with guns, there are limits on who can purchase a gun. A person can carry a concealed handgun but only if permitted by the state and with certain restrictions. Even if a person is licensed to carry a handgun, there are still locations where the possession of a concealed handgun is not permitted.

Finally, the commenter states that the symbols that would be prohibited by this rule are "...contained in comic books that are marketed and sold to kinds all over the state and this country." What the commenter has failed to do is differentiate between comic books and the product that this rule regulates. This rule does not relate to the publication of comic books for children. This rule relates to the production, distribution and sale of gambling products.

Comment: Strike the words "that must not exceed $1.00" in subsection (b)(3)(E). There is no statutory provision limiting the sales price of a pull tab to $1.00 except a pull tab dispensed in a pull tab dispenser, §2001.410(b) of the Texas Government Code.

Agency response: The Commission agrees with the commenter's suggestion to eliminate the reference in the proposed rule to a $1 limit. However, should the sale of pull-tab bingo tickets violate §2001.410(b) of the Bingo Enabling Act that is a violation of state law subject to prosecution.

Comment: In subsection (a)(13), in the definition of prize, include as a prize bonus pull tabs. Certain pull tab games available in other states award as a prize bonus pull tabs that have proven to be extremely popular.

Agency response: The Commission agrees.

Comment: In subsection (d)(7), add the word "instant" immediately after the word "winning" such that the sentence now reads: "All high tier winning instant pull-tab bingo tickets must utilize a secondary form of winner verification." This will clarify that this subsection applies to high tier pull tab tickets. High tier has been defined in subsection (a)(6).

Agency response: The Commission agrees. For "legislative history" purposes, a sign-up board, as defined in subsection (h)(1), and a sign-up board ticket, as defined in subsection (h)(2), are what the industry commonly refers to as "seal tickets."

Agency response: The Commission agrees.

Comment: Positive benefits from new rule.

$ Increased revenue to charity

$ Increased revenue to State in the form of 5% prize fees, sales tax Based upon sales and revenue data experienced by charities in Louisiana that aggressively market pull tabs like the ones that would be available in the Texas market with the adoption of

the new rule, the State of Texas can expect to receive over $40 million in additional revenue. Suzanne Taylor, during the April 2, 2002 Bingo Advisory Committee meeting, made a presentation showing the favorable economic activity that occurs with innovative pull tabs that are aggressively marketed by charities.

The assumptions used to formulate the increased revenue include where new games are allowed to be played and marketed during bingo occasions. It is expected that approximately 2 of all bingo occasions would adopt the new games. Where new games are adopted, an increment in sales of pull tabs and related products of approximately three (3) times the current sales is experienced. In halls that have the new games and tickets, an additional sales person would be employed for each bingo occasion. An average wage for the additional person is $60 per occasion. The summary of the increased revenue and economic activity is the following:

Additional net funds available to charities: $31, 900,859

Additional sales tax to State: $152,880

Additional prize tax to State: $4,431,785

Dollar value of additional employment-direct:

(approximately 136 full-time jobs at $30,000 annually) $4,068,840

Grand Total: $40,554,364

Agency response: The Commission anticipates that the adoption of the rule will result in the potential increase of pull-tab sales; but, the Commission is not able to estimate that amount of additional revenue to the organizations conducting bingo or the state. The Commission would point out two key phrases from the commenter's suggestions. The first relates to the statement regarding the "...charities in Louisiana that aggressively market pull tabs like the ones that would be available in the Texas market with the adoption of the new rule,...." The amount of sales resulting from the introduction of these games will be a direct result of the charities in Texas ability to market and sell the product. The second key phrase regards the "assumptions" used in achieving the figures relating to increased sales that the commenter provided. Those figures are just assumptions and the commenter provided no backup for the figures other than their "experience."

Comment: One commenter offered comment on behalf of the Bingo Interest Group. Specifically, this commenter and others offered the following comment or similar comment regarding merchandise prizes.

Merchandise prizes

The definition of "merchandise" in the proposed rule in effect requires that merchandise offered as a pull tab bingo prize be obtained by the conducting organization from a licensed bingo distributor. The commenter supports the Commission's proposal to allow merchandise to be used as a pull-tab prize in lieu of cash prizes. This will allow for variety and innovation and should find acceptance among some players who will be drawn to the opportunity to win a particular merchandise prize. However, the commenter thinks a charity conducting bingo ought to be able to obtain merchandise offered as a prize from whomever the charity can get the best value. The purpose of the new rules is to create additional opportunities to enhance the bingo operations of Texas charities, not to create an additional line of business for distributors. The best and broadest array of opportunities for charities would be for them to be free to obtain prizes from the entire spectrum of the market place for such merchandise. Certainly a licensed bingo distributor could be one competitor in that market place, but so could be an appliance wholesaler, for example.

The commenter offered the following example to illustrate the "merchandise prizes" comment. There are seven charities licensed to play at a given location. Each licensed charity holds 106 sessions per year at which pull tabs with a merchandise prize are sold. The charities offer televisions with a retail value of $500 as one of the prizes. That is the potential for 742 nice televisions to be given away, but, of course, a television won't be won in every session. If only 50 televisions per charity are actually won, the charities in that hall could give away over 350 televisions per year. At that potential, the commenter believes many charities would be able to obtain televisions at a good price from an appliance wholesaler. If a charity awards a $500 cash prize, it must take in at least $500 in revenues. But, if a charity awards a television with a retail value of $500, the charity may be able to obtain the television from a wholesales for, say, $250. The charity is $250 ahead relative to a cash prize. On the other hand, the player received $500 in value, as promised and that $500 in value is consistent with the payout structure established by the manufacturer.

Of course, a licensed distributor could obtain the televisions from a wholesaler and then provide them to the charities. The commenter does not object to the distributor being authorized to do so. But, the commenter sees no particular reason why the additional costs represented by the distributor-as-middle-man must, by law, be included in the marketing chain. The commenter believes there is no assurance that the price the distributor charges the charity will not eat up most, or all, of the margin between the wholesale cost of the prize and the retail value to the player. The likelihood of that happening is greatly reduced if the charity can go into the market to make the purchase.

The commenter suggests that the manufacturer produces a game with an established payout structure based on a winning tab that says something like "$500 Merchandise Prize" or $500 Cash or Merchandise." (We have seen such tabs but there may be many ways to do it, including just a generic prize amount accompanied by player education that the prize is a $500 television that day.) Then, it is incumbent on the charity that wants to provide a merchandise prize to supply one that has a retail value for $500. (If it does not, the players will recognize it and will not tolerate it.)

The commenter realizes there are security and integrity issues that must be addressed to allow charities to obtain merchandise from non-distributors, although the commenter believes the potential benefits to the charities far exceed any difficulty of resolving these issues. These issues are inherent in the merchandise prize concept and are not peculiar to allowing charities to get the prize from whoever supplies the best value.

Rather than bog the proposed rulemaking down in consideration of these issues, the commenter makes the following simple suggestion, which the commenter believes would be administratively workable and obtain the benefits for charities that the commenter is seeking. The general rule should be as proposed in the rule. Then, simply authorize the director of the charitable bingo division to allow case-by-case exceptions to the general rule if a charity provides a plan acceptable to the director that addresses the security and integrity issues that are inherent in merchandise prize offerings, such as: How the payout structure

established by the manufacturer will be maintained by the charity that desires to award a merchandise prize obtained from a non-distributor.

How the prize fee will be calculated by the charity awarding merchandise prizes obtained from non-distributors.

How the expenses for the merchandise obtained from a non-distributor will be accounted for and how an inventory for the merchandise obtained from a non-distributor will be maintained, such that an audit trail is maintained.

How the charity awarding a merchandise prize obtained from a non-distributor will ensue the player gets the value promised in the payout structure.

How the charity will ensure that the prize amount of the non-distributor prize does not exceed $750.

Any other issues the director requires to be addressed.

Specifically, the commenter suggests the following amendments and language to address these issues:

(1) Strike the words "provided to a licensed authorized organization by a licensed distributor" from the proposed definition of merchandise.

(2) Establish a new paragraph or subparagraph that reads:

(A)(1) Except as provided by subsection (A)(2) merchandise must be obtained by a licensed authorized organization from a licensed distributor.

(2) The director of charitable bingo operations may authorize a licensed authorized organization to obtain merchandise from a party other than a licensed distributor if the licensed organization requests such authorization and, prior to obtaining merchandise from a non-distributor, submits a plan acceptable to the director that addresses the security and integrity of a game utilizing such merchandise, including:

(i) maintenance of the payout structure established by the manufacturer;

(ii) calculation of prize fees;

(iii) accounting for expenses of related to obtaining the merchandise;

(iv) maintenance of inventories and other records related to such merchandise;

(v) how the prize amount will be established for the merchandise;

(vi) measures for ensuring that the prize amount do not exceed $750; and

(vii) any other issues the director requires be addressed.

Agency response: The Commission disagrees with the commenter's suggestion and believes that the commenter's intent is captured by the changes to subsection (a)(14).

Comment: Several commenters are concerned that there are so many names for games and types of games and types of playing procedures used in the industry nationwide, that it is difficult, if not impossible to capture in words all the possibilities that would be allowed under state statutes. One commenter would like the proposed rule to be construed broadly so that, should there be ambiguities or inadvertent use of trade lingo, when products are offered for approval the division is clearly authorized to approve those products, if they are consistent with the statute and not in direct contradiction to the rule. Such a rule of interpretation would ensure the broadest array of products available for sale in Texas under current statutes, which the commenter believes to be the purpose of this effort. The commenter suggests something like the following be added to the proposed rule: "Subject to specific limitations and procedures provided in this §402.554, it is the intent of the Commission that this rule be liberally construed to achieve the purpose of expanding and promoting opportunities for licensed authorized organizations and bingo players to have access to pull tab products that are authorized by state statutes. In the event of any ambiguity in these rules with respect to a specific product or type of play, the director of the charitable bingo division is authorized and directed to interpret this rule so that such products and types of play are made available, if authorized under state law."

Agency response: Although the Commission agrees with the commenter that the intent of the proposed new rule is to allow for a greater variety of pull-tab games to be played in the State of Texas, the Commission does not agree with the commenter's suggestion because the Commission believes it will create ambiguity and the potential for misinterpretation of the regulatory requirements. This language creates to many opportunities for unintended consequences to occur.

Comment: Another commenter offered the following comment: Background: "Seal cards" are a type of pull-tab game allowed in other states. The whole movement to allow new games started with a presentation about seal cards to the Bingo Advisory Committee.

In a seal card game, when a player opens a pull tab and wins, the player becomes eligible to win again because the player is automatically eligible for prizes or winning numbers posted under "seals" on a board at the front of the bingo hall.

Problem: Although the staff says they will interpret the rules to allow seal cards, the proposed rules do not contain the words "seal cards." One type of game that is clearly allowed might include seal cards, but it is not clear that it does.

Solution: Add seal cards to the "style of play" part of the rule or at least use seal cards as an example of what would be allowed under one the styles of play that are listed.

Agency response: The Commission disagrees with the commenter. "Seals" on flares could take many forms and be utilized by many different types of games. The addition of the term "seal" to the rule is unnecessary. By the very nature of the game, the winning feature is revealed by the removal of a "tab", "seal" or other covering device.

Comment: Another commenter offered the following comment: Background: Under current rules, a charity must maintain a "purchase log" showing information about their pull-tab purchases from distributors. The information on the log is obtained from the distributor when the charity receives the invoice from the distributor.

Problem: The proposed rule does not change the current purchase log requirements. But, since the information is contained on the invoice from a distributor and the charity has to retain the invoices, why must a charity create a new document to "log" these purchases. The invoices form an audit trail that can be used by the Lottery Commission and the charity to track its inventory.

The commenter wants to simplify administrative burdens on charities whenever possible.

Solutions: (1) Replace the words "purchase logs" with the word documentation. As long as the charity retains the distributor's invoices and the invoices have the correct information, there will be an audit trail. (2) Or, add language that allows the distributor to provide the purchase log to the charity, so the charity won't have to do it. The distributor has the information anyway and can produce these logs.

Agency response: The Commission disagrees with the commenter's representation of the required "purchase log" and the statement that all required information is captured from the distributor's invoice. While the purchase log contains some of the information provided by the distributor's invoice, it also contains a means to track when a deal was put into play. This is an important audit control feature for both the organization and the agency. The purchase log serves as a convenient summary of purchase and sales information. The Commission does not believe the requirements with regard to the purchase log or requirements contained in the rule pose an unreasonable administrative burden for licensees. The Commission recognizes that regulatory operations create administrative burdens, especially in an industry that is cash-intensive, like gambling operations. However, to ensure that the Commission meets its regulatory responsibilities, it will impose requirements that may pose an administrative obligations for a licensee. The issue is the balance to be reached between administrative burden for the licensee and the Commission carrying statutory responsibilities in regulating and administering bingo.

Comment: Another commenter offered the following comment: Background: A new provision requires charities to maintain a "perpetual inventory" of all pull tab games and to account for all sold and unsold pull-tabs. As a practical matter, most charities keep an inventory of their merchandise now and everyone selling a retail product should.

Problem: Perpetual means forever. But, other parts of the rule require that records be maintained for only four years.

Solution: strike the word "perpetual" in the inventory rule and make it clear that the inventory records are to be kept for four years, not forever.

Agency response: The Commission disagrees with the commenter that the term "perpetual inventory" be deleted. The term "perpetual inventory" is an accounting term meaning a system of inventory records that continuously disclose the amount of inventory on hand at any point in time. The records will reflect what inventory was started with, what was purchased and what was sold. The term does not indicate that the inventory must be retained perpetually.

Comment: Another commenter offered the following comment: Background: Under current rules, the permission to manufacture each pull-tab game expires after two years. Under the proposed rule, the permission will not expire at all. But, if the manufacturer decides not to continue to manufacture a game for sale in Texas, it must notify the Commission.

Problems: (1) The rule does not make it clear that charities and distributors can continue to sell any pull tabs they have in inventory after the manufacturer notifies the Commission it is going to discontinue making that pull tab for sale in Texas. (2) The rule does not make it clear that the manufacturer has the right to start printing the ticket for sale again in Texas whenever it wants to and the charities want to buy it.

Solutions: (1) Make it clear that charities and distributors can continue to sell any pull-tabs they have in inventory after the manufacturer notifies the Commission it is going to discontinue making that pull tab for sale in Texas. (2) Make it clear that a manufacturer can return to making a discontinued game for sale in Texas at any time, as long as it notifies the Commission first. If the rules or state law have changed in the meantime, the Commission can then inform the manufacturer that the pull-tab in question must comply with the new laws.

Agency response: These comments have been addressed earlier under subsection (b)(7).

Comment: Another commenter indicated she was in support of the proposed new rule because she thinks it will provide more variety of pull-tabs.

Agency response: The Commission agrees.

Comment: Another commenter was in support of the proposed new rule but wanted the administrative burden on the charities reduced.

Agency response: The Commission does not have sufficient information to understand what the administrative burden to which the commenter is referring.

Comment: Another commenter indicated he was in support of the proposed new rule and suggested that the guiding principle agency staff should keep in mind is whether the particular wording in the proposed rule cause sales to increase.

Agency response: The Commission's guiding principle in the development of any new or amended rule is the specific statutory authority granted by the Bingo Enabling Act.

Groups or associations that are in support of the rule are: Thompson Allstate Bingo Supply, Inc., Bingo Interest Group, AMVETS Post 77, South Plains Children Shelter Inc., AMVETS Post 74, K&B Sales, Inc., AMVETS Auxilliary 52, AMVETS Post 78, AMVETS 52, AMVETS-Improved Order of Redmen, AMVETS, AMVETS Post 83, Douglas Press, All Saints Bingo, Jetta Management, Reunion Institute, The Fine Arts Foundation, Living History Studies, NAFTM, Air Force Sergeants Association, Merkel Community Chest, Merkel Cemetery Association, Kiva Tribe #26, Cochise Council #9, Merkel Chamber of Commerce, Merkel Emergency Medical Service, Merkel Volunteer Fire Department, Redmen Comanche Tribe #18, Wigwam Council #8, North Texas Fair Association, McKinney Service League, Denton Humane Society, Elks Lodge, Redmen Pomo Tribe #32, AmVets Post 81, Senior Citizens Services of Texarkana, The Texarkana Historical Society and Museum, Texarkana Sheltered Workshop, Inc., Otis Henry VFW Post 2549, AmVets Post 92, Kiwanis Club of Cedar Creek Lake, Optimist Club of Cedar Creek Lake, Seven Points Volunteer Fire Department, Seven Points Volunteer Fire Department--Ladies Auxiliary, Improved Order of Redmen Wanonah Council #3, Improved Order of Redmen Wampum Tribe #3, AmVets Post 90, Holy Family Catholic Church, Clements Boys & Girls Club, Midtown Youth Inc., South Park Kids Inc., Youth Benefit Inc., Lions Club of Killeen Noon, Exchange Club of Killeen, Retired Sergeants Major Association, Holy Trinity Catholic High School, Improved Order of Redmen Kiowa Tribe #33, Improved Order of Redmen Omega Tribe #38, Improved Order of Redmen Dakota Council #22, Central Texas Exposition Inc., Four Winds Intertribal Council, Killeen Evening Lions Club, AmVets #91, Greater Killeen Lions Foundation, VFW Post #8790, VFW 8790 Auxiliary, Military Order of Cooties, Let's Do It M.O.C. Auxiliary,

St. Kevork Armenian Church, Fine Arts Foundation, Living History Studies, The Reunion Institute Inc., Reunion Ministries Inc., Assemblies of Yahshua Inc., International Serving Hands, Grand Bears Lodge, The Liccion Center, St. Pius V Catholic School, The Skyline 24-Hour Club, Womens Way Out Center, The Optimist Club of Victoria, The Kiwanis Club of Victoria, Victoria Bach Festival, Rotary Club of Victoria, Texas 200, CWC Family Center, Eagles #3854 Auxiliary, Volunteers for Animals Protection, Savannah Boxing Association, St. Martha's Guild, Our Lady of Walsingham Church, Rivers End Volunteer Fire Department Inc., Red Men Council 41 Lone Wolf, Red Men Council 20 Venita, Holiday Lakes/Long Pond Volunteer Fire Department, F.O.E. Aerie 2753 Bayshore, Eagles Aeries 2753 Auxiliary, Conroe Police Officers Association, South Montgomery County Crime Prevention Assoc., Godfrey Foundation, Victoria Vietnam Veterans Association, The Texas Hillel Foundation, Family Eldercare, Inc., The Arc of the Capital Area, Inc., Project Normalization, Inc., North Austin Foundation, Inc., Bingo for Charity, Inc., Properties for Charities, Inc., Senior Citizens Lodge, Ellen Noel Art Museum, Odessa Rotary, LULAC, Odessa Westside Lions, Planned Parenthood, Permian Playhouse, Lubbock Police Association, MOCA, Downtown Lions, American Legions, VFW # 1419 Ladies Auxilliary, Bluebonnet Hills Christian Church/Disciples of Christ, Institute for Disability Access, Inc., Austin River City Rec'ers, Inc., Texas Paralyzed Veterans Association/Greater Austin Chamber of Commerce, Save Barton Creek Association, Inc., C.S. Lewis Center for the Study of the Common Tradition, Inc., Cardinal Mindzenty Foundation, College of St. Thomas More, Highlands Educational Corporation, Highlands Parent Teacher Association, Low Birth Weight Development, Oakhill Incorporated, Quality of Life, Inc., Sacred Heart Educational Services, Inc., School of Faith of Texas, Inc., St. Anthony Home and School Association, St. Anthony School, St. Joseph's Helpers of Dallas, Texas, Inc., St. Stephen the Martyr Chapter, Truth, Incorporated, Texas Center for the Physically Impaired, Dallas Queen of Peace Foundation, Holy Trinity Catholic School, St. Therese Little Flower Day School, Mansfield Volunteer Fire Department, Lions Club of Pantego, Mansfield Volunteer Fire Department--Ladies Auxiliary, Harold L. Gregory Memorial Post #626--American Legion, Expanco, Inc., American Legion Ladies Auxiliary, Congregation Beth Shalom Sisterhood, The Living Word Fellowship, B'Nai B'Rith Council, VFW Post 4395, West Houston Lodge of B'Nai B'Rith, Houston Memorial Lodge of B'Nai B'Rith, Greater Houston Unit of B'Nai B'Rith, Mexican American Educational Advisory Committee, Tarrant County Emergency Squad, Hispanic Debutante Association of Forth Worth, IORM Saratoga Tribe #29, Fort Worth Jaycees, Professional Youth Conservatory, Image de Fort Worth, B'Nai B'rith Voice, IORM Shoshone Council 25, IORM Wahoo Council 19, Fort Worth Theatre, Inc., IORM Shoshone Tribe 10, Congregation Ahaveth Shalom, Men's Club, IORM Kickapoo Council #10M, Texas Girls Choir, Image de Tejas, United Hispanic Council of Tarrant County, B'Nai B'rith District Seven, IORM Pushmahata Tribe #8, Riding Unlimited Incorporated, San Mateo Catholic Church, IORM Navajo Council #21, Metroplex Council B'Nai B'rith, Academic Achievement Center, Inc., Blue Mound Lionettes, International Fort Worth Military Ball, Benbrook Lakeshore Neighbors Assoc., Rescue Lodge #20 F & AM of Texas, Tarrant County Firefighters Association, Tarrant County Bowling Centers Association, Fort Worth Judo Club Inc., Golden Tee Golf Club, Isadore Garsek Lodge of B'Nai B'Rith, Eagle Mountain VFD Auxiliary, Jewish Women International 1036, Ft. Worth Southwest Lions Club, White Settlement VFD, Edgecliff VFD, Edgecliff VFD EMS, Benbrook Firefighters Association, Southside Optimist Club, North Texas High School Rodeo Association, Wichita East VFD, Parents Anonymous of Wichita Falls, Cameron Gardens VFD, American Legion Post #169, Iowa Park VFD, Wichita Falls/The Place, Christmas in April, Iowa Park Optimist Club, Parents Without Partners, North Texas Junior Wheelchair Association, Southwest Wheelchair Athletic Association, Spina Bifida Association, Dallas Junior Texans, North Texas Wheelchair Basketball Conference, Panther City Elks Lodge #1562, AMBUCS, Sabine VFD, Judson Lions Club, ARC of Gregg County, Fraternal Order of the Eagles, Anna Volunteer Fire Department, Celina Volunteer Fire Department, VFW Post 2195 Armistice Memorial, Branuh Volunteer Fire Department, Celina Association of Renaissance Excellence, Military Order of the Cooties Ch. 36, Women=s Auxiliary Military Order of the Cooties Ch. 36, Hamby Volunteer Fire Dept., Non-Commissioned Officers Assoc., American Legion Post 57, Ladies Auxilliary--VFW 2012, Keep Abilene Beautiful, Abilene Opera Association, Abilene Community Theatre, The House That Kerry Built, Hilltop Senior Citizens Association, Amarillo Community Center, Amarillo Senior Citizens, Alamo Catholic Booster Club, Loyal Order of Moose Lodge #1481 Greater Amarillo, Old Corral Club, Inc., American Legion Post 54, American Legion Auxilliary Hanson Unit #54, Amarillo Alcoholic Women's Recovery Center, Inc., Austin Flyers Soccer Club, Brush Country Services, Inc., BPO Elks, People Community Clinic, Father Joe Znotas Scholarship Fund, ADV Housing Management, American Legion Post 37, Amigos Del Valle, Inc., Centro Missionero Emanuel, RGV Sports Hall of Fame, National Retirement Association, Substance Abuse Services Today, Marion Moss Enterprises, Managed Care Center, ASK House for Women, Inc., South Plains Volunteer Services, South Plains Economic Development, Lubbock Area Addiction Services, Alcoholic Recovery Center, South Plains Recovery Services, Inc., DeTox Building, Inc., Guadalupe Economic Services Corp., Optimist Club, Idalou Volunteer Fire Department, Keep Odessa Beautiful, Odessa Jaycees, The Heritage of Odessa Foundation, White Pool House Friends, Northside Lions Club, Animal Goodwill Center, Lions Club of San Antonio, Respite Care of San Antonio, Texas Society to Prevent Blindness, Triple City Bingo Hall, RGV Chamber of Commerce, Palmer Drug Abuse Program, Daughters of the Americas, South Texas Project, Jewish Women International #1336, Jewish Women International #1050--Big D Chapter, Shalom Couples Unit #5160 of B'Nai B'Rith, Jewish Women International #1807, Ethel Daniels Foundation, Inc., The Magdalen House, Jewish Women International #1045, Jewish Women International #833, Vaad Hakashrus of Dallas Inc., Dallas Rescue Mission, VFW 8785 Auxiliary, Justice of Peace and Constables, Lewisville Alcoholic Rehabilitation, Southwest Clinic and Commission, Vietnam Veterans of America #457, Carlsbad Community Center, VFW Post #1815, Carlsbad Volunteer Fire Department, War Veterans Recreation Center, Desoto Redbird Elks #2552, Texas Clinic Hospital/Alcohol, Does #246, American Legion Post #511, American Legion Post #511 Auxiliary, VFW Post #02012, VFW Post #06873, VFW Post #08768, VFW Post #08621, VFW Post #02195, VFW Post #07207, VFW Post #05400, VFW Post #08908, VFW Post #09299, VFW Post #05237, VFW Post #01475, VFW Post #10378, VFW Post #08929, VFW Post #02932, VFW Post #06111, VFW Post #08561, VFW Post #02959, VFW Post #07103, VFW Post #00856, VFW Post #04443, VFW Post #08787, VFW Post #08906, VFW Post #08925, VFW Post #02137, VFW Post #08566, VFW Post #08119, VFW Post #09176, VFW Post #02527, VFW

Post #02438, VFW Post #00912, VFW Post #01806, VFW Post #09170, VFW Post #05619, VFW Post #06522, VFW Post #04008, VFW Post #10377, VFW Post #08585, VFW Post #10429, VFW Post #03216, VFW Post #02013, VFW Post #08784, VFW Post #00576, VFW Post #06074, VFW Post #00688, VFW Post #08187, VFW Post #04852, VFW Post #01789, VFW Post #08789, VFW Post #03234, VFW Post #07767, VFW Post #07104, VFW Post #06794, VFW Post #02035, VFW Post #03278, VFW Post #04692, VFW Post #09651, VFW Post #10455, VFW Post #06974, VFW Post #04458, VFW Post #02010, VFW Post #07469, VFW Post #09171, VFW Post #05681, VFW Post #08573, VFW Post #09361, VFW Post #08923, VFW Post 05620, VFW Post #10427, VFW Post #08904, VFW Post #10700, VFW Post #02512, VFW Post #10782, VFW Post #07782, VFW Post #01839, VFW Post #08553, VFW Post #08576, VFW Post #08875, VFW Post #09178, VFW Post #06113, VFW Post #08569, VFW Post #04709, VFW Post #08577, VFW Post #00338, VFW Post #02397, VFW Post #03837, VFW Post #06521, VFW Post #03366, VFW Post #04621, VFW Post #04377, VFW Post #07210, VFW Post #09761, VFW Post #09177, VFW Post #06872, VFW Post #03972, VFW Post # 08905, VFW Post #0189, VFW Post #03397, VFW Post #01406, VFW Post #01837, VFW Post #02414, VFW Post #06796, VFW Post #07471, VFW Post #08552, VFW Post #09303, VFW Post #02773, VFW Post #02205, VFW Post #03966, VFW Post #08933, VFW Post #06378, VFW Post #08056, VFW Post #10802, VFW Post #02933, VFW Post #09022, VFW Post #07843, VFW Post #08783, VFW Post #08562, VFW Post #04136, VFW Post #08549, VFW Post #03249, VFW Post #02786, VFW Post #00812, VFW Post #02451, VFW Post #02753, VFW Post #05615, VFW Post #06388, VFW Post #08550, VFW Post #08782, VFW Post #08919, VFW Post #10326, VFW Post #10354, VFW Post #04145, VFW Post #06115, VFW Post #07473, VFW Post #07106, VFW Post #10461, VFW Post #05872, VFW Post #07634, VFW Post #07426, VFW Post #08932, VFW Post #05616, VFW Post #09180, VFW Post #07475, VFW Post #00708, VFW Post #02544, VFW Post #08235, VFW Post #08911, VFW Post #08943, VFW Post #09873, VFW Post #05073, VFW Post #07105, VFW Post #04341, VFW Post #08786, VFW Post #01413, VFW Post #08273, VFW Post #01922, VFW Post #00880, VFW Post #03497, VFW Post #03359, VFW Post #04402, VFW Post #05076, VFW Post #08230, VFW Post #06119, VFW Post #08587, VFW Post #08456, VFW Post #04475, VFW Post #06715, VFW Post #09807, VFW Post #02784, VFW Post #04817, VFW Post #08567, VFW Post #07835, VFW Post #04477, VFW Post #06635, VFW Post #10454, VFW Post #04011, VFW Post #09771, VFW Post #06382, VFW Post #09190, VFW Post #04148, VFW Post #06014, VFW Post #03892, VFW Post #02410, VFW Post #09784, VFW Post #10358, VFW Post #02011, VFW Post #10351, VFW Post #04007, VFW Post #08535, VFW Post #05401, VFW Post #04818, VFW Post #06008, VFW Post #08909, VFW Post #04855, VFW Post #03891, VFW Post #07875, VFW Post #00581, VFW Post #04344, VFW Post #04711, VFW Post #06010, VFW Post #08790, VFW Post #08928, VFW Post #08930, VFW Post #09172, VFW Post #09183, VFW Post #09187, VFW Post #09296, VFW Post #10352, VFW Post #10462, VFW Post #05871, VFW Post #04695, VFW Post #06386, VFW Post #03861, VFW Post #08559, VFW Post #02494, VFW Post #08962, VFW Post #08914, VFW Post #03984, VFW Post #06380, VFW Post #10373, VFW Post #03542, VFW Post #08915, VFW Post #06795, VFW Post #04853, VFW Post #03779, VFW Post #08572, VFW Post #09182, VFW Post #03905, VFW Post #03393, VFW Post #02641, VFW Post #06282, VFW Post #06284, VFW Post #01480, VFW Post #06524, VFW Post #09191, VFW Post #09192, VFW Post #10428, VFW Post #02375, VFW Post #02059, VFW Post #10458, VFW Post #08134, VFW Post #05254, VFW Post #03895, VFW Post #08248, VFW Post #08251, VFW Post #10460, VFW Post #06266, VFW Post #07873, VFW Post #08539, VFW Post #08913, VFW Post #08575, VFW Post #09194, VFW Post #04506, VFW Post #09168, VFW Post #05621, VFW Post #08200, VFW Post #09828, VFW Post #06968, VFW Post #04854, VFW Post #08568, VFW Post #08927, VFW Post #07993, VFW Post #08556, VFW Post #01183, VFW Post #04002, VFW Post #02466, VFW Post #01836, VFW Post #08233, VFW Post #03377, VFW Post #10376, VFW Post #04693, VFW Post #03969, VFW Post #10426, VFW Post #08554, VFW Post #04459, VFW Post #03079, VFW Post #08396, VFW Post #02369, VFW Post #08788, VFW Post #08313, VFW Post #07995, VFW Post #02150, VFW Post #08565, VFW Post #09213, VFW Post #10686, VFW Post #10464, VFW Post #05683, VFW Post #08537, VFW Post #08785, VFW Post #04694, VFW Post #04149, VFW Post #07208, VFW Post #07523, VFW Post #02399, VFW Post #10710, VFW Post #04010, VFW Post #04004, VFW Post #06971, VFW Post #03986, VFW Post #03992, VFW Post #06205, VFW Post #08570, VFW Post #01035, VFW Post #03893, VFW Post #04006, VFW Post #06384, VFW Post #05873, VFW Post #07110, VFW Post #11050, VFW Post #08558, VFW Post #01907, VFW Post #04372, VFW Post #06717, VFW Post #03906, VFW Post #04779, VFW Post #02775, VFW Post #08920, VFW Post #09185, VFW Post #06109, VFW Post #07528, VFW Post #02467, VFW Post #03907, VFW Post #08924, VFW Post #01657, VFW Post #06972, VFW Post #03990, VFW Post #04395, VFW Post #07109, VFW Post #09195, VFW Post #06437, VFW Post #10712, VFW Post #05398, VFW Post #05399, VFW Post #04380, VFW Post #08967, VFW Post #00797, VFW Post #08791, VFW Post #04403, VFW Post #04820, VFW Post #04816, VFW Post #09783, VFW Post #06970, VFW Post #08555, VFW Post #08922, VFW Post #09167, VFW Post #10355, VFW Post #05870, VFW Post #01680, VFW Post #06719, VFW Post #06290, VFW Post #03530, VFW Post #08627, VFW Post #08526, VFW Post #05074, VFW Post #07841, VFW Post #06525, VFW Post #03904, VFW Post #08781, VFW Post #09175, VFW Post #08953, VFW Post #03903, VFW Post #05072, VFW Post #09078, VFW Post #09196, VFW Post #09189, VFW Post #03406, VFW Post #10374, VFW Post #01815, VFW Post #00076, VFW Post #00837, VFW Post #01533, VFW Post #04700, VFW Post #04815, VFW Post #05142, VFW Post #06012, VFW Post #07108, VFW Post #08111, VFW Post #08132, VFW Post #08397, VFW Post #08541, VFW Post #08910, VFW Post #08936, VFW Post #09174, VFW Post #09186, VFW Post #09603, VFW Post #09313, VFW Post #05402, VFW Post #08931, VFW Post #03413, VFW Post #02412, VFW Post #08315, VFW Post #05623, VFW Post #05601, VFW Post #06798, VFW Post #08917, VFW Post #04376, VFW Post #07871, VFW Post #02772, VFW Post #06209, VFW Post #08574, VFW Post #07839, VFW Post #08625, VFW Post #06721, VFW Post #09173, VFW Post #01309, VFW Post #08231, VFW Post #08907, VFW Post #09188, VFW Post #07212, VFW Post #09179, VFW Post #08800, VFW Post #09181, VFW Post #08560, VFW Post #08551,

VFW Post #02479, VFW Post # 09318, VFW Post #04476, VFW Post #01820, VFW Post #02449, VFW Post #02549, VFW Post #09169, VFW Post #04009, VFW Post #08557, VFW Post #02427, VFW Post #04133, VFW Post #06899, VFW Post #03501, VFW Post #01798, VFW Post #01799, VFW Post #07211, VFW Post #04676, VFW Post #04135, VFW Post #04747, VFW Post #04146, VFW Post #08246, VFW Post #01514, VFW Post #02034, VFW Post #02148, VFW Post #02983, VFW Post #06799, VFW Post #08564, VFW Post #05121, VFW Post #03894, VFW Post #04746, VFW Post #05875, VFW Post #06439, VFW Post #01196, VFW Post #08563, VFW Post #04819, VFW Post #02559, VFW Post #06117, VFW Post #05617, VFW Post #04474, VFW Post #03716, VFW Post #08571, VFW Post #02147, VFW Post #08878, VFW Post #07837, VFW Post #06441, VFW Post #02676, VFW Post #10457, VFW Post #08780, VFW Post #09193, VFW Post #02033, VFW Post #02456, VFW Post #08136, VFW Post #07768

There are no groups or associations indicating opposition to the proposed rule.

The new rule is adopted under Occupations Code, §2001.054 which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, under Government Code, §467.102 which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction, and under Occupations Code, §2001.051(b) which grants the Commission broad authority to exercise strict control and close supervision over all bingo conducted in Texas so that bingo is fairly conducted and the proceeds derived from bingo are used for an authorized purpose.

The new rule implements Occupations Code, Chapter 2001.

§402.554. Pull-Tab Bingo.

(a) Definitions. The following words and terms, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Bingo Ball Draw--A pulling of a bingo ball(s) to determine the winner of an event ticket by either the number or color on the ball(s).

(2) Deal--A separate and specific game of pull-tab bingo tickets of the same serial number and form number.

(3) Face--The front of a pull-tab bingo ticket, which displays the artwork of a specific game. The front of the pull-tab bingo ticket includes, but is not limited to, the name of the game, the price of the game and the payout structure of the game.

(4) Flare--A poster or placard that must display:

(A) a form number of a specific pull-tab bingo game;

(B) the name of the pull-tab bingo game;

(C) the total card count of the pull-tab bingo game;

(D) the cost per pull-tab bingo ticket;

(E) the number of prizes to be awarded and the corresponding prize amounts of the pull-tab bingo game; and,

(F) the name of the manufacturer or trademark.

(5) Form Number--The unique identification number assigned by the manufacturer to a specific pull-tab bingo game. A form number may be numeric, alpha, or a combination of numeric and alpha characters.

(6) High Tier--The two highest paying prize amounts as designated on the face of the pull-tab bingo ticket and on the game's flare.

(7) Last Sale--The purchaser of the last pull-tab bingo ticket(s) sold in a deal with this feature is awarded a prize or a registration for the opportunity to win a prize.

(8) Merchandise--Any non-cash item(s) provided to a licensed authorized organization that is used as a prize.

(9) Wheels--Devices that determine event ticket winner(s) by a spin of a wheel.

(10) Pay-Out--The total sum of all possible prize amounts in a pull-tab bingo game.

(11) Payout Schedule--A printed schedule prepared by the manufacturer that displays:

(A) the name of the pull-tab bingo game;

(B) the form number of the pull-tab bingo game;

(C) the total card count of the pull-tab bingo game;

(D) the cost per pull-tab bingo ticket;

(E) the number of prizes to be awarded and the corresponding prize amount for each category of the pull-tab bingo game;

(F) the number of winners for each category of prize;

(G) the profit of the pull-tab bingo game;

(H) the percentage of payout or the percentage of profit of the pull-tab bingo game; and,

(I) the payout of the pull-tab bingo game.

(12) Payout Structure--The printed information that appears on the face of a pull-tab bingo ticket. This display shows the winnable prize amounts, the winning patterns required to win a prize, and the number of winners for each category of prize.

(13) Prize--An award of collectible items, merchandise, cash, bonus pull-tabs, and additional pull-tab bingo tickets, individually or in any combination.

(14) Prize Amount--The value of cash and/or the fair market value of merchandise which is awarded as a prize. A collectable item is considered merchandise for determining allowable prize amounts. If a manufacturer or distributor supplies a merchandise prize, the manufacturer or distributor must determine the fair market value of the merchandise prize, otherwise the fair market value of a merchandise prize must be determined by the authorized organization.

(15) Reverse--The back of a pull-tab bingo ticket that has a perforated break-open tab(s) that when opened reveals one or more numbers and/or symbols that appear under the tab(s).

(16) Serial Number--The unique identification number assigned by the manufacturer identifying a specific deal of pull-tab bingo tickets. A serial number may be numeric, alpha, or a combination of numeric and alpha characters.

(17) Symbol--A graphic representation of an object other than a numeric or alpha character.

(b) Approval of pull-tab bingo tickets.

(1) A pull-tab bingo ticket may not be sold in the state of Texas, nor furnished to any person in this state nor used for play in this state until that pull-tab bingo ticket has received approval for use within the state of Texas by the commission. The manufacturer at its

own expense must present their pull-tab bingo ticket to the commission for approval.

(2) All pull-tab bingo ticket color artwork with a letter of introduction including style of play must be presented to the commission's Austin, Texas location for review. The manufacturer must submit one complete color positive or hardcopy set of the color artwork for each pull-tab bingo ticket and its accompanying flare. The color artwork may be submitted in an electronic format prescribed by the commission in lieu of the hardcopy submission. The submission must include the payout schedule. The submission must show the face and reverse sides of a pull-tab bingo ticket and must be submitted on an 8 1/2" x 11" size sheet. The color artwork will show the actual size of the ticket and a 200% size of the ticket. The color artwork will clearly identify all winning and non-winning symbols. The color artwork will clearly identify the winnable patterns and combinations.

(3) The color artwork for each individual pull-tab bingo ticket must:

(A) display in no less than 26-point diameter circle, an impression of the commission's seal with the words "Texas Lottery Commission" engraved around the margin and a five-pointed star in the center;

(B) contain the name of the game in a conspicuous location on the face of the pull-tab bingo ticket;

(C) contain the form number assigned by the manufacturer in a conspicuous location on the face of the pull-tab bingo ticket;

(D) contain the manufacturer's name or trademark in a conspicuous location on the face of the pull-tab bingo ticket;

(E) disclose the prize amount and number of winners for each prize amount, the number of individual pull-tab bingo tickets contained in the deal, and the cost per pull-tab bingo ticket in a conspicuous location on the face of the pull-tab bingo ticket;

(F) display the serial number where it will be printed in a conspicuous location on the face of the pull-tab bingo ticket. The color artwork may display the word "sample" or number "000000" in lieu of the serial number;

(G) contain graphic symbols that preserve the integrity of the commission. The commission will not approve any pull-tab bingo ticket that displays images or text that could be interpreted as depicting alcoholic beverages, weapons, profane language, provocative, explicit or derogatory images or text. All images or text are subject to final approval by the commission; and,

(H) be accompanied with the color artwork of the pull-tab bingo tickets reverse side along with a list of all other colors that will be printed with the game.

(4) Upon approval of the color artwork, the manufacturer will be notified by the commission to submit one (1) deal, for testing. The deal must be submitted for testing to the commission at the manufacturers own expense. If necessary, the commission may request that additional deals be submitted for testing.

(5) If the color artwork is approved and the pull-tab bingo deal(s) pass the commission's testing, the manufacturer will be notified of the approval. This approval only extends to the specific pull-tab bingo game and the specific form number cited in the commission's approval letter. If the pull-tab bingo ticket is modified in any way, with the exception of the serial number, it must be resubmitted to the commission for approval.

(6) The commission may require resubmission of an approved pull-tab bingo ticket at any time.

(7) If an approved pull-tab bingo game is discontinued or no longer manufactured for sale in Texas, the manufacturer of this game must provide the commission written notification within ten days of this change. The notification must include the name of the pull-tab bingo game and the form number of the pull-tab bingo ticket. The written notification may be sent to the commission via facsimile, e-mail, delivery services or postal delivery. Notification that a game has been discontinued does not preclude a manufacturer, distributor or authorized organization from continuing to sell any deals produced prior to the date the game was discontinued. A manufacturer may reactivate a discontinued game by submitting a request to the commission with a statement that the artwork for the discontinued game has not changed and by submitting the appropriate number of deals for testing from the next print run from the reactivated game. If the manufacturer does want to reactivate a game and make changes to the artwork then the artwork must be resubmitted for approval.

(c) Disapproval of pull-tab bingo tickets.

(1) Upon inspection of a pull-tab bingo ticket by the commission and if it is deemed not to properly preserve the integrity or security of the commission including compliance with the art work requirements of this rule, the commission may disapprove a pull-tab bingo ticket. All pull-tab bingo tickets that are disapproved by the commission may not be displayed or sold in the state of Texas by licensed manufacturers. Disapproval of and prohibition to use, purchase, sell or otherwise distribute such a pull-tab bingo ticket is effective immediately upon notice to the manufacturer by the commission.

(2) If modified by the manufacturer all disapproved pull-tab bingo tickets may be resubmitted to the commission. At any time the manufacturer may withdraw any disapproved pull-tab bingo tickets from further consideration.

(3) The commission may disapprove a pull-tab bingo game at any stage of review, which includes artwork review and security testing, or at any time in the duration of a pull-tab bingo game. The disapproval of a pull-tab bingo ticket is administratively final.

(d) Manufacturing requirements.

(1) Manufacturers of pull-tab bingo tickets must manufacture, assemble, and package each deal in such a manner that none of the winning pull-tab bingo tickets, nor the location, or approximate location of any winning pull-tab bingo ticket can be determined in advance of opening the deal by any means or device. Nor should the winning pull-tab bingo tickets, or the location or approximate location of any winning pull-tab bingo ticket be determined in advance of opening the deal by manufacture, printing, color variations, assembly, packaging markings, or by use of a light. Each manufacturer is subject to inspection by the commission, its authorized representative, or designee.

(2) All winning pull-tab bingo tickets as identified on the payout schedule must be randomly distributed and mixed among all other pull-tab bingo tickets of the same serial number in a deal regardless of the number of packages, boxes, or other containers in which the deal is packaged. The position of any winning pull-tab bingo ticket of the same serial numbers must not demonstrate a pattern within the deal or within a portion of the deal.

(3) Each deal of pull-tab bingo tickets must contain a packing slip inside the deal. This packing slip must substantiate the name of the manufacturer, the serial number for the specific deal, the date the deal was packaged, and the name or other identification of the person who packaged the deal.

(4) Each deal's package, box, or other container shall be sealed at the manufacturer's factory with a seal including a warning to the purchaser that the deal may have been tampered with if the package,

box, or other container was received by the purchaser with the seal broken.

(5) Each deal's serial number shall be clearly and legibly placed on the outside of the deal's package, box or other container or be able to be viewed from the outside of the package, box or container.

(6) The flare for the deal shall be located on the outside of each deal's sealed package, box, or other container.

(7) Manufacturers must seal or tape, with tamper resistant seal or tape, every entry point into a package, box or container of pull-tab bingo tickets prior to shipment. The seal or tape must be of such construction as to guarantee that should the container be opened or tampered with, such tampering or opening would be easily discernible.

(8) All high tier winning instant pull-tab bingo tickets must utilize a secondary form of winner verification.

(9) Each individual pull-tab bingo ticket must be constructed so that, until opened by a player, it is substantially impossible, in the opinion of the commission, to determine its concealed letter(s), number(s) or symbol(s).

(10) No manufacturer may sell or otherwise provide to a distributor and no distributor may sell or otherwise provide to a licensed authorized organization of this state or for use in this state any pull-tab bingo game that does not contain a minimum prize payout of 65% of total receipts if completely sold out.

(11) A manufacturer in selling or providing pull-tab bingo tickets to a distributor shall seal or shrink-wrap each deal completely in a clear wrapping material.

(12) Pull-tab bingo tickets must:

(A) be constructed of cardboard and glued or otherwise securely sealed along all four edges of the pull-tab bingo ticket and between the individual perforated break-open tab(s) on the ticket. The glue must be of sufficient strength and type so as to prevent the separation of the face from the reverse sides of a pull-tab bingo ticket;

(B) have letters, numbers or symbols that are concealed behind perforated window tab(s) ; and allow such letters, numbers or symbols to be revealed only after the player has physically removed the perforated window tab(s) ;

(C) prevent the determination of a winning or losing pull-tab bingo ticket by any means other than the physical removal of the perforated window tab(s) by the player; and,

(D) have the commission's seal placed on all pull-tab bingo tickets by only a licensed manufacturer.

(13) Wheels must be submitted to the commission for approval. As a part of the approval process, the following requirements must be demonstrated to the satisfaction of the commission:

(A) wheels must be able to spin at least four times with reasonable effort;

(B) wheels must only contain the same number or symbols as represented on the event ticket; and,

(C) locking mechanisms must be installed on wheel(s) to prevent play outside the licensed authorized organization's licensed time(s).

(e) Sales and redemption.

(1) All winning pull-tab bingo tickets must be presented for payment during the licensed authorized organization's licensed times at which the pull-tab bingo ticket is purchased. Immediately upon payment a licensed authorized organization must punch a hole with a standard hole punch through or otherwise mark or deface each winning pull-tab bingo ticket of $5.00 or more.

(2) A licensed authorized organization may sell or redeem winning pull-tab bingo tickets on the premises specified in its bingo license only:

(A) during the licensed authorized organization's licensed times; or

(B) during a required intermission between the bingo occasions of two licensed authorized organizations.

(3) Licensed authorized organizations may not display or sell any pull-tab bingo ticket which has in any manner been marked, defaced, tampered with, or which otherwise may deceive the public or affect a person's chances of winning.

(4) A licensed authorized organization may not withdraw a deal of pull-tab bingo tickets from play until the entire deal is completely sold out or all winning pull-tab bingo tickets of $5.00 prize winnings or more have been either cashed, or redeemed, or the bingo occasion ends.

(5) A licensed authorized organization may not commingle different serial numbers of the same form number of pull-tab bingo tickets.

(6) A licensed authorized organization may bundle pull-tab bingo tickets of different form numbers and may sell these bundled pull-tab bingo tickets during their licensed times.

(7) The licensed authorized organization's gross receipts from the sale of pull-tab bingo tickets must be included in the reported total gross receipts for the organization. Each deal of pull-tab bingo tickets must be accounted for in sales, prizes or unsold cards.

(f) Inspection. The commission, its authorized representative or designee may examine and inspect any individual pull-tab bingo ticket or deal of pull-tab bingo tickets and may pull all remaining pull-tab bingo tickets in an unsold deal.

(g) Records.

(1) Any licensed authorized organization selling pull-tab bingo tickets must maintain a purchase log showing:

(A) the date of the purchase, the form number and corresponding serial number of the purchased pull-tab bingo tickets; and,

(B) the name, address, and taxpayer number of the distributor from whom the pull-tab bingo tickets were purchased.

(2) Licensed authorized organizations must show the sale of pull-tab bingo tickets, prizes that were paid and the serial number of the pull-tab bingo tickets on the daily cash report. The aggregate total sales for the licensed authorized organization must be recorded on the cash register.

(3) Licensed authorized organizations must maintain a perpetual inventory of all pull-tab bingo games. They must account for all sold and unsold pull-tab bingo tickets and pull-tab bingo tickets designated for destruction. The licensed authorized organization will be responsible for the gross receipts, prizes and prize fee associated with the unaccounted for pull-tab bingo tickets.

(4) As long as a specific pull-tab bingo game serial number is in play, all records, reports, receipts and redeemed winning pull-tab bingo tickets of $5.00 or more relating to this specific pull-tab bingo

game serial number must be retained on the licensed premises for examination by the commission.

(5) If a deal is removed from play and marked for destruction then all redeemed winning and unsold pull-tab bingo tickets of the deal must be retained by the licensed authorized organization for a period of four years from the date the deal is taken out of play or until the destruction of the deal is witnessed by the commission, its authorized representative or designee.

(6) Manufacturers and distributors must provide the following information on each invoice and other document used in connection with a sale of pull-tab bingo tickets:

(A) date of sale;

(B) quantity sold;

(C) cost per each deal of pull-tab bingo game sold;

(D) serial number of each pull-tab bingo game's deal;

(E) name and address of the purchaser; and,

(F) Texas taxpayer number of the purchaser.

(7) All licensed organizations must retain these records for a period of four years.

(h) Style of Play. The following pull-tab bingo tickets are authorized by this rule. A last sale feature can be utilized on any pull-tab bingo ticket.

(1) Sign-up Board. A form of pull-tab bingo that is played with a sign-up board. Sign-up board tickets that contain a winning numeric, alpha or symbol instantly win the stated prize or qualify to advance to the sign-up board. The sign-up board that serves as the game flare is where identified winning sign-up board ticket holders may register for the opportunity to win the prize indicated on the sign-up board.

(2) Sign-up Board Ticket. A sign up board ticket is a form of pull-tab bingo played with a sign-up board. A single window or multiple windows sign-up board ticket reveals a winning (or losing) numeric, alpha or symbol that corresponds with the sign-up board.

(3) Tip Board. A form of pull-tab game where perforated tickets attached to a placard that have a predetermined winner under a seal.

(4) Coin Board. A placard that contains prizes consisting of coin(s). Coin boards can have a sign-up board as part of its placard.

(5) Coin Board Ticket. A form of pull-tab bingo that when opened reveals a winning number or symbol that corresponds with the coin board.

(6) Event Ticket. Pull-tab bingo tickets used as event tickets must contain more than two (2) instant winners. Event ticket winner(s) are determined by some subsequent action such as a drawing of ball(s), spinning wheel, opening of a seal on a flare(s) or any other method approved by the commission so long as that method has designated numbers, letters, or symbols that conform to the randomly selected numbers or symbols.

(7) Instant Ticket. A form of pull-tab bingo that have predetermined winners and losers and have immediate recognition of the winners and losers.

(8) Multiple Part Event or Multiple Part Instant Ticket. An event ticket that is broken apart and sold in sections by a licensed authorized organization. Each section of the ticket consists of a separate deal with its own corresponding payout structure, serial number, and winner verification.

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 June 11, 2002.

TRD-200203669
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: July 1, 2002
Proposal publication date: May 10, 2002
For further information, please call: (512) 344-5113

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER L. HEARINGS--CONTESTED CASES

22 TAC §1.231

The Texas Board of Architectural Examiners adopts the repeal of the following rule for Title 22, Chapter 1, Subchapter L: §1.231, pertaining to the case hearings conducted by State Office of Administrative Hearings without changes to the proposal as published in the December 28, 2001, issue of the *Texas Register* (26 TexReg 10701) and will not be republished. TRD-200108016

Simultaneously, the agency is adopting a new rule with section number 1.231 to replace the rule being repealed. Due to the extensive modifications in the new rule, amending the existing rule is less practical than repealing the existing rule and adopting a new rule.

The repealed rule has been replaced with an updated rule that will more clearly define the Board's procedures and is more consistent with governing law.

The agency received no comments pertaining to the repeal of this rule.

The repeal is adopted pursuant to §§3(b), 3(d), and 5(b) of Article 249a, Vernon's Texas Civil Statutes, which provide the Texas Board of Architectural Examiners with authority to promulgate rules and include implied authority to repeal rules that have been promulgated.

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 June 17, 2002.

TRD-200203723

Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: July 7, 2002
Proposal publication date: December 28, 2001
For further information, please call: (512) 305-8535

♦ ♦ ♦

22 TAC §1.231

The Texas Board of Architectural Examiners adopts new §1.231 for Title 22, Chapter 1, Subchapter L, concerning procedures for formal hearings without changes to the text as published in the December 28, 2001, issue of the *Texas Register* (26 TexReg 10701) and will not be republished. TRD-200108017.

This new rule states that the Administrative Procedure Act applies to all contested cases involving matters under the jurisdiction of the Board and states the Rules of Procedure of the State Office of Administrative Hearings apply to formal hearings of contested cases conducted for the Board.

The new rule ensures that the agency's procedures will be clearly stated and consistent with governing law.

The agency received no comments pertaining to the adoption of this new rule.

The new rule is adopted pursuant to §§3(b), 3(d) and 5(b) of Article 249a, Vernon's Texas Civil Statutes, which provide the Texas Board of Architectural Examiners with authority to promulgate rules and take action to enforce them.

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 June 17, 2002.

TRD-200203724
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: July 7, 2002
Proposal publication date: December 28, 2001
For further information, please call: (512) 305-8535

♦ ♦ ♦

22 TAC §1.232

The Texas Board of Architectural Examiners adopts an amendment to rule §1.232 for Title 22, Chapter 1, Subchapter L, concerning the board's responsibilities as they pertain to hearings for contested cases with changes to the text as published in the December 28, 2001, issue of the *Texas Register* (26 TexReg 10702). TRD-200108019.

The amendment to this rule generally describes the Board's procedures for addressing contested cases and ensures that the procedures are consistent with governing law. The changes to the amendment, as published in the December 28, 2001, issue of the *Texas Register*, include the addition of language regarding a party's right to file exceptions, briefs, and replies to exceptions after a proposal for decision is submitted to the agency and setting forth the procedure for filing such documents; the addition of language regarding a party's right to request an oral hearing before the Board and setting forth both the procedure for requesting an oral argument and the amount of time to be allotted for an oral argument if one is allowed by the Board; the addition of language regarding the time when the Board may first act to render a final decision in a contested case; the addition of language stating that the Board's final order in a contested case may adopt by reference the findings of fact and conclusions of law submitted by the administrative law judge; the addition of language stating that the party who appeals a final decision in a contested case must pay for the preparation of the record for review; and the addition of a penalty matrix setting forth recommended penalties for various violations by registrants.

The amendment to this rule will result in the agency's procedures being clearly stated and consistent with governing law.

The agency received no comments pertaining to the proposal to amend this rule.

The amendment to this rule is adopted pursuant to §§3(b), 3(d), and 5(b) of Article 249a, Vernon's Texas Civil Statutes, which provide the Texas Board of Architectural Examiners with authority to promulgate rules and take action to enforce them.

§1.232. Board Responsibilities.

(a) The Board shall investigate Contested Case matters and attempt to resolve Contested Cases informally as provided in Subchapter I of the Rules and Regulations of the Board. However, if a Contested Case is not settled informally pursuant to Subchapter I, it shall be referred to SOAH for a formal hearing to determine whether there has been a violation of any of the statutory provisions or rules enforced by the Board.

(b) A formal hearing shall be conducted in accordance with the Rules of Procedure of SOAH.

(c) After a formal hearing of a Contested Case, the SOAH administrative law judge who conducted the formal hearing shall prepare a proposal for decision and submit it to the Board so that the Board may render a final decision with regard to the Contested Case. The proposal for decision shall include findings of fact and conclusions of law.

(d) Any party of record in a Contested Case who is adversely affected by the proposal for decision may file exceptions and briefs within twenty (20) days after the date of service of the proposal for decision. Replies to exceptions and briefs may be filed within fifteen (15) days after the date for the filing of exceptions and briefs. Exceptions, briefs, and replies shall be filed with the Board and copies shall be served on the administrative law judge and on all other parties in the same manner as for serving other documents in a Contested Case.

(e) Any party of record in a Contested Case may request an oral hearing before the Board. A request for an oral hearing shall be filed with the Board and copies shall be served on the administrative law judge and on all other parties in the same manner as for serving other documents in a Contested Case. The Board, in its sole discretion, shall determine whether to grant or deny a request for an oral hearing. If a request for an oral hearing is granted, each party of record shall be allotted thirty (30) minutes to make an oral presentation to the Board.

(f) Upon the expiration of the time provided for the filing of exceptions and briefs or, if exceptions and briefs are filed, upon the tenth (10th) day following the time provided for the filing of replies to exceptions and briefs, the Board may render a decision to finally resolve a Contested Case. The Board may change a finding of fact or conclusion of law made by an administrative law judge or may vacate or modify an order issued by an administrative law judge only if the Board determines:

(1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions;

(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

(g) If the Board makes a change to a finding of fact or conclusion of law or vacates or modifies an order pursuant to subsection (f) of this section, the Board must state in writing the specific reason and the legal basis for the change.

(h) The Board shall issue a written order regarding the Board's decision to finally resolve a Contested Case that is not settled informally. The written order shall include findings of fact and conclusions of law that are based on the official record of the Contested Case. The written order may adopt by reference the findings of fact and conclusions of law made by an administrative law judge and included in the proposal for decision submitted to the Board.

(i) Motions for rehearing and appeals may be filed and judicial review of final decisions of the Board may be sought pursuant to the Administrative Procedure Act. The party who appeals a final decision in a Contested Case shall be responsible for the cost of the preparation of the original or a certified copy of the record of the agency proceeding that is required to be sent to the reviewing court.

(j) The Board and the administrative law judge who presides over the formal hearing in a Contested Case shall refer to the following guidelines to determine the appropriate penalty for a violation of any of the statutory provisions or rules enforced by the Board:
Figure: 22 TAC §1.232(j)

(k) The penalty for a violation of any of the statutory provisions or rules enforced by the Board may vary from the penalty recommended in subsection (j) of this section if justified by the circumstances of the matter or the disciplinary history of the respondent.

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 June 17, 2002.

TRD-200203726
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: July 7, 2002
Proposal publication date: December 28, 2001
For further information, please call: (512) 305-8535

♦ ♦ ♦

22 TAC §§1.233 - 1.276

The Texas Board of Architectural Examiners adopts the repeal of the following rules for Title 22, Chapter 1, Subchapter L: §1.233, pertaining to jurisdiction and requests for hearings or for An administrative law judge; §1.234, pertaining to filing notices, pleadings, motions, answers, affidavits and all other filings in a contested case; §1.235, pertaining to stipulations and agreements as they concern procedural matters; §1.236, pertaining to the service of documents concerning notices of hearing, default orders, prehearing orders, proposals for decisions, and decisions and orders of the board; §1.237, pertaining to conduct and decorum during proceedings; §1.238, pertaining to the classifications of parties; §1.239, pertaining to appearances in person or by a representative and to waivers and defaults; §1.240, pertaining to classification of pleadings; §1.241, pertaining to form and content of pleadings; §1.242, pertaining to discovery rights; §1.243, pertaining to motions and amendments; §1.244, pertaining to prehearing conferences and orders; §1.245, pertaining to notice of hearings; §1.246, pertaining to certificates of registration; §1.247, pertaining to conduct of hearings; §1.248, pertaining to formal exceptions; §1.249, pertaining to motions for postponement, continuance, withdrawal, or dismissal of matters before the board; §1.250, pertaining to the place and nature of hearings; §1.251, pertaining to powers and authority of the administrative law judge; §1.252, pertaining to the order of proceedings; §1.253, pertaining to reporters and transcript; §1.254, pertaining to telephone hearings; §1.255, pertaining to dismissal or settlement without a hearing; §1.256, pertaining to rules of evidence; §1.257, pertaining to documentary evidence; §1.258, pertaining to official notice of facts; §1.259, pertaining to prepared or prefiled testimony; §1.260, pertaining to limitations on the number of witnesses; §1.261, pertaining to exhibits; §1.262, pertaining to offers of proof; §1.263, pertaining to depositions; §1.264, pertaining to subpoenas; §1.265, pertaining to proposals for decision; §1.266, pertaining to filing exceptions, briefs, and replies; §1.267, pertaining to the form and content of briefs, exceptions, and replies; §1.268, pertaining to oral arguments; §1.269, pertaining to final decisions and orders; §1.270, pertaining to administrative finality; §1.271, pertaining to motions for rehearing; §1.272, pertaining to the rendering of a final decision or order; §1.273, pertaining to the payment of an administrative penalty; §1.274, pertaining to judicial review; §1.275, pertaining to what the record in a contested case shall include; and §1.276 pertaining to complaints. The repeals are being adopted without changes to the proposal as published in the December 28, 2001, issue of the *Texas Register* (26 TexReg 10703) and will not be republished. TRD-200108018.

Simultaneously, the agency is adopting a new rule with section number 1.233 to replace the rules being repealed.

Due to the extensive modifications in the new rule, amending the existing rules is less practical than repealing the existing rules and adopting a new rule.

Repealing these rules makes it possible to adopt new and updated rules which more clearly define the Board's procedures and are more consistent with governing law.

The agency received no comments pertaining to the repeal of these rules.

The repeals are adopted pursuant to §§3(b), 3(d), and 5(b) of Article 249a, Vernon's Texas Civil Statutes, which provide the Texas Board of Architectural Examiners with authority to promulgate rules and include implied authority to repeal rules that have been promulgated.

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 June 17, 2002.

TRD-200203725

Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: July 7, 2002
Proposal publication date: December 28, 2001
For further information, please call: (512) 305-8535

♦ ♦ ♦

22 TAC §1.233

The Texas Board of Architectural Examiners adopts new rule §1.233 for Title 22, Chapter 1, Subchapter L, concerning the application and construction of procedures for hearings on contested cases with changes to the text as published in the December 28, 2001, issue of the *Texas Register* (26 TexReg 10704). TRD-200108020.

This rule states that the State Office of Administrative Hearings (SOAH) will conduct formal hearings in accordance with the Administrative Procedure Act and Chapter 155 of the Rules of Procedure of SOAH. It states that the statute will control any conflict between the Board's rules or a prior decision of the Board and any statutory provisions applicable to a contested case. It requires the presiding administrative law judge to consider applicable policy of the Board if an issue is not susceptible to resolution by reference to the APA and other applicable statutes. The change to the new rule as proposed involved changing the first sentence of the rule by replacing "in accordance with the APA and with Chapter 155 of the Rules of Procedure of SOAH" with "in accordance with the APA, the Rules of Procedure of SOAH, the Architects' Registration Law, the Rules and Regulations of the Board, and case law...".

The new rule ensures that the agency's procedures will be clearly stated and consistent with governing law.

The agency received no comments pertaining to the adoption of this new rule.

The new rule is adopted pursuant to §§3(b), 3(d), and 5(b) of Article 249a, Vernon's Texas Civil Statutes, which provide the Texas Board of Architectural Examiners with authority to promulgate rules and take action to enforce them.

§1.233. Application and Construction of Procedures.

(a) SOAH shall conduct formal hearings in accordance with the APA, the Rules of Procedure of SOAH, the Architects' Registration Law, the Rules and Regulations of the Board, and case law, provided that:

(1) An administrative law judge may, by order, modify the requirements of the Rules of Procedure of SOAH and supplement other procedural requirements of law to promote the fair and efficient handling of a Contested Case; and

(2) An administrative law judge may modify the procedural requirements of the Rules of Procedure of SOAH in appropriate cases to facilitate resolution of issues if doing so does not prejudice any of a party's rights or contravene applicable statutes.

(b) If there is any conflict between the Rules and Regulations of the Board or a prior decision of the Board and any of the statutory provisions applicable to a Contested Case, the statute controls.

(c) Not all contested procedural issues may be susceptible to resolution by reference to the APA and other applicable statutes, the Rules of Procedure of SOAH, the Rules and Regulations of the Board, and case law. When they are not, the presiding administrative law judge shall consider the Texas Rules of Civil Procedure (TRCP) as interpreted and construed by Texas case law, and shall consider persuasive authority established in other forums, in order to issue orders and rulings that are just in the circumstances of the Contested Case.

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 June 17, 2002.

TRD-200203727
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: July 7, 2002
Proposal publication date: December 28, 2001
For further information, please call: (512) 305-8535

♦ ♦ ♦

CHAPTER 3. LANDSCAPE ARCHITECTS
SUBCHAPTER K. HEARINGS--CONTESTED CASES

22 TAC §3.231

The Texas Board of Architectural Examiners adopts the repeal of the following rule for Title 22, Chapter 3, Subchapter K: §3.231, pertaining to the case hearings conducted by the State Office of Administrative Hearings without changes to the proposal as published in the December 28, 2001, issue of the *Texas Register* (26 TexReg 10707). TRD-200108025.

Simultaneously, the agency is adopting new §3.231 to replace the rule being repealed. Due to the extensive modifications in the new rule, amending the existing rule is less practical than repealing the existing rule and adopting a new rule.

The repealed rule has been replaced with an updated rule that will more clearly define the Board's procedures and is more consistent with governing law.

The agency received no comments pertaining to the repeal of this rule.

The repeal is adopted pursuant to §4(a) of Article 249c, Vernon's Texas Civil Statutes, which provide the Texas Board of Architectural Examiners with authority to promulgate rules and include implied authority to repeal rules that have been promulgated.

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 June 17, 2002.

TRD-200203728
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: July 7, 2002
Proposal publication date: December 28, 2001
For further information, please call: (512) 305-8535

♦ ♦ ♦

22 TAC §3.231

The Texas Board of Architectural Examiners adopts new §3.231 for Title 22, Chapter 3, Subchapter K, concerning procedures for formal hearings without changes to the text as published in the December 28, 2001, issue of the *Texas Register* (26 TexReg 10708). TRD-200108026.

This rule states that the Administrative Procedure Act applies to all contested cases involving matters under the jurisdiction of the Board and states the Rules of Procedure of the State Office of Administrative Hearings apply to formal hearings of contested cases conducted for the Board.

The new rule ensures that the agency's procedures will be clearly stated and consistent with governing law.

The agency received no comments pertaining to the adoption of this new rule.

The new rule is adopted pursuant to §4(a) of Article 249c, Vernon's Texas Civil Statutes, which provide the Texas Board of Architectural Examiners with authority to promulgate rules and take action to enforce them.

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 June 17, 2002.

TRD-200203729
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: July 7, 2002
Proposal publication date: December 28, 2001
For further information, please call: (512) 305-8535

♦ ♦ ♦

22 TAC §3.232

The Texas Board of Architectural Examiners adopts an amendment to §3.232 for Title 22, Chapter 3, Subchapter K, concerning the board's responsibilities as they pertain to hearings for contested cases with changes to the text as published in the December 28, 2001, issue of the *Texas Register* (26 TexReg 10709). TRD-200108028.

The amendment to this rule generally describes the Board's procedures for addressing contested cases and ensures that the procedures are consistent with governing law. The changes to the amendment, as published in the December 28, 2001 issue of the *Texas Register*, include the addition of language regarding a party's right to file exceptions, briefs, and replies to exceptions after a proposal for decision is submitted to the agency and setting forth the procedure for filing such documents; the addition of language regarding a party's right to request an oral hearing before the Board and setting forth both the procedure for requesting an oral argument and the amount of time to be allotted for an oral argument if one is allowed by the Board; the addition of language regarding the time when the Board may first act to render a final decision in a contested case; the addition of language stating that the Board's final order in a contested case may adopt by reference the findings of fact and conclusions of law submitted by the administrative law judge; the addition of language stating that the party who appeals a final decision in a contested case must pay for the preparation of the record for review; and the addition of a penalty matrix setting forth recommended penalties for various violations by registrants.

The amendment to this rule will result in the agency's procedures being clearly stated and consistent with governing law.

The agency received no comments pertaining to the proposal to amend this rule.

The amendment to this rule is adopted pursuant to §4(a) of Article 249c, Vernon's Texas Civil Statutes, which provide the Texas Board of Architectural Examiners with authority to promulgate rules and take action to enforce them.

§3.232. Board Responsibilities.

(a) The Board shall investigate Contested Case matters and attempt to resolve Contested Cases informally as provided in Subchapter I of the Rules and Regulations of the Board. However, if a Contested Case is not settled informally pursuant to Subchapter I, it shall be referred to SOAH for a formal hearing to determine whether there has been a violation of any of the statutory provisions or rules enforced by the Board.

(b) A formal hearing shall be conducted in accordance with the Rules of Procedure of SOAH.

(c) After a formal hearing of a Contested Case, the SOAH administrative law judge who conducted the formal hearing shall prepare a proposal for decision and submit it to the Board so that the Board may render a final decision with regard to the Contested Case. The proposal for decision shall include findings of fact and conclusions of law.

(d) Any party of record in a Contested Case who is adversely affected by the proposal for decision may file exceptions and briefs within twenty (20) days after the date of service of the proposal for decision. Replies to exceptions and briefs may be filed within fifteen (15) days after the date for the filing of exceptions and briefs. Exceptions, briefs, and replies shall be filed with the Board and copies shall be served on the administrative law judge and on all other parties in the same manner as for serving other documents in a Contested Case.

(e) Any party of record in a Contested Case may request an oral hearing before the Board. A request for an oral hearing shall be filed with the Board and copies shall be served on the administrative law judge and on all other parties in the same manner as for serving other documents in a Contested Case. The Board, in its sole discretion, shall determine whether to grant or deny a request for an oral hearing. If a request for an oral hearing is granted, each party of record shall be allotted thirty (30) minutes to make an oral presentation to the Board.

(f) Upon the expiration of the time provided for the filing of exceptions and briefs or, if exceptions and briefs are filed, upon the tenth (10th) day following the time provided for the filing of replies to exceptions and briefs, the Board may render a decision to finally resolve a Contested Case. The Board may change a finding of fact or conclusion of law made by an administrative law judge or may vacate or modify an order issued by an administrative law judge only if the Board determines:

(1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions;

(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

(g) If the Board makes a change to a finding of fact or conclusion of law or vacates or modifies an order pursuant to subsection (f) of this section, the Board must state in writing the specific reason and the legal basis for the change.

(h) The Board shall issue a written order regarding the Board's decision to finally resolve a Contested Case that is not settled informally. The written order shall include findings of fact and conclusions of law that are based on the official record of the Contested Case. The written order may adopt by reference the findings of fact and conclusions of law made by an administrative law judge and included in the proposal for decision submitted to the Board.

(i) Motions for rehearing and appeals may be filed and judicial review of final decisions of the Board may be sought pursuant to the Administrative Procedure Act. The party who appeals a final decision in a Contested Case shall be responsible for the cost of the preparation of the original or a certified copy of the record of the agency proceeding that is required to be sent to the reviewing court.

(j) The Board and the administrative law judge who presides over the formal hearing in a Contested Case shall refer to the following guidelines to determine the appropriate penalty for a violation of any of the statutory provisions or rules enforced by the Board:
Figure: 22 TAC §3.232(j)

(k) The penalty for a violation of any of the statutory provisions or rules enforced by the Board may vary from the penalty recommended in subsection (j) of this section if justified by the circumstances of the matter or the disciplinary history of the respondent.

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 June 17, 2002.

TRD-200203731
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: July 7, 2002
Proposal publication date: December 28, 2001
For further information, please call: (512) 305-8535

♦ ♦ ♦

22 TAC §§3.233 - 3.275

The Texas Board of Architectural Examiners adopts the repeal of the following rules for Title 22, Chapter 3, Subchapter K: §3.233, pertaining to jurisdiction and requests for hearings or for an administrative law judge; §3.234, pertaining to filing notices, pleadings, motions, answers, affidavits and all other filings in a contested case; §3.235, pertaining to stipulations and agreements as they concern procedural matters; §3.236, pertaining to the service of documents concerning notices of hearing, default orders, prehearing orders, proposals for decisions, and decisions and orders of the board; §3.237, pertaining to conduct and decorum during proceedings; §3.238, pertaining to the classifications of parties; §3.239, pertaining to appearances in person or by a representative and to waivers and defaults; §3.240, pertaining to classification of pleadings; §3.241, pertaining to form and content of pleadings; §3.242, pertaining to discovery rights; §3.243, pertaining to motions and amendments; §3.244, pertaining to prehearing conferences and orders; §3.245, pertaining to notices of hearings; §3.246, pertaining to certificates of registration; §3.247, pertaining to conduct of hearings; §3.248, pertaining to formal exceptions; §3.249, pertaining to motions for postponement, continuance, withdrawal, or dismissal of matters before the board; §3.250, pertaining to the place and nature of hearings; §3.251, pertaining to powers and authority of the administrative law judge; §3.252, pertaining to the order of proceedings; §3.253, pertaining to reporters and transcripts; §3.254, pertaining to telephone hearing; §3.255, pertaining to dismissal or settlement without a hearings; §3.256, pertaining to rules of evidence; §3.257, pertaining to documentary evidence; §3.258, pertaining to official notice of facts; §3.259, pertaining to prepared or prefiled testimony; §3.260, pertaining to limitations on the number of witnesses; §3.261, pertaining to exhibits; §3.262, pertaining to offers of proof; §3.263, pertaining to depositions; §3.264, pertaining to subpoenas; §3.265, pertaining to proposals for decision; §3.266, pertaining to filing exceptions, briefs, and replies; §3.267, pertaining to the form and content of briefs, exceptions, and replies; §3.268, pertaining to oral arguments; §3.269, pertaining to final decisions and orders; §3.270, pertaining to administrative finality; §3.271, pertaining to motions for rehearing; §3.272, pertaining to the rendering of a final decision or order; §3.273, pertaining to judicial review; §3.274, pertaining to what the record in a contested case shall include; and §3.275, pertaining to complaints. The repeals are adopted without changes to the proposal as published in the December 28, 2001, issue of the *Texas Register* (26 TexReg 10709). TRD-200108027.

Simultaneously, the agency is adopting a new rule with section number §3.233 to replace the rules being repealed.

Due to the extensive modifications in the new rule, amending the existing rules is less practical than repealing the existing rules and adopting a new rule.

Repealing these rules makes it possible to adopt new and updated rules which more clearly define the Board's procedures and are more consistent with governing law.

The agency received no comments pertaining to the repeal of these rules.

The repeal is adopted pursuant to §4(a) of Article 249c, Vernon's Texas Civil Statutes, which provide the Texas Board of Architectural Examiners with authority to promulgate rules and include implied authority to repeal rules that have been promulgated.

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 June 17, 2002.

TRD-200203730
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: July 7, 2002
Proposal publication date: December 28, 2001
For further information, please call: (512) 305-8535

♦ ♦ ♦

22 TAC §3.233

The Texas Board of Architectural Examiners adopts new §3.233 for Title 22, Chapter 3, Subchapter K, concerning the application and construction of procedures for hearings on contested cases with changes to the text as published in the December

28, 2001, issue of the *Texas Register* (26 TexReg 10710). TRD-200108029.

This rule states that the State Office of Administrative Hearings (SOAH) will conduct formal hearings in accordance with the Administrative Procedure Act and Chapter 155 of the Rules of Procedure of SOAH. It states that the statute will control any conflict between the Board's rules or a prior decision of the Board and any statutory provisions applicable to a contested case. It requires the presiding administrative law judge to consider applicable policy of the Board if an issue is not susceptible to resolution by reference to the APA and other applicable statutes. The change to the new rule as proposed involved changing the first sentence of the rule by replacing "in accordance with the APA and with Chapter 155 of the Rules of Procedure of SOAH" with "in accordance with the APA, the Rules of Procedure of SOAH, the Landscape Architects' Registration Law, the Rules and Regulations of the Board, and case law...".

The new rule ensures that the agency's procedures will be clearly stated and consistent with governing law.

The agency received no comments pertaining to the adoption of this new rule.

The new rule is adopted pursuant to §4(a) of Article 249c, Vernon's Texas Civil Statutes, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

§3.233. Application and Construction of Procedures.

(a) SOAH shall conduct formal hearings in accordance with the APA, the Rules of Procedure of SOAH, the Landscape Architects' Registration Law, the Rules and Regulations of the Board, and case law, provided that:

(1) an administrative law judge may, by order, modify the requirements of the Rules of Procedure of SOAH and supplement other procedural requirements of law to promote the fair and efficient handling of a Contested Case; and

(2) an administrative law judge may modify the procedural requirements of the Rules of Procedure of SOAH in appropriate cases to facilitate resolution of issues if doing so does not prejudice any of a party's rights or contravene applicable statutes.

(b) If there is any conflict between the Rules and Regulations of the Board or a prior decision of the Board and any of the statutory provisions applicable to a Contested Case, the statute controls.

(c) Not all contested procedural issues may be susceptible to resolution by reference to the APA and other applicable statutes, the Rules of Procedure of SOAH, the Rules and Regulations of the Board, and case law. When they are not, the presiding administrative law judge shall consider the Texas Rules of Civil Procedure (TRCP) as interpreted and construed by Texas case law, and shall consider persuasive authority established in other forums in order to issue orders and rulings that are just in the circumstances of the Contested Case.

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 June 17, 2002.

TRD-200203732

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Effective date: July 7, 2002

Proposal publication date: December 28, 2001

For further information, please call: (512) 305-8535

♦ ♦ ♦

CHAPTER 5. INTERIOR DESIGNERS
SUBCHAPTER K. HEARINGS--CONTESTED CASES

22 TAC §5.241

The Texas Board of Architectural Examiners adopts the repeal of the following rule for Title 22, Chapter 5, Subchapter K: §5.241, pertaining to the case hearings conducted by the State Office of Administrative Hearings without change to the proposal as published in the December 28, 2001, issue of the *Texas Register* (26 TexReg 10714). TRD-200108034.

Simultaneously, the agency is adopting a new §5.241 to replace the rule being repealed. Due to the extensive modifications proposed in the new rule, amending the existing rule is less practical than repealing the existing rule and adopting a new rule.

The repealed rule has been replaced with an updated rule that will more clearly define the Board's procedures and is more consistent with governing law.

The agency received no comments pertaining to the repeal of this rule.

The repeal is adopted pursuant to §5(a) of Article 249e, Vernon's Texas Civil Statutes, which provide the Texas Board of Architectural Examiners with authority to promulgate rules and include implied authority to repeal rules that have been promulgated.

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 June 17, 2002.

TRD-200203733

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Effective date: July 7, 2002

Proposal publication date: December 28, 2001

For further information, please call: (512) 305-8535

♦ ♦ ♦

22 TAC §5.241

The Texas Board of Architectural Examiners adopts new §5.241 for Title 22, Chapter 5, Subchapter K, concerning procedures for formal hearings without changes to the text as published in the December 28, 2001, issue of the *Texas Register* (26 TexReg 10714). TRD-200108035.

This rule states that the Administrative Procedure Act applies to all contested cases involving matters under the jurisdiction of the Board and states the Rules of Procedure of the State Office of Administrative Hearings apply to formal hearings of contested cases conducted for the Board.

The new rules ensures that the agency's procedures will be clearly stated and consistent with governing law.

The agency received no comments pertaining to the proposal of the new rule

The new rule is adopted pursuant to §5(d) and §5(b) of Article 249e, Vernon's Texas Civil Statutes, which provide the Texas Board of Architectural Examiners with authority to promulgate rules and take action to enforce them.

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 June 17, 2002.

TRD-200203734
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: July 7, 2002
Proposal publication date: December 28, 2001
For further information, please call: (512) 305-8535

♦ ♦ ♦

22 TAC §5.242

The Texas Board of Architectural Examiners adopts an amendment to §5.242 for Title 22, Chapter 5, Subchapter K, concerning the board's responsibilities as they pertain to hearings for contested cases with changes to the text as published in the December 28, 2001, issue of the *Texas Register* (26 TexReg 10715). TRD-200108037.

The amendment to this rule generally describes the Board's procedures for addressing contested cases and ensures that the procedures are consistent with governing law. The changes to the amendment, as published in the December 28, 2001 issue of the Texas Register, include the addition of language regarding a party's right to file exceptions, briefs, and replies to exceptions after a proposal for decision is submitted to the agency and setting forth the procedure for filing such documents; the addition of language regarding a party's right to request an oral hearing before the Board and setting forth both the procedure for requesting an oral argument and the amount of time to be allotted for an oral argument if one is allowed by the Board; the addition of language regarding the time when the Board may first act to render a final decision in a contested case; the addition of language stating that the Board's final order in a contested case may adopt by reference the findings of fact and conclusions of law submitted by the administrative law judge; the addition of language stating that the party who appeals a final decision in a contested case must pay for the preparation of the record for review; and the addition of a penalty matrix setting forth recommended penalties for various violations by registrants.

The amendment to this rule will result in the agency's procedures being clearly stated and consistent with governing law.

The agency received no comments pertaining to the proposal to amend this rule.

The amendment to this rule is adopted pursuant to §5(b) and §5(d) of Article 249e, Vernon's Texas Civil Statutes, which provide the Texas Board of Architectural Examiners with authority to promulgate rules and take action to enforce them.

§5.242. Board Responsibilities.

(a) The Board shall investigate Contested Case matters and attempt to resolve Contested Cases informally as provided in Subchapter I of the Rules and Regulations of the Board. However, if a Contested Case is not settled informally pursuant to Subchapter I, it shall be referred to SOAH for a formal hearing to determine whether there has been a violation of any of the statutory provisions or rules enforced by the Board.

(b) A formal hearing shall be conducted in accordance with the Rules of Procedure of SOAH.

(c) After a formal hearing of a Contested Case, the SOAH administrative law judge who conducted the formal hearing shall prepare a proposal for decision and submit it to the Board so that the Board may render a final decision with regard to the Contested Case. The proposal for decision shall include findings of fact and conclusions of law.

(d) Any party of record in a Contested Case who is adversely affected by the proposal for decision may file exceptions and briefs within twenty (20) days after the date of service of the proposal for decision. Replies to exceptions and briefs may be filed within fifteen (15) days after the date for the filing of exceptions and briefs. Exceptions, briefs, and replies shall be filed with the Board and copies shall be served on the administrative law judge and on all other parties in the same manner as for serving other documents in a Contested Case.

(e) Any party of record in a Contested Case may request an oral hearing before the Board. A request for an oral hearing shall be filed with the Board and copies shall be served on the administrative law judge and on all other parties in the same manner as for serving other documents in a Contested Case. The Board, in its sole discretion, shall determine whether to grant or deny a request for an oral hearing. If a request for an oral hearing is granted, each party of record shall be allotted thirty (30) minutes to make an oral presentation to the Board.

(f) Upon the expiration of the time provided for the filing of exceptions and briefs or, if exceptions and briefs are filed, upon the tenth (10th) day following the time provided for the filing of replies to exceptions and briefs, the Board may render a decision to finally resolve a Contested Case. The Board may change a finding of fact or conclusion of law made by an administrative law judge or may vacate or modify an order issued by an administrative law judge only if the Board determines:

(1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions;

(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

(g) If the Board makes a change to a finding of fact or conclusion of law or vacates or modifies an order pursuant to subsection (f) of this section, the Board must state in writing the specific reason and the legal basis for the change.

(h) The Board shall issue a written order regarding the Board's decision to finally resolve a Contested Case that is not settled informally. The written order shall include findings of fact and conclusions of law that are based on the official record of the Contested Case. The written order may adopt by reference the findings of fact and conclusions of law made by an administrative law judge and included in the proposal for decision submitted to the Board.

(i) Motions for rehearing and appeals may be filed and judicial review of final decisions of the Board may be sought pursuant to the

Administrative Procedure Act. The party who appeals a final decision in a Contested Case shall be responsible for the cost of the preparation of the original or a certified copy of the record of the agency proceeding that is required to be sent to the reviewing court.

(j) The Board and the administrative law judge who presides over the formal hearing in a Contested Case shall refer to the following guidelines to determine the appropriate penalty for a violation of any of the statutory provisions or rules enforced by the Board:
Figure: 22 TAC §5.242(j)

(k) The penalty for a violation of any of the statutory provisions or rules enforced by the Board may vary from the penalty recommended in subsection (j) of this section if justified by the circumstances of the matter or the disciplinary history of the respondent.

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 June 17, 2002.

TRD-200203736
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: July 7, 2002
Proposal publication date: December 28, 2001
For further information, please call: (512) 305-8535

♦ ♦ ♦

22 TAC §§5.243 - 5.285

The Texas Board of Architectural Examiners adopts the repeal of the following rules for Title 22, Chapter 5 Subchapter K: §5.243, pertaining to jurisdiction and requests for hearings or for an administrative law judge; §5.244, pertaining to filing notices, pleadings, motions, answers, affidavits and all other filings in a contested case; §5.245, pertaining to stipulations and agreements as they concern procedural matters; §5.246, pertaining to the service of documents concerning notices of hearing, default orders, prehearing orders, proposal for decisions, and decisions and orders of the board; §5.247, pertaining to conduct and decorum during proceedings; §5.248, pertaining to the classifications of parties; §5.249, pertaining to appearances in person or by a representative and to waivers and defaults; §5.250, pertaining to classification of pleadings; §5.251, pertaining to form and content of pleadings; §5.252, pertaining to discovery rights; §5.253, pertaining to motions and amendments; §5.254, pertaining to prehearing conferences and orders; §5.255, pertaining to notice of hearing; §5.256, pertaining to certificates of registration; §5.257, pertaining to conduct of hearings; §5.258, pertaining to formal exceptions; §5.259, pertaining to motions for postponement, continuance, withdrawal, or dismissal of matters before the board; §5.260, pertaining to the place and nature of hearings; §5.261, pertaining to powers and authority of the administrative law judge; §5.262, pertaining to the order of proceedings; §5.263, pertaining to reporters and transcript; §5.264, pertaining to telephone hearings; §5.265, pertaining to dismissal or settlement without a hearings; §5.266, pertaining to rules of evidence; §5.267, pertaining to documentary evidence; §5.268, pertaining to official notice of facts; §5.269, pertaining to prepared or prefiled testimony; §5.270, pertaining to limitations on the number of witnesses; §5.271, pertaining to exhibits; §5.272, pertaining to offers of proof; §5.273, pertaining to depositions; §5.274, pertaining to subpoenas; §2.275, pertaining to proposals for decision; §5.276, pertaining to filing exceptions, briefs, and replies; §5.277, pertaining to the form and content of briefs, exceptions, and replies; §5.278, pertaining to oral arguments; §5.279, pertaining to final decisions and orders; §5.280, pertaining to administrative finality; §5.281, pertaining to motions for a rehearing; §5.282, pertaining to the rendering of a final decision or order; §5.283, pertaining to judicial review; §5.284, pertaining to what the record in a contested case shall include; and §5.285 pertaining to complaints. The repeals are adopted without changes to the proposal as published in the December 28, 2001, issue of the *Texas Register* (26 TexReg 10716). TRD-200108036.

Simultaneously, the agency is adopting a new rule with section number 5.243 to replace the rules being repealed.

Due to the extensive modifications in the new rule, amending the existing rules is less practical than repealing the existing rules and adopting a new rule.

Repealing these rules makes it possible to adopt new and updated rules which more clearly define the Board's procedures and are more consistent with governing law.

The agency received no comments pertaining to the repeal of these rules.

The repeal is adopted pursuant to §5(a) of Article 249e Vernon's Texas Civil Statutes, which provide the Texas Board of Architectural Examiners with authority to promulgate rules and include implied authority to repeal rules that have been promulgated.

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 June 17, 2002.

TRD-200203735
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: July 7, 2002
Proposal publication date: December 28, 2001
For further information, please call: (512) 305-8535

♦ ♦ ♦

22 TAC §5.243

The Texas Board of Architectural Examiners adopts new §5.243 for Title 22, Chapter 5 Subchapter K, concerning the application and construction of procedures for hearings on contested cases with changes to the proposal as published in the December 28, 2001, issue of the *Texas Register* (26 TexReg 10717). TRD-200108038.

This rule states that the State Office of Administrative Hearings (SOAH) will conduct formal hearings in accordance with the Administrative Procedure Act and Chapter 155 of the Rules of Procedure of SOAH. It states that the statute will control any conflict between the Board's rules or a prior decision of the Board and any statutory provisions applicable to a contested case. It requires the presiding administrative law judge to consider applicable policy of the Board if an issue is not susceptible to resolution by reference to the APA and other applicable statutes. The change to the new rule as proposed involved changing the first sentence of the rule by replacing "in accordance with the APA

and with Chapter 155 of the Rules of Procedure of SOAH" with "in accordance with the APA, the Rules of Procedure of SOAH, the Interior Designers' Registration Law, the Rules and Regulations of the Board, and case law...".

The new rule ensures that the agency's procedures will be clearly stated and consistent with governing law.

The agency received no comments pertaining to the adoption of this new rule.

The new rule is adopted pursuant to §5(b) and §5(d) of Article 249e Vernon's Texas Civil Statutes, which provide the Texas Board of Architectural Examiners with authority to promulgate rules and take action to enforce them.

§5.243. Application and Construction of Procedures.

(a) SOAH shall conduct formal hearings in accordance with the APA, the Rules of Procedure of SOAH, the Interior Designers' Registration Law, the Rules and Regulations of the Board, and case law, provided that:

(1) an administrative law judge may, by order, modify the requirements of the Rules of Procedure of SOAH and supplement other procedural requirements of law to promote the fair and efficient handling of a Contested Case; and

(2) an administrative law judge may modify the procedural requirements of the Rules of Procedure of SOAH in appropriate cases to facilitate resolution of issues if doing so does not prejudice any of a party's rights or contravene applicable statutes.

(b) If there is any conflict between the Rules and Regulations of the Board or a prior decision of the Board and any of the statutory provisions applicable to a Contested Case, the statute controls.

(c) Not all contested procedural issues may be susceptible to resolution by reference to the APA and other applicable statutes, the Rules of Procedure of SOAH, the Rules and Regulations of the Board, and case law. When they are not, the presiding administrative law judge shall consider the Texas Rules of Civil Procedure (TRCP) as interpreted and construed by Texas case law, and shall consider persuasive authority established in other forums in order to issue orders and rulings that are just in the circumstances of the Contested Case.

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 June 17, 2002.

TRD-200203737
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: July 7, 2002
Proposal publication date: December 28, 2001
For further information, please call: (512) 305-8535

♦ ♦ ♦

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.9

The State Board of Dental Examiners adopts amendments to §101.9, concerning Dental Profiles without changes to the text published in the April 26, 2002, issue of the *Texas Register* (27 TexReg 3424).

Section 101.9 provides that all applicants for renewals of dental licenses must include specified data on a form provided by the State Board of Dental Examiners and must do so by June 1, 2002. The State Board of Dental Examiners is amending the effective date of this rule to begin on January 1, 2003.

This rule was adopted pursuant to Senate Bill 187 passed during the 78th Legislative Session. Section 2054.2606 of Senate Bill 187 provided that various health care licensing entities, inclusive of the State Board of Dental Examiners, provide specified profile information of its licensees. The purpose of this legislation was to provide a uniform reporting requirement of health care licensing entities and make available to the citizens of the State of Texas specified uniform information to enable citizens accessible acquisition of information so that the citizens may become more informed in their for health care decision-making. The State Board of Dental requests amendment of §101.9 to amend the effective date of June 1, 2002, to January 1, 2003, in order to implement internal measures and systems to accomplish the implementation process.

The public benefit anticipated as a result of the amended section will be access by the public to licensees' information which will be uniform.

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, and Senate Bill 187, §11, 77th Legislature, 2001, which requires the Board to adopt rules to establish a profile system.

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

Filed with the Office of the Secretary of State on June 11, 2002.

TRD-200203657
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Effective date: July 1, 2002
Proposal publication date: April 26, 2002
For further information, please call: (512) 463-6400

♦ ♦ ♦

CHAPTER 104. CONTINUING EDUCATION

22 TAC §104.1

The State Board of Dental Examiners adopts amendments to §104.1, concerning requirements without changes to the proposed text as published in the April 26, 2002, issue of the *Texas Register* (27 TexReg 3425).

The deleted section no longer has any function. It was added to implement a statutory change that is now fully in place. The

Dental Practice Act was amended in 1999 to change the continuing education requirement from 36 hours in three years to 12 hours in each year. Since in 1999 some licensees may have already accumulated the full 36 hours for the next three years, certain "bridging" provisions between the old scheme and the new needed to be in place. That was the purpose of §104.1(2). The bridging period is now over and the rule section is no longer needed. The agency is repealing §104.1(2) in its entirety. The remainder of §104.1 remains unchanged with no proposed amendments to the current 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, and §257.005 which provides continuing education requirements for dentists and dental hygienists.

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 June 11, 2002.

TRD-200203658
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Effective date: July 1, 2002
Proposal publication date: April 26, 2002
For further information, please call: (512) 463-6400

♦ ♦ ♦

22 TAC §104.6

The State Board of Dental Examiners adopts new §104.6, concernig Audits without changes to the proposed text as published in the April 26, 2002, issue of the *Texas Register* (27 TexReg 3426).

Section 104.6 provides that all licensees are subject to audit by the State Board of Dental Examiners for purposes of ensuring compliance with the continuing education requirements under Chapter 104 of the State Board of Dental Examiners' Rules. The purpose of §104.6 is to enable the State Board of Dental Examiners to conduct audits to verify that licensees have satisfied the continuing education requirements set forth in statute.

No comments were received regarding adoption of this proposal.

The new 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, and §257.005 which provides continuing education requirements for dentists and dental hygienists.

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 June 11, 2002.

TRD-200203659
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Effective date: July 1, 2002
Proposal publication date: April 26, 2002
For further information, please call: (512) 463-6400

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 229. FOOD AND DRUG
SUBCHAPTER K. TEXAS FOOD ESTABLISHMENTS

The Texas Department of Health (department) adopts the repeal of §229.172, and new §229.172 concerning accreditation of food management programs, new §229.176 concerning certification of food managers, and new §229.177 concerning the certification of food managers in areas under Texas Department of Health permitting jurisdiction. Sections 229.172, 229.176, and 229.177 are adopted with changes to the proposed text that was published in the March 8, 2002, issue of the *Texas Register* (27 TexReg 1645). The repeal of §229.172 is adopted without changes, and therefore will not be republished.

Government Code, §2001.039 requires each state agency to review and consider for readoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Existing §229.172 has been reviewed and the department has determined that reasons for adopting the section continue to exist. However, because of substantial changes to the Texas Food Establishment rules and revisions to the recommendations of the Conference for Food Protection which serve as the guidance documents, existing §229.172 is being repealed and new §229.172 is adopted.

The department published a Notice of Intention to Review for §229.172 in the *Texas Register* on January 21, 2000 (25 TexReg 398). No comments were received as a result of the publication of the notice.

Section 229.172 is being amended to make the language consistent with the Texas Food Establishment Rules currently in place and with the National Conference for Food Protection Guidelines. In addition, the 77th Texas Legislature passed House Bill 251 which requires the department to develop new standards for certification based on passage of a department approved examination. New §229.176 proposes new standards which will provide this framework. House Bill 251 also provides the department with the statutory authority to require manager certification in those areas of the state under department permitting jurisdiction. New §229.177 implements this requirement. Certification of food managers supports demonstration of food safety knowledge, thereby reducing the risk of foodborne illness outbreaks caused by improper food preparation and handling techniques.

No comments were received during the comment period regarding the amended sections as proposed; however after department staff review, three changes were made for consistency within the proposed rules.

Change: Section 229.172(f)(3) was amended to include the words "site location" to be consistent with §229.176(e)(3).

Change: Sections 229.172(f)(3) and 229.176(e)(3) were amended to include the words "change of name" to be consistent within Chapter 229.

Change: In §229.177(c)(3), the word "in" was inserted before "§229.162(66)" for clearer understanding of the reference used in the paragraph.

25 TAC §229.172

The repeal is adopted under the Health and Safety Code, §438.042, which requires the department to adopt necessary regulations pursuant to the enforcement of Chapter 438; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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 June 17, 2002.

TRD-200203739
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: July 7, 2002
Proposal publication date: March 8, 2002
For further information, please call: (512) 458-7236

♦ ♦ ♦

25 TAC §§229.172, 229.176, 229.177

New §229.172 is adopted under the Health and Safety Code, §438.042, which requires the department to adopt necessary regulations pursuant to the enforcement of Chapter 438, Subchapter D; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health. New §229.176 is adopted under the Health and Safety Code, §438.102, which requires the department to adopt necessary regulations pursuant to the enforcement of Chapter 438, Subchapter G; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health. New §229.177 is adopted under the Health and Safety Code, §437.0076, which provides the department with the statutory authority to adopt necessary regulations pursuant to the enforcement of Chapter 437; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§229.172. Accreditation of Certified Food Management Programs.

(a) Purpose. This section is intended to provide the framework for accrediting manager level food safety programs in accordance with the Texas Health and Safety Code (HSC), Chapter 438, Subchapter D. A uniform standard governing the accreditation of food safety programs enhances the recognition of reciprocity among regulatory agencies and reduces the expense of duplicate education incurred when food establishment managers work in multiple regulatory jurisdictions. Education of the food establishment manager provides more qualified personnel, thereby reducing the risk of foodborne illness outbreaks caused by improper food preparation and handling techniques.

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

(1) Accredited--A program approved by the department that meets the standards set forth in this section.

(2) Alternative training methods--Training other than classroom, including but not limited to distance learning, computerized training programs, and correspondence courses.

(3) Certificate--The documentation issued by the department or an organization that administers a department approved examination verifying that an individual has complied with the requirements of this section.

(4) Certification--The process whereby a certificate is issued.

(5) Certified food manager--A person who has demonstrated that they have the knowledge, skills and abilities required to protect the public from foodborne illness by means of successfully completing a food safety examination as described in this section.

(6) Certified food management program--A program accredited by the department that provides food safety education for food establishment managers and administers an approved examination for certification or recertification purposes.

(A) Certification program--A program whose course work consists of a minimum of 14 hours of instruction on food safety topics which may include traditional or alternative methods of training, including distance education, and at least a one-hour proctored department approved examination.

(B) Recertification program--A program whose course work consists of six hours of instruction on food safety topics, which may include traditional or alternative methods of training, including distance education, and a department approved proctored examination.

(7) Certified food management program instructor--An individual whose educational background and work experience meet the requirements for approval as a certified food management instructor as described in this section.

(8) Certified food management program licensee--The individual, corporation or company that is licensed by the department to operate certified food management programs.

(9) Certified food management program sponsor--An individual designated in writing to the department, by the licensee, as the person responsible for administrative management of the program.

(10) Conference for Food Protection--An independent national voluntary nonprofit organization to promote food safety and consumer protection.

(11) Continuing education--Documented professional education or activities that provide for the continued proficiency of a certified food management program instructor.

(12) Department--The Texas Department of Health.

(13) Examination administrator--An individual or individuals who are designated in writing to the department, by the licensee, who is responsible for administering food manager certification examinations.

(14) Food--A raw, cooked, or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(15) Food establishment--An operation that stores, prepares, packages, serves, or otherwise provides food for human consumption such as: a food service establishment; retail food store; satellite or catered feeding location; catering operation, if the operation provides food directly to a consumer or to a conveyance used to transport people; market; remote catered operations; conveyance used to transport people; institution or food bank that relinquishes possession of food to a consumer directly or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(A) The term includes: an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location, unless the vending or feeding location is permitted by the regulatory authority; a restaurant; a grocery store; an operation that is conducted in a mobile, roadside, stationary, temporary, or permanent facility or location; group residence; outfitter operations; bed and breakfast extended and bed and breakfast food establishments where consumption is on or of the premises; and regardless of whether there is a charge for the food.

(B) The term does not include: an establishment that offers only prepackaged foods that are not potentially hazardous; a produce stand that only offers whole, uncut fresh fruits and vegetables; a food processing plant; a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function, such as a religious or charitable organization's bake sale; a bed and breakfast limited facility as defined in §229.162(4)(A) of this title; or a private home.

(16) Law--Applicable local, state and federal statutes, regulations and ordinances.

(17) Person--An association, corporation, individual, partnership or other legal entity, government or governmental subdivision or agency.

(18) Proctor--The examination administrator or a person who is designated to assist the examination administrator.

(19) Psychometric--Scientific measurement or quantification of human qualities, traits or behaviors.

(20) Reciprocity--Acceptance by state and local regulatory authorities of a Department approved food manager certificate.

(21) Regulatory authority--The state or local enforcement body or authorized representative having jurisdiction over the food establishment.

(22) Secure--Access limited to the certified food manager licensee or examination administrator.

(23) Single entity--A corporation that educates only its own employees.

(24) Traceable means--A method of mailing documents, which can be tracked in the event of loss or delay.

(c) Certified food manager.

(1) Certified food manager responsibilities. Responsibilities of a certified food manager include:

(A) identifying hazards in the day-to-day operation of a food establishment that provides food for human consumption;

(B) developing or implementing specific policies, procedures or standards aimed at preventing foodborne illness;

(C) coordinating training, supervising or directing food preparation activities, and taking corrective action as needed to protect the health of the consumer;

(D) training the food establishment employees on the principles of food safety; and

(E) conducting in-house self-inspections of daily operations on a periodic basis to ensure that policies and procedures concerning food safety are being followed.

(2) Certification by training and food safety examination. To be certified, a food manager must complete an accredited certification or recertification program and pass an examination that has been administered through a department accredited food management program.

(3) Certificate reciprocity. Department issued food management certificates shall be recognized statewide by regulatory authorities as the only valid proof of successful completion of a department accredited food management course.

(4) Certificate availability. The original food manager certificate shall be conspicuously posted at each food establishment.

(d) Licensing of certified food management program licensee. The department shall issue a license of accreditation to each certified food management program licensee who has demonstrated compliance with this section. A license issued under these rules will expire one year from the date of issuance. This license is not transferable on change of ownership, or site location.

(1) Application. A person wishing to apply for a certification or recertification certified food management program license shall submit an application to the department.

(2) Certified food management program license fee. The license application shall include the appropriate non-refundable fee.

(3) Examination security agreement. The licensee shall submit a signed security agreement for each examination administrator using a department examination.

(4) Certified food management program sponsor. The licensee may designate a program sponsor as the person responsible for the administrative management of the program.

(5) Certified food management program instructor. A list of all department certified food management program instructors who plan to teach an accredited certification or recertification course shall be provided to the department. An instructor application, along with other necessary documentation must be submitted for all non-certified instructors.

(6) Training methods. Training methods shall be designated on the application. Documentation must be provided to the department verifying that the time required to complete an alternative training program is equivalent to 14 hours of training for certification and six hours for recertification.

(7) Certification examination. Department approved examination(s) utilized by the certified food protection management programs shall be designated on the application.

(e) Licensing of single entity certified food management programs. In addition to the licensing requirements as specified in subsection (d) of this section, a corporation wishing to use a single entity option, which defers course length and topic requirements as specified HSC, §438.043(a), shall submit to the department:

(1) a copy of the course guide; and

(2) an outline of each topic and sub-topics.

(f) Responsibilities of a certified food management program licensee.

(1) Compliance with certified food management program law and rules. The licensee is responsible for compliance with applicable certified food management program law and rules.

(2) Payment of fees. All fees shall be non-refundable and paid as specified in subsection (p) of this section.

(3) Change of ownership, site location, or change of name. A new licensing application, to include non-refundable fee(s) as described in this section, shall be submitted prior to a change of license ownership, site location, or change of name.

(4) Certified food management program course content. All food management programs must be taught utilizing the course content established in the Conference for Food Protection's Standards for Accreditation of Food Protection Manager Certification Programs, and must meet the training and time requirements in subsection (d)(6) of this section.

(5) Change of program sponsor. The licensee shall notify the department in writing of the name of the new program sponsor.

(6) Change of examination administrator. The licensee shall submit a signed security agreement for each new examination administrator prior to administering the department examination. New examination administrators must receive instruction on administrative responsibilities for examination security and processing.

(7) Change of certified food management instructor. The licensee shall ensure that only a department certified food management instructor serves as the instructor for the food management program. All new instructors must complete the application for new instructors that must be submitted by the licensee to the department with the applicable documentation. All new instructors must receive instruction on the applicable law and rules and administrative responsibilities.

(8) Mailing of answer sheets. The licensee shall ensure that the answer sheets used for computerized grading shall be mailed to the department by traceable means. The completed answer sheets must be received by the department within seven working days of the examination date.

(g) Requirements for certification of certified food management program instructors. The instructors for all food management programs shall be department certified prior to teaching a class. Instructors meeting the qualifications will be approved for a five-year period. The application form shall be submitted to the department through the accredited certified food management program licensee.

(1) New food management instructors. A completed application for new instructors must be submitted to the department with the following documentation:

(A) the completed and signed application form;

(B) a copy of a valid food management certificate; and

(C) verification of education or experience in food safety documented by one of the following:

(i) an associate or higher college degree from an accredited institution in a major related to food safety or environmental health, evidenced by a copy of the candidate's diploma or transcript;

(ii) five years of food establishment work experience verified in an attached resume; or

(iii) one year of regulatory inspection experience verified in an attached resume.

(2) Nationally accredited program instructors. Nationally accredited program instructors who have met the minimum standards as set forth by this section shall be given reciprocity when instructing and administering a Conference for Food Protection accredited examination.

(h) Responsibilities of certified food management program instructors.

(1) Compliance with certified food management program law and rules. All certified instructors are responsible for compliance with applicable certified food management program law and rules.

(2) Training requirements. All certified instructors are responsible for instructing the course content as specified in subsection (f)(4) of this section, and meeting the training time requirements as specified in subsection (d)(6) of this section.

(3) Examination administrator. Instructors serving as the examination administrator must complete an examination security agreement prior to administering a department examination.

(i) Requirements for the renewal of certified food management program instructor certification. In order for an instructor to renew their instructor certification, they must comply with the requirements of this subsection.

(1) Instructor certification renewal. At least 60 days prior to the certificate expiration date, the department will mail instructors a renewal notice. In order for certification to be renewed, the instructor must return the completed renewal notice to the department prior to the expiration date along with required documentation.

(2) Continuing education requirements. An instructor must earn a minimum of 12 contact hours of continuing education credits before expiration of their certification.

(3) Accepted continuing education topics. Continuing education topics may include areas in food safety or instruction enhancement.

(4) Verification of continuing education. The following may be used for continuing education:

(A) a certificate of completion for a course or seminar with the participant's name, course name, date and number of contact hours earned;

(B) a college transcript with course description;

(C) a copy of a published professional research paper authored by the instructor that indicates the journal name and publication date;

(D) a signed and dated letter on official letterhead from an employer detailing the instructor's participation in company workshops or programs; or

(E) other documentation of attendance as approved by the department.

(5) Expiration of instructor certificate. Instructor certification expires upon the expiration date on the certificate. In order to be recertified, the instructor must submit a new food management instructor application.

(j) Responsibilities of the examination administrators.

(1) Compliance with certified food management program laws and rules. The examination administrator is responsible for compliance with the certified food management program laws and rules applicable to examination administration.

(2) Examination security agreement. An examination administrator must complete a security agreement and submit to the department through the certified food management program licensee. The department may not issue examinations to an examination administrator who does not have a signed security agreement on file with the department.

(3) Examination security. The examination administrator shall provide examination security at the examination site. All security measures shall be met and maintained at all times during examination storage, administration and issuance as described in this section.

(4) Mailing answer sheets. Answer sheets used for computerized grading shall be mailed to the department by traceable means. The completed answer sheets must be received at the department within seven working days of the examination date.

(5) Examination results. Candidates shall be informed of the process for receiving their certificate upon passing the examination. Candidates shall be informed of the reexamination process, in the event of examination failure.

(6) Replacement process for candidate certificate. Candidates shall be informed of the process for replacing lost or damaged certificates.

(k) Certified food manager certificates.

(1) Certificate issuance. Certified food manager certificates for candidates who complete an accredited program and pass the department examination will be mailed directly to the candidate at the address provided on the computerized grading sheet.

(2) Certificate period. A certified food manager certificate shall be valid for five years from the date of examination. All certificates issued prior to the effective date of these rules will expire on the expiration date as stated on the certificate.

(3) Certificate renewal. Renewal shall be achieved by completing a recertification program and passing a department approved examination. A renewal certificate shall be valid for five years from date of issuance.

(4) Certificate replacement. An individual requesting a certified food manager certificate replacement must submit a written request to the department with the appropriate non-refundable fee. Replacement certificates will bear the same expiration date as the original certificate.

(5) Expired certificates. Certified food managers whose certification has expired shall complete an accredited certification course and pass the final examination.

(6) Certification through single entity corporations. Candidates from accredited single entity corporations will receive food management certificates as described in this section, except that the food management certificate shall:

(A) clearly indicate that the certificate is for the single entity only;

(B) be recognized by regulatory authorities for only that single entity; and

(C) not receive reciprocity or recertification.

(l) Department examination criteria. The department examination shall meet accepted psychometric standards for reliability, validity and passing score. The department certification examination shall consist of 75 statistically valid questions to be administered at one time following the required training which precedes the examination. The department recertification examination shall consist of 50 statistically valid questions to be administered at one time following the required training which precedes the examination.

(m) National examination criteria. National food manager examinations recognized by the Conference for Food Protection shall be considered department approved examinations. Examination administrators for national examinations must implement and maintain all of the administrative procedures as outlined in the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Programs.

(n) Site requirements for administration of the department examination and national examinations. Examination sites utilizing the department examination or a national examination must comply with all legal requirements for safety, health, and accessibility for all qualified candidates. Accommodations, lighting, space, comfort, and workspace for taking the examination must allow all candidates to perform at their highest level of competency. Requirements at each site include but are not limited to:

(1) accessibility in accordance with the requirements of the Americans with Disabilities Act must be available for all qualified examinees;

(2) sufficient spacing between each examinee in the area in which the actual testing is conducted, or other appropriate and effective methods, to preclude any examinee from viewing another candidate's examinations;

(3) acoustics that allow each examinee to hear instructions clearly, using an electronic audio system if necessary;

(4) adequate lighting at each examinee's work space for reading fine print; and

(5) appropriate ventilation and temperature for the health and comfort of examinees.

(o) Examination administration. Examination administrators shall implement and maintain the following examination administration procedures for a program utilizing the department examination.

(1) Security procedures shall be in place which protect the examination from compromise at all times. The examinations shall be stored and administered under secure conditions and shall be inventoried prior to and immediately following each administration of an examination. The examination may not be duplicated. Candidates shall have access to the examination only during examination administration.

(2) There shall be one proctor for every 35 candidates taking the examination. Proctors shall, by picture identification, confirm the accurate identity of each candidate. The examination administrator shall train and supervise the activities of any proctor(s).

(3) A candidate who speaks English as a second language may use a translation dictionary to translate English into their native language.

(4) An employee or a non-biased volunteer translator may be used as a translator of languages other than English to administer the examination orally. Translators shall be pre-approved by the examination administrator, and shall not compromise the integrity of the examination or the examination results of the candidate.

(5) Each candidate's examination results and personal information shall be held confidential. Such information may be made available only to the examinee and to persons designated in writing by the examinee in a dated document containing the examinee's original signature. The signed document must specify the name(s) of specific individuals the information may be released to and the exact information which may be provided. The department shall only release information in writing and only to appropriately designated and identified person(s).

(6) All completed answer sheets for the department examinations shall:

(A) be mailed by traceable means, and received by the department within seven working days of the examination date for grading and processing;

(B) be submitted in a condition acceptable for immediate scanning. Forms requiring extensive correction shall be returned to the examination administrator ungraded; and

(7) Only the department shall grade the department examination.

(p) Required fees. All fees are payable to the Texas Department of Health and are non- refundable. Fees must be submitted with the appropriate form that relates to the fee category.

(1) Certified food manager program license fee. A program fee shall be $300 per year for each certification or recertification program.

(2) Candidate fee. A candidate fee for those taking a department approved examination shall be $17. If the candidate fails the department examination, another candidate fee must be submitted to retake the examination.

(3) Replacement certificate. A replacement certificate fee for the department examination shall be $10.

(4) Late fee. Certified food manager licensees submitting a renewal application to the department after the expiration date shall pay an additional $100 as a late fee.

(q) Department examination related to late fees. Department examinations will not be provided to any licensee that is over 30 days delinquent in renewing a certified food management program license.

(r) Certified food management program registry. The department shall maintain a program registry of all accredited certification and recertification programs. The registry shall be made available on the department website.

(s) Department audits. Examination and classroom audits shall be conducted to assess program compliance. Audits may be based on analysis of data compiled by the department.

(t) Denial, suspension and revocation of program accreditation. An accredited food manager program license may be denied, suspended or revoked for the following reasons:

(1) an average quarterly candidate failure rate in any one quarter of 25% or higher on examinations;

(2) a licensee, examination administrator or proctor breaches the security agreement;

(3) a licensee is delinquent in payment of fees as described in this section; or

(4) violation of the provisions of this section.

(u) Denial, suspension and revocation procedures. Denial, suspension and revocation procedures under this section shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

§229.176. Certification of Food Managers.

(a) Purpose. This section is intended to provide the framework of certification programs for food managers in accordance with Texas Health and Safety Code (HSC), Chapter 438, Subchapter G. Certification of Food Managers supports demonstration of food safety knowledge, thereby reducing the risk of foodborne illness outbreaks caused by improper food preparation and handling techniques.

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

(1) Certificate--The documentation issued by the department or an organization that administers a department approved examination verifying that an individual has complied with the requirements of this section.

(2) Certification--The process whereby a certificate is issued.

(3) Certified food manager--A person who has demonstrated that he/she has the knowledge, skills and abilities required to protect the public from foodborne illness by means of successfully completing a food safety examination as described in this section.

(4) Certified food manager licensee--The individual, corporation, or company that is licensed by the department to administer a department approved examination for food manager certification and who complies with the examination site requirements.

(5) Certified food manager examination--A department approved examination for food manager certification.

(6) Conference for Food Protection--An independent national voluntary nonprofit organization promoting food safety and consumer protection.

(7) Department--The Texas Department of Health.

(8) Examination administrator--an individual designated in writing to the department by the licensee who is responsible for administering food manager certification examinations.

(9) Examination site--The physical location at which the department approved examination is administered.

(10) Food--A raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(11) Food establishment--An operation that stores, prepares, packages, serves, or otherwise provides food for human consumption such as: a food service establishment; retail food store; satellite or catered feeding location; catering operation, if the operation provides food directly to a consumer or to a conveyance used to transport people; market; remote catered operations; conveyance used to transport people; institution or food bank that relinquishes possession of food to a consumer directly or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(A) The term includes: an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location, unless the vending or feeding location is permitted by the regulatory authority; a restaurant; a

grocery store; an operation that is conducted in a mobile, roadside, stationary, temporary, or permanent facility or location; group residence; outfitter operations; bed and breakfast extended and bed and breakfast food establishments where consumption is on or off the premises; and regardless of whether there is a charge for the food.

(B) The term does not include: an establishment that offers only prepackaged foods that are not potentially hazardous; a produce stand that only offers whole, uncut fresh fruits and vegetables; a food processing plant; a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function, such as a religious or charitable organization's bake sale; a bed and breakfast limited facility as defined in §229.162(4)(A) of this title.

(12) Law--Applicable local, state and federal statutes, regulations and ordinances.

(13) Nonprofit organization--A civic or fraternal organization, charity, lodge, association, proprietorship or corporation possessing a 501(C) exemption under the Internal Revenue Code; or religious organizations meeting the definition of "church" under the Internal Revenue Code, §170(b)(1)(A)(I).

(14) Person--An association, corporation, partnership, individual or other legal entity, government or governmental subdivision or agency.

(15) Personal validation question--A question designed to establish the identity of the candidate taking a certified food manager examination by requiring an answer related to the candidate's personal information such as a driver's license number, address, date of birth, or other similar information that is unique to the candidate.

(16) Proctor--The examination administrator or a person who is designated to assist the examination administrator.

(17) Psychometric--Scientific measurement or quantification of human qualities, traits or behaviors.

(18) Reciprocity--Acceptance by state and local regulatory authorities of a department approved food manager certificate.

(19) Regulatory authority--The state or local enforcement body or authorized representative having jurisdiction over the food establishment.

(20) Secure--Access limited to the licensee or examination administrator.

(21) Traceable means--A method of mailing documents that can be tracked in the event of loss or delay.

(c) Certified food manager.

(1) Certified food manager responsibilities. Responsibilities of a certified food manager include:

(A) identifying hazards in the day-to-day operation of a food establishment that provides food for human consumption;

(B) developing or implementing specific policies, procedures or standards aimed at preventing foodborne illness;

(C) coordinating training, supervising or directing food preparation activities and taking corrective action as needed to protect the health of the consumer;

(D) training the food establishment employees on the principles of food safety; and

(E) conducting in-house self-inspection of daily operations on a periodic basis to ensure that policies and procedures concerning food safety are being followed.

(2) Certification by a food safety examination. To be certified, a food manager must pass a department approved examination or a national examination recognized by the Conference for Food Protection.

(3) Certificate reciprocity. A certificate issued to an individual who successfully completes a department approved examination shall be accepted as meeting the training and examination requirements under HSC, §438.046(b).

(4) Certificate availability. The original food manager certificate shall be conspicuously posted at each food establishment.

(d) Licensing of certified food manager licensee. The department shall issue a license to certified food manager licensees meeting the requirements of this subsection. A license issued under these rules shall expire one year from the date of issuance. A license is not transferable on change of ownership, or change of site location.

(1) Application. Persons wishing to apply for a certified food manager license shall submit an application to the department.

(2) Certified food manager licensee fee. The license application shall include the appropriate non-refundable fee as specified in subsection (o)(1) of this section.

(3) Examination security agreement. The licensee shall submit a signed security agreement for each examination administrator using a department examination.

(4) Certification examination. Department approved examination(s) utilized by the certified food manager licensee shall be designated on the application.

(5) Number of examination sites utilized. The license application shall indicate the number of examination sites to be utilized under the certified food manager license.

(e) Responsibilities of certified food manager licensee.

(1) Compliance with food manager laws and rules. The licensee is responsible for compliance with applicable food manager laws and rules.

(2) Payment of fees. All fees shall be non-refundable and paid as specified in subsection (o) of this section.

(3) Change of ownership, site location, or change of name. A new licensing application package, to include non-refundable fee(s) as described in this section, shall be submitted prior to a change of licensee ownership, site location, or change of name.

(4) Change of the examination administrator. The licensee shall submit a signed security agreement by a new examination administrator prior to administering the department examination.

(5) Examination administration. The licensee shall directly administer the department approved examination.

(f) Responsibilities of department examination administrators.

(1) Compliance with food manager laws and rules. The examination administrator is responsible for compliance with the food manager laws and rules applicable to examination administration.

(2) Examination security agreement. An examination administrator must complete, sign and date a security agreement and submit it to the department through the certified food manager licensee. The department may not issue examinations to examination administrators who do not have a signed security agreement on file with the department.

(3) Examination security. The examination administrator shall provide examination security at the examination site. All security measures specified in this section shall be met and maintained at all times during examination storage, administration and issuance.

(4) Mailing answer sheets. Answer sheets used for computerized grading shall be mailed to the department by traceable means. The completed answer sheets must be received at the department within seven working days of the examination date.

(5) Examination results. Candidates shall be informed of the process for receiving their certificate upon passing the examination. Candidates shall be informed of the reexamination process, in the event of examination failure.

(6) Replacement process for candidate certificate. Candidates shall be informed of the process for replacing lost or damaged certificates.

(g) Responsibilities for Internet examination providers.

(1) Compliance with food manager laws and rules. Internet examination providers are responsible for compliance with food manager laws and rules applicable to examination administration.

(2) Examination Security Agreement. Internet examination providers must submit the department security agreement signed by the certified food manager licensee.

(3) Examination Security. Candidates taking Internet examinations shall be advised on the application that outside training materials or assistance shall not be used during administration of the examination and that appropriate measures must be taken to assure that the examination is not compromised.

(h) Certified food manager certificates.

(1) General certificate issuance. Certificates shall be issued by the department or the organization that administers a department approved examination. Certificates issued after successful passage of a department approved examination shall be deemed to meet the requirements for food manager certification.

(2) Department certificate issuance. Certified food manager certificates for candidates who pass the department's examination will be mailed directly to the candidate at the address provided on the computerized grading sheets.

(3) Certificate period. A certified food manager certificate shall be valid for five years from the date of examination. All certificates issued prior to the effective date of these rules will expire on the expiration date as stated on the certificate.

(4) Certificate renewal. Renewal shall be achieved by passing an examination approved by the department. A renewal certificate shall be valid for five years from the date of issuance.

(5) Department certificate replacement. An individual requesting a certified food manager certificate replacement must submit a written request to the department with the appropriate non-refundable fee. Replacement certificates will bear the same expiration date as the original certificate.

(i) Department examination criteria. The department examination shall meet accepted psychometric standards for reliability, validity and passing score. The department examination shall consist of 75 statistically valid questions to be administered at one time following any voluntary training which may precede the examination.

(j) National examination criteria. National food manager examinations recognized by the Conference for Food Protection shall be considered department approved examinations. Examination administrators for national examinations must implement and maintain all of the administrative procedures as outlined in the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Programs.

(k) Internet examination criteria. Documentation that Internet examination questions meet accepted psychometric standards for reliability, validity, and passing score shall be submitted to the department. Each candidate shall receive a unique form of the examination with regard to question sequence. Internet examinations shall consist of 75 statistically valid questions that are administered at one time following any voluntary training that may precede the examination.

(l) Site requirements for administration of the department examination and national examinations. Examination sites utilizing the department examination or a national examination must comply with all legal requirements for safety, health, and accessibility for all qualified candidates. Accommodations, lighting, space, comfort, and workspace for taking the examination must allow all candidates to perform at their highest level of competency. Requirements at each site include but are not limited to:

(1) accessibility in accordance with the requirements of the Americans with Disabilities Act must be available for all qualified examinees;

(2) sufficient spacing between each examinee in the area where the actual examination is conducted, or other appropriate and effective methods, to preclude any examinee from viewing other candidates' examinations;

(3) acoustics that allow each examinee to hear instructions clearly, using an electronic audio system if necessary;

(4) adequate lighting at each examinee's workspace for reading fine print; and

(5) appropriate ventilation and temperature for the health and comfort of examinees.

(m) Department examination administration. Examination administrators shall implement and maintain the following examination administration procedures for a program utilizing the department examination:

(1) Security procedures shall be in place, which protect the examination from compromise at all times. The examinations shall be stored and administered under secure conditions and shall be inventoried prior to and immediately following each administration of an examination. The examination may not be duplicated. Candidates shall have access to the examination only during examination administration;

(2) There shall be one proctor for every 35 candidates taking the examination. Proctors shall, by picture identification, confirm the accurate identity of each candidate. The examination administrator shall train and supervise the activities of any proctor(s);

(3) A candidate who speaks English as a second language may use a translation dictionary to translate English into their native language;

(4) An employee or a non-biased volunteer translator may be used as a translator of languages other than English to administer the examination orally. Translators shall be pre-approved by the examination administrator, and shall not compromise the integrity of the examination nor the examination results of the candidate;

(5) Each candidate's examination results and personal information shall be held confidential. Such information may be made

available only to the examinee and to persons designated in writing by the examinee in a dated document containing the examinee's original signature. The signed document must specify the name(s) of specific individuals the information may be released to and the exact information which may be provided. The department shall only release information in writing and only to appropriately designated and identified person(s);

(6) All completed answer sheets for the department examinations shall:

(A) be mailed by traceable means, and received by the department within seven working days of the examination date for grading and processing;

(B) be submitted in a condition acceptable for immediate scanning. Forms requiring extensive correction shall be returned to the examination administrator ungraded; and

(7) Only the department shall grade the department examination.

(n) Internet examination administration.

(1) Registration requirements for Internet examinations. The licensee shall register the candidates and require the candidates to:

(A) verify their identity;

(B) provide responses to ten personal validation questions; and

(C) maintain examination security.

(2) Licensee examination disclosure information. The licensee shall inform the candidate that:

(A) reference materials shall not be used during the examination;

(B) the candidate shall not receive assistance from anyone during the examination; and

(C) examination questions may not be replicated in any fashion.

(3) Personal validation questions. The licensee shall verify a candidate's identity throughout the examination. The personal validation process must include the following elements:

(A) a minimum of five personal validation questions selected from the ten questions provided during registration shall be incorporated at various times during the examination;

(B) the personal validation questions must be randomly generated with respect to time and order;

(C) the same personal validation questions shall not be asked more than once during the same examination; and

(D) the examination session shall cease and the candidate shall be automatically exited from the examination if a candidate answers a personal validation question incorrectly.

(4) System support. The licensee of an approved Internet examination must include the following system capabilities and security measures:

(A) capability to browse or review previously completed examination questions;

(B) capability to navigate logically and systematically through the examination;

(C) technical support personnel for Internet examination issues;

(D) security of personal candidate information in transit and at rest;

(E) a back-up and disaster recovery system capability; and

(F) assurance that examination data is maintained in a secure and safe environment and readily available to the department.

(5) Reporting requirements for non-proctored Internet examination administrators. Internet examination administrators who administer examinations in non-proctored locations shall submit a semi-annual report to enable the department to evaluate examination security and system performance. The report shall include:

(A) statistical data to enable measurement of central tendency, ranges of examination scores, standard deviation, standard error of measurement, and examination cut score;

(B) the number of personal validation questions used; and

(C) the number of examinations discontinued due to incorrect responses to personal validation questions.

(6) Time allotment for non-proctored Internet examination providers. Time allotted for administration of non-proctored examinations shall not exceed 90 minutes.

(o) Required fees. All fees are payable to the Texas Department of Health and are non- refundable. Fees must be submitted with the appropriate form that relates to the fee category. Fees shall be:

(1) Certified food manager licensee fee. Certified food manager licensee fees shall be based on the number of sites at which the certified food manager licensee administers the examinations based on the following scale:

(A) one site - $200;

(B) two to ten sites - $500; or

(C) over ten sites - $1,000.

(2) Candidate fee. A candidate fee for those taking the department examination shall be $17. If the candidate fails the department examination, another candidate fee must be submitted to retake the examination.

(3) Replacement certificate fee. A replacement certificate fee for the department examination shall be $10.

(4) Late fee. A certified food manager licensee submitting a renewal application to the department after the expiration date shall pay an additional $100 as a late fee.

(p) Department examination related to late fees. Department examinations will not be provided to any licensee that is over 30 days delinquent in renewing a license.

(q) Certified food manager licensee registry. The department shall maintain a registry of all licensed certified food manager licensees. The registry shall be made available on the department website.

(r) Department audits. Audits of certified food manager licensees shall be conducted to assess compliance with these rules. Audits may be based on analysis of data compiled by the department.

(s) Denial, suspension and revocation of certified food manager license. A certified food manager license may be denied, suspended or revoked for the following reasons:

(1) a licensee, examination administrator, or proctor breaches the security agreement;

(2) a licensee is delinquent in payment of fees as described in this section; or

(3) violation of the provisions of this section.

(t) Denial, suspension and revocation procedures. Denial, suspension and revocation procedures under this section shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

§229.177. Certification of Food Managers in Areas Under Texas Department of Health Permitting Jurisdiction.

(a) Purpose. The purpose of this section is to implement a food manager certification requirement as authorized in the Texas Health and Safety Code (HSC), Chapter 437, §437.0076(b). Certification of food managers after testing on food safety principles reduces the risk of foodborne illness outbreaks caused by improper food preparation and handling techniques.

(b) Food manager certification required. One certified food manager must be employed by each food establishment permitted under HSC, §437.0055. Certification must be obtained by passing a department approved examination at an approved examination site, and meeting all requirements in HSC, Chapter 438, Subchapter G, and §229.176 of this title (relating to Certification of Food Managers).

(c) Food manager certification exemptions. The following food establishments are exempt from the requirements in subsection (b) of this section:

(1) establishments that handle only prepackaged food and do not package food as exempted in HSC, §437.0076(c);

(2) child care facilities as exempted by HSC, §437.0076(f);

(3) establishments that do not prepare or handle exposed potentially hazardous foods as defined in §229.162(66) of this title; or

(4) nonprofit organizations as defined in §229.371(9) of this title (relating to Permitting Retail Food Establishments).

(d) Responsibilities of a certified food manager. Responsibilities of a certified food manager include:

(1) identifying hazards in the day-to-day operation of a food establishment that provide food for human consumption;

(2) developing or implementing specific policies, procedures or standards to prevent foodborne illness;

(3) supervising or directing food preparation activities and ensuring appropriate corrective actions are taken as needed to protect the health of the consumer;

(4) training the food establishment employees on the principles of food safety; and

(5) performing in-house self-inspections of daily operations on a periodic basis to ensure that policies and procedures concerning food safety are being followed.

(e) Certificate reciprocity. A certificate issued to an individual who successfully completes a department approved examination shall be accepted as meeting the training and testing requirements under HSC, §438.046(b).

(f) Certificate posting. The original food manager certificate shall be posted in a location in the food establishment that is conspicuous to consumers.

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 June 17, 2002.

TRD-200203740
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: July 7, 2002
Proposal publication date: March 8, 2002
For further information, please call: (512) 458-7236

♦ ♦ ♦

SUBCHAPTER O. LICENSING OF WHOLESALE DISTRIBUTORS OF DRUGS--INCLUDING GOOD MANUFACTURING PRACTICES

25 TAC §§229.251 - 229.255

The Texas Department of Health (department) adopts amendments to §§229.251 - 229.255, concerning the licensing of wholesale distributors of drugs - including good manufacturing practices. Sections 229.252 and 229.254 are adopted with changes to the proposed text as published in the March 8, 2002, issue of the *Texas Register* (27 TexReg 1655). Sections 229.251, 229.253 and 229.255 are adopted without changes and will not be republished.

The amendments clarify language and alphabetize defined terms to make them consistent with other division rules and clarify licensing fees for out-of-state wholesale drug distributors. In addition, the rules clarify compliance requirements for drug distributors with regard to the Texas Controlled Substances Act, and the Health and Safety Code, Chapter 481. The amendments implement Title 21, Code of Federal Regulations (CFR), Part 203, titled "Prescription Drug Marketing" to protect the public against drug diversion by establishing procedures, requirements, and minimum standards for distribution of prescription drugs and prescription drug samples.

Government Code, §2001.039 requires each state agency to review and consider for readoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). The current rules have been reviewed and the department has determined that reasons for adopting the sections continue to exist; however, the rules need revisions as described in this preamble.

The department published a Notice of Intention to Review §§229.251 - 229.255 in the *Texas Register* on November 30, 2001 (26 TexReg 9933). No comments were received as a result of the publication of the notice.

The department received no public comments during the comment period for these amendments. However, the department is making the following changes due to staff comments to clarify the intent of and improve the accuracy of the sections.

Change: Concerning §229.252(a)(1)(D), the word "and" is added for proper formatting of the subparagraphs of the paragraph. The subparagraph was proposed as "no change".

Change: Concerning §229.254(a), the words "After an opportunity for a hearing" were deleted. This language is used in the sentence twice and deletion corrects the redundancy.

The amendments are adopted under the Health and Safety Code, §431.241, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of Chapter 431; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§229.252. Licensing Fee and Procedures.

(a) License fee.

(1) All wholesale distributors of drugs who are not manufacturers of drugs in Texas shall obtain a license annually with the Texas Department of Health (department). Except as provided for in paragraph (2) of this subsection, wholesale distributors of drugs who are not manufacturers of drugs in Texas shall pay a non-refundable licensing fee for each place of business operated as follows:

(A) $250 per distributor engaged in distribution only of compressed medical gases (no transfilling operations) having gross annual drug sales of $0-$20,000;

(B) $400 per wholesale distributor having gross annual drug sales of $0 - $199,999.99;

(C) $650 per wholesale distributor having gross annual drug sales of $200,000 - $19,999,999.99;

(D) $850 per wholesale distributor having gross annual drug sales greater than or equal to $20 million; and

(E) $0.00 per wholesale distributor engaged in the distribution of an over-the-counter drug by a charitable organization, as described in the Internal Revenue Code of 1986, §501(c)(3), to a nonprofit affiliate of the organization to the extent otherwise permitted by law.

(2) A wholesale distributor of drugs who is not a manufacturer of drugs, who is required to be licensed under this section and who is also required to be licensed as a device distributor under §229.439(a)(1) of this title (relating to Licensure Fees) or as a food wholesaler under §229.182(a)(3) of this title (relating to Licensing Fee and Procedures) shall pay a combined non-refundable licensing fee for each place of business. The licensing fee shall be based on the combined gross annual sales of these regulated products (foods, drugs, and/or devices) as follows:

(A) $200 for each place of business having combined gross annual sales of $0 - $199,999.99;

(B) $300 for each place of business having combined gross annual sales of $200,000 - $499,999.99;

(C) $400 for each place of business having combined gross annual sales of $500,000 - $999,999.99;

(D) $500 for each place of business having combined gross annual sales of $1 million - $9,999,999.99; and

(E) $750 for each place of business having combined gross annual sales greater than or equal to $10 million.

(3) All wholesale distributors of drugs who are manufacturers of drugs in Texas shall obtain a license annually with the department and shall pay a non-refundable licensing fee for each place of business operated as follows:

(A) $400 per wholesale distributor having gross annual drug sales of $0 - $199,999.99 (includes a compressed and/or liquid medical gas transfiller);

(B) $650 per wholesale distributor having gross annual drug sales of $200,000 - $19,999,999.99; and

(C) $850 per wholesale distributor having gross annual drug sales greater than or equal to $20 million.

(4) All out-of-state wholesale distributors of drugs who distribute drugs into the State of Texas must pay an annual non-refundable license fee as follows:

(A) $750 per out-of-state wholesale drug distributor; or

(B) $500 per out-of-state wholesale drug distributor with gross annual sales of $20 million or less, provided an outside audited statement demonstrating gross annual sales are less than $20 million is provided to the department.

(5) If the United States Food and Drug Administration (FDA) determines, with respect to a product that is a combination of a drug and a device, that the primary mode of action of the product is as a drug, a person who engages in wholesale distribution of the product is subject to licensing as described in this section.

(6) For the purpose of collecting licensing fees under this section, a person that distributes both its own manufactured drugs and drugs it does not manufacture must obtain only a wholesale distributor of drugs (manufacturing) license. However, when calculating the amount of the licensing fee, the manufacturer must include the total for all drugs manufactured and distributed from the place of business. In addition, drug warehousing locations operated by a drug distributor, including locations from which drugs are held for limited periods of time for distribution, and which are totally separate from any manufacturing location, must be individually licensed as drug distributors.

(7) A firm that has more than one business location may request a one-time prorating of fees when applying for a license for each new location. Upon approval by the department, the expiration date of the license for the new location will be the same as the expiration date of the firm's other licensed locations.

(b) License forms. Licensing forms may be obtained from the Texas Department of Health, Drugs and Medical Devices Division, 1100 West 49th Street, Austin, Texas 78756.

(c) License statement. The wholesale distributors' licensing statement shall be signed and verified by the owner, partner, president, or corporate designee, shall be made on the department furnished license form, and shall contain the following information:

(1) the legal name under which the business is conducted;

(2) the address of each place of business that is licensed;

(3) if a proprietorship, the name and residence address of the proprietor; if a partnership, the names and residence addresses of all partners; if a corporation, the date and place of incorporation and name and address of its registered agent in the state; or if any other type of association, then the names of the principals of such association;

(4) the names and residence addresses and valid driver's license of those individuals in an actual administrative capacity which, in the case of proprietorship, shall be the managing proprietor; partnership, the managing partner; corporation, the officers and directors; or those in a managerial capacity in any other type of association;

(5) for each place of business, the residence addresses of the individuals in charge thereof; and

(6) a list of categories which must be marked and adhered to in the determination and paying of the fee.

(d) Two or more places of business. If the wholesale distributor operates more than one place of business, the wholesale distributor shall license each place of business separately.

(e) Pre-licensing inspection. The applicant shall cooperate with any pre-licensing inspection by the department of the wholesale distributor's facilities. The department may accept reports from authorities in other jurisdictions to determine the extent of compliance with the minimum standards in this chapter for applicants located out-of-state.

(f) Issuance of license. The department may license a wholesale distributor of drugs who meets the requirements of this section and §229.253 of this title (relating to Minimum Standards for Licensing).

(1) The initial license shall be valid for one year from the start date of the regulated business activity which becomes the anniversary date.

(2) The renewal license shall be valid for one year from the anniversary date.

(g) Renewal of license.

(1) Each year, the wholesale distributor of drugs shall renew its license following the requirements of this section and §229.253 of this title (relating to Minimum Standards for Licensing).

(2) A person who holds a license issued by the department under the Health and Safety Code shall renew the license by filing an application for renewal on a form prescribed by the department, accompanied by the appropriate licensure fee. A licensee must file for renewal before the expiration date of the current license. A person who files a renewal application after the expiration date must pay an additional $100 as a delinquency fee.

(3) Failure to submit the renewal annually may subject the wholesale distributor of drugs to the enforcement provisions under Health and Safety Code, Chapter 431, and to the provisions of §229.254 of this title (relating to Refusal, Revocation, or Suspension of License).

(A) Amendment of license. A license that is amended, including a change of name, ownership, or a notification of a change in the location of a licensed place of business required under the Health and Safety Code, §431.206, will require submission of fees as outlined in subsection (a) of this section.

(B) Notification of change of location of place of business. Not fewer than 30 days in advance of the change, the licensee shall notify the commissioner of health (commissioner) or the commissioner's designee in writing of the licensee's intent to change the location of a licensed place of business. The notice shall include the address of the new location, and the name and residence address of the individual in charge of the business at the new location. Not more than 10 days after the completion of the change of location, the licensee shall notify the commissioner or the commissioner's designee in writing to verify the change of location, the address of the new location, and the name and residence address of the individual in charge of the business at the new address. Notice will be deemed adequate if the licensee provides the intent and verification notices to the commissioner or the commissioner's designee by certified mail, return receipt requested, mailed to the Texas Department of Health, 1100 West 49th Street, Austin.

(h) Exemption from licensing. Persons who engage in wholesale distribution of prescription drugs for use in humans are exempt from the licensing requirements of this subchapter, to the extent that it does not violate provisions of the Texas Dangerous Drug Act or the Texas Controlled Substances Act, the Health and Safety Code. The exemptions are:

(1) intracompany sales;

(2) the purchase or acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;

(3) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization, as described in the Internal Revenue Code of 1986, §501(c)(3), to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(4) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control. For the purpose of this subsection, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise;

(5) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons. For purposes of this section, "emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;

(6) the sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;

(7) the distribution of drug samples by manufacturers' representatives or distributors' representatives; or

(8) the sale, purchase, or trade of blood and blood components intended for transfusion.

(i) Sale of food, drugs, or devices. The provisions of this section regarding the sale of food, drugs, or devices shall be considered to include the manufacture, production, processing, packaging, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug or device place of business.

§229.254. Refusal, Revocation, or Suspension of License.

(a) The commissioner may refuse an application for a license or may refuse to license a wholesale distributor of drugs, or may revoke or suspend the license if the commissioner determines after providing an opportunity for hearing that the applicant or licensee:

(1) has been convicted of a felony or misdemeanor that involves moral turpitude, including but not limited to the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(2) is an association, partnership, or corporation and any officer or management employee, partner, or any officer or director of the corporation has been convicted of a felony or misdemeanor that involves moral turpitude, including but not limited to the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines; desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(3) has violated any provisions of the Texas, Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431 or these sections;

(4) has failed to pay a license fee or an annual renewal fee for a license;

(5) has obtained or attempted to obtain a license by fraud or deception;

(6) has violated the Health and Safety Code, §431.021(1)(3), concerning the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug;

(7) has violated the Health and Safety Code, Chapter 481 (Texas Controlled Substance Act), or the Health and Safety Code, Chapter 483 (Dangerous Drug Act); or

(8) has violated the rules of the director of the Department of Public Safety, including responsibility for a significant discrepancy in the records that state law requires the applicant or licensee to maintain.

(b) Any hearings for the refusal, revocation, or suspension of a license are governed by the department's formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health) and the Administrative Procedure Act, Government Code, Chapter 2001.

(c) If the department suspends a license, the suspension shall remain in effect until the department determines that the reason for the suspension no longer exists. If the suspension overlaps a renewal date, the suspended license holder shall comply with the renewal procedures in §229.252(g) of this title (relating to Licensing Fee and Procedures); however, the department may choose not to renew the license until the department determines that the reason for suspension no longer exists.

(d) If the department revokes or does not renew a license, a person may reapply for a license by complying with the requirements and procedures in §229.252(a) and (c) of this title at the time of reapplication. The department may refuse to issue a license if the reason for revocation or non-renewal continues to exist.

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 June 17, 2002.

TRD-200203738
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: July 7, 2002
Proposal publication date: March 8, 2002
For further information, please call: (512) 458-7236

♦ ♦ ♦

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

CHAPTER 1. PURPOSE OF RULES, GENERAL PROVISIONS

30 TAC §1.3, §1.4

The Texas Natural Resource Conservation Commission (commission or agency) adopts the amendments to §1.3 and §1.4 *without changes* to the proposed text as published in the March 1, 2002 issue of the *Texas Register* (27 TexReg 1441) and will not be republished.

The commission's name will change to the Texas Commission on Environmental Quality on September 1, 2002, and the adopted amendments reflect this change.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

During the 77th legislative session, the agency underwent the sunset review process, culminating in the enactment of House Bill (HB) 2912, which, among other things, extended the term of the agency to September 1, 2013 and changed its name to the Texas Commission on Environmental Quality.

House Bill 2912, §18.01(a), 77th Legislature, 2001, states that: "Effective January 1, 2004: (1.) the name of the Texas Natural Resource Conservation Commission is changed to the Texas Commission on Environmental Quality, and all the powers, duties, rights, and obligations of the Texas Natural Resource Conservation Commission are the powers, duties, rights, and obligations of the Texas Commission on Environmental Quality;...."

House Bill 2912, §18.01(c) grants the commission latitude in phasing in the name change. Section 18.01(c) provides: "The Texas Natural Resource Conservation Commission shall adopt a timetable for phasing in the change of the agency's name so as to minimize the fiscal impact of the name change. Until January 1, 2004, to allow for phasing in the change of the agency's name and in accordance with the timetable established as required by this section, the agency may perform any act authorized by law for the Texas Natural Resource Conservation Commission as the Texas Natural Resource Conservation Commission or as the Texas Commission on Environmental Quality. Any act of the Texas Natural Resource Conservation Commission acting as the Texas Commission on Environmental Quality after the effective date of this Act and before January 1, 2004, is an act of the Texas Natural Resource Conservation Commission."

In accordance with a timetable adopted by the commission on November 9, 2001, formal, public phase-in of the agency name change will begin September 1, 2002.

The current name of the agency appears in a number of the commission rules; however, it is not feasible to change all these rules simultaneously to conform with the new name. Rather, the commission will take a two-pronged approach in effectuating the name changes in its rules. First, the commission through this limited rulemaking is changing key provisions of its rules, such as the name on the seal and addresses of the agency and chief clerk in this chapter and the definition of "commission" in 30 TAC Chapter 3 (being adopted concurrently in this issue of the *Texas Register*), effective September 1, 2002. Secondly, the balance of the commission rules in which the current name of the agency appears, or that of its predecessors (Texas Water Commission and Texas Air Control Board), will be revised on a chapter-by-chapter basis as rulemakings are convened to modify those chapters for other reasons or as part of the quadrennial review of our rules in accordance with Texas Government Code, §2001.039.

SECTION BY SECTION DISCUSSION

Section 1.3, *Business Office and Mailing Address of the Agency*, is amended in subsection (a) to add "Texas Commission on Environmental Quality" to the agency mailing address, effective September 1, 2002. In subsection (b), the name of the agency appearing in the chief clerk's address is proposed to be amended to the Texas Commission on Environmental Quality, effective September 1, 2002.

Section 1.4, *Seal of the Commission*, is amended to change the name of the agency to the Texas Commission on Environmental Quality, effective September 1, 2002.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rulemaking does not meet the definition of "major environmental rule" because it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. This rulemaking merely proposes to conform certain rules to state statutory requirements relating to the change of the agency's name to the Texas Commission on Environmental Quality in accordance with HB 2912.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rules and assessed whether Texas Government Code, Chapter 2007 is applicable. The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to the adopted rules because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The specific purpose of the adopted rules is to modify certain chapters of the commission rules to reflect the change of the agency's name to the Texas Commission on Environmental Quality in accordance with HB 2912. Promulgation of the adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, no private property will be affected in any way by these rules. There are no burdens imposed on private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the rules are neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program, nor will they affect any action/authorization identified in §505.11. Therefore, the proposed rules are not subject to the Coastal Management Program.

HEARING AND COMMENTERS

A hearing was not held on this rulemaking. The comment period closed April 1, 2002 and no comments were received.

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule.

The amendments are also adopted in accordance with HB 2912, 77th Legislature, 2001.

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 June 10, 2002.

TRD-200203623
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: June 30, 2002
Proposal publication date: March 1, 2002
For further information, please call: (512) 239-6087

♦ ♦ ♦

CHAPTER 3. DEFINITIONS

30 TAC §3.2

The Texas Natural Resource Conservation Commission (commission or agency) adopts the amendment to §3.2, Definitions, *without change* to the proposed text as published in the March 1, 2002 issue of the *Texas Register* (27 TexReg 1443) and will not be republished.

The commission's name will change to the Texas Commission on Environmental Quality on September 1, 2002, and the adopted amendment reflects this change.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

During the 77th legislative session, the agency underwent the sunset review process, culminating in the enactment of House Bill (HB) 2912, which, among other things, extended the term of the agency to September 1, 2013 and changed its name to the Texas Commission on Environmental Quality.

House Bill 2912, §18.01(a), 77th Legislature, 2001, states that: "Effective January 1, 2004: (1.) the name of the Texas Natural Resource Conservation Commission is changed to the Texas Commission on Environmental Quality, and all the powers, duties, rights, and obligations of the Texas Natural Resource Conservation Commission are the powers, duties, rights, and obligations of the Texas Commission on Environmental Quality;...."

House Bill 2912, §18.01(c) grants the commission latitude in phasing in the name change. Section 18.01(c) provides: "The Texas Natural Resource Conservation Commission shall adopt a timetable for phasing in the change of the agency's name so as to minimize the fiscal impact of the name change. Until January 1, 2004, to allow for phasing in the change of the agency's name and in accordance with the timetable established as required

by this section, the agency may perform any act authorized by law for the Texas Natural Resource Conservation Commission as the Texas Natural Resource Conservation Commission or as the Texas Commission on Environmental Quality. Any act of the Texas Natural Resource Conservation Commission acting as the Texas Commission on Environmental Quality after the effective date of this Act and before January 1, 2004, is an act of the Texas Natural Resource Conservation Commission."

In accordance with a timetable adopted by the commission on November 9, 2001, formal, public phase-in of the agency name change will begin September 1, 2002.

The current name of the agency appears in a number of the commission rules; however, it is not feasible to change all these rules simultaneously to conform with the new name. Rather, the commission will take a two-pronged approach in effectuating the name changes in its rules. First, the commission through this limited rulemaking is changing key provisions of its rules, such as the name on the seal and address of the chief clerk in 30 TAC Chapter 1 (being adopted concurrently in this issue of the *Texas Register*) and the definition of "commission" in this chapter, effective September 1, 2002. Secondly, the balance of the commission rules in which the current name of the agency appears, or that of its predecessors (Texas Water Commission and Texas Air Control Board), will be revised on a chapter-by-chapter basis as rulemakings are convened to modify those chapters for other reasons or as part of the quadrennial review of our rules in accordance with Texas Government Code, §2001.039.

SECTION DISCUSSION

The name of the agency appearing in §3.2(8) concerning the definition of the "commission" is changed as of September 1, 2002 to the Texas Commission on Environmental Quality. Paragraphs (5), (11), (15), (17), (18), (21), (27), (31) - (33), and (35) - (38) are amended to make minor grammatical and administrative revisions.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rulemaking does not meet the definition of "major environmental rule" because it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. This rulemaking merely proposes to conform certain rules to state statutory requirements relating to the change of the agency's name to the Texas Commission on Environmental Quality in accordance with HB 2912.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rule and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to the adopted rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The specific purpose of the adopted rule is to modify certain chapters of the commission rules to reflect the change of the agency's name to the Texas Commission on Environmental Quality in accordance with HB 2912. Promulgation of the adopted rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, no private property will be affected in any way by this rule. There are no burdens imposed on private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that the rule is neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program, nor will it affect any action/authorization identified in §505.11. Therefore, the rule is not subject to the Coastal Management Program.

HEARING AND COMMENTERS

A hearing was not held on this rulemaking. The comment period closed April 1, 2002 and no comments were received.

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule.

The amendment is also adopted in accordance with HB 2912, 77th Legislature, 2001.

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 June 10, 2002.

TRD-200203624
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: June 30, 2002
Proposal publication date: March 1, 2002
For further information, please call: (512) 239-6087

♦ ♦ ♦

CHAPTER 290. PUBLIC DRINKING WATER
SUBCHAPTER G. WATER SAVING PERFORMANCE STANDARDS

30 TAC §290.251, §290.261

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §290.251. The commission also adopts new §290.261. The amendment to §290.251 is adopted *with changes* to the proposed text as published in

the March 15, 2002, issue of the *Texas Register* (27 TexReg 1978). New §290.261 is adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted rules will implement House Bill (HB) 2403, 77th Texas Legislature, 2001, which amended Texas Health and Safety Code (THSC), Chapter 372, adding §372.004, which requires that appropriate industry trade associations or other entities, by January 31st of each year, report to the commission the number of clothes washing machines imported into the state. Section 372.004 also requires the report to contain a categorization of the clothes washing machines according to four different water consumption factors. The adopted rules do not apply to clothes washing machines with a capacity of more than 3.5 cubic feet or less than 1.6 cubic feet. The first report under §372.004 must be submitted to the commission by January 31, 2003.

SECTION BY SECTION DISCUSSION

Throughout these sections minor grammatical revisions and administrative clarifications are adopted to conform to internal style standards.

Section 290.251, Purpose, Authority, and Definitions, is adopted with changes from the proposal. Subsection (a) adds reporting requirements for the number of certain commercial or residential clothes washing machines imported into the state. Subsection (c) adds definitions for "Import" and "Water consumption factor." The bill only requires that trade associations report on the number of washing machines that are imported into the state; therefore, the commission adopts the definition of "Import" in subsection (c) as "The physical movement of merchandise into the State of Texas, including shipments to distributors, shipments to factory distributing branches, direct factory sales, shipments to retailers, shipments to factory distributing branches, shipments to sales districts, and shipments to factory owned distributing outlets." The definition of "Water consumption factor" is defined in HB 2403 as the meaning according to 10 Code of Federal Regulations Part 430, Subpart B, Appendix J, as that appendix existed on September 1, 2001. The commission adopts the definition of "Water consumption factor," which is "The quotient of the total weighted per cycle consumption divided by the capacity of the clothes washer...." The commission also adopts the addition of "clothes washing machines" to the definition of "manufacturer."

The commission also deletes paragraphs (3) and (4). The definition of "commission" is already included in 30 TAC §3.2(8) and the definition of "executive director" is already included in §3.2(16) and are no longer necessary in Chapter 290. This is a nonsubstantive, strictly administrative change.

New §290.261, Reporting on Clothes Washing Machines, is adopted to specify the reporting requirements for clothes washing machine manufacturers. The adopted new section will include the annual reporting deadlines and the criteria for categorizing the machines by the four water consumption factors.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a).

A major environmental rule means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rules do not meet the definition of a major environmental rule because the specific intent of the rulemaking is to implement a statutory directive to compile information regarding the water consumption of certain washing machines imported into the state. Furthermore, due to the limited applicability of this rulemaking, which will only apply to importers of certain washing machines, the adopted rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, the adopted rules do not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. The adopted rules do not exceed a standard set by federal law. The adoption does not exceed an express requirement of state law because it is in direct response to HB 2403, and does not exceed the requirements of this bill. This adoption does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because there is no applicable delegation agreement or contract. This adoption does not adopt a rule solely under the general powers of the agency, but rather under specific state law, i.e., HB 2403, THSC, §372.004, which requires the commission to adopt rules which require industry trade associations or other entities to provide specific water consumption information to the commission. Finally, this rulemaking is not being adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure. The commission invited public comment on the draft regulatory analysis determination and no comments were received.

TAKINGS IMPACT ASSESSMENT

The commission performed a final analysis for these adopted rules in accordance with Texas Government Code, §2007.043. The specific purpose of the rulemaking is to implement HB 2403, which directs that the commission will annually report to the legislature on the water consumption of certain washing machines imported into the state. The legislation from HB 2403 also directs the commission to adopt rules which require industry trade associations or other entities to provide specific water consumption information to the commission. The adopted rules will substantially advance these stated purposes by providing specific provisions on these matters. Promulgation and enforcement of these rules will not affect private real property because the adopted rules only create recordkeeping and reporting requirements. Therefore, the adopted rules will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adopted rules are not subject to the CMP.

HEARING AND COMMENTERS

A public hearing was not held for this rulemaking. The comment period closed April 15, 2002. No comments were received regarding the proposal.

STATUTORY AUTHORITY

The amendment is adopted under HB 2403, 77th Legislature, 2001, which requires the agency to adopt rules to implement THSC, §372.004. In addition, the amendment is adopted under Texas Water Code, §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority to carry out its jurisdiction; and §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under this code and other laws of this state.

§290.251. Purpose, Authority, and Definitions.

(a) Purpose. The purpose of this subchapter is to establish water saving performance standards and labeling requirements for plumbing fixtures; establish labeling requirements for dishwashing machines, lawn sprinklers, and clothes washing machines; and establish reporting requirements for clothes washing machines. This subchapter applies to plumbing fixtures, dishwashing machines, lawn sprinklers, and clothes washing machines that are manufactured, imported, or otherwise supplied for sale in Texas unless the item is manufactured exclusively for sale outside of the state.

(b) Authority. The authority for these sections is Texas Health and Safety Code, Chapter 372, titled *Environmental Performance Standards for Plumbing Fixtures*.

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

(1) ANSI--The American National Standards Institute.

(2) ASME--The American Society of Mechanical Engineers.

(3) Import--The physical movement of merchandise into the State of Texas, including shipments to distributors, shipments to factory distributing branches, direct factory sales, shipments to retailers, shipments to factory distributing branches, shipments to sales districts, and shipments to factory-owned distributing outlets.

(4) Importer--A business or individual that brings into the state plumbing fixtures from other countries or states for resale or installation (other than for their own domicile) within the state.

(5) Major supplier--A business or individual that provides plumbing fixtures to others for resale or installation (other than for their own domicile) within the state.

(6) Manufacturer--Someone who manufactures plumbing fixtures or clothes washing machines.

(7) Model--A type or design of a plumbing fixture.

(8) Order--A request to purchase plumbing fixtures from a manufacturer, major supplier, or importer.

(9) Plumbing fixture--A sink faucet, lavatory faucet, faucet aerator, shower head, urinal, toilet, flush valve toilet, or drinking water fountain.

(10) Toilet--A toilet or water closet except a wall-mounted toilet that employs a flushometer valve.

(11) Water consumption factor--The quotient of the total weighted per cycle consumption divided by the capacity of the clothes washer, as stated in 10 Code of Federal Regulations Part 430, Subpart B, Appendix J, September 1, 2001.

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 June 10, 2002.

TRD-200203627
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: June 30, 2002
Proposal publication date: March 15, 2002
For further information, please call: (512) 239-4712

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 525. AUDIT REQUIREMENTS FOR SOIL AND WATER CONSERVATION DISTRICTS SUBCHAPTER A. AUDITS OF DISTRICTS

31 TAC §525.8

The Texas State Soil and Water Conservation Board adopts the repeal of 31 TAC §525.8, without changes, as published in the May 10, 2002, issue of the *Texas Register* (27 TexReg 3963) and will not be republished.

The repeal of §525.8 is due to a publication error in the *Texas Register* dated January 4, 2002. In that issue the body of §525.9 was duplicated in §525.8.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Chapter 201.020 Agriculture Code which provides the Texas State Soil and Water Conservation Board with the authority to adopt rules as necessary for the performance of its functions under the Agriculture Code.

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

Filed with the Office of the Secretary of State on June 10, 2002.

TRD-200203626

Robert G. Buckley
Executive Director
Texas State Soil and Water Conservation Board
Effective date: June 30, 2002
Proposal publication date: May 10, 2002
For further information, please call: (254) 773-2250

♦ ♦ ♦

31 TAC §525.8

The Texas State Soil and Water Conservation Board adopts new §525.8, defining guidelines for audit and financial reporting by Soil and Water Conservation Districts, without changes, as published in the May 10, 2002, issue of the *Texas Register* (27 TexReg 3963) and will not be republished.

The adopted rule explains the compliance contingencies of audit and financial statement reporting to the Texas State Soil and Water Conservation Board by Soil and Water Conservation Districts.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Chapter 201.020 Agriculture Code which provides the Texas State Soil and Water Conservation Board with the authority to adopt rules as necessary for the performance of its functions under the Agriculture Code.

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

Filed with the Office of the Secretary of State on June 10, 2002.

TRD-200203625
Robert G. Buckley
Executive Director
Texas State Soil and Water Conservation Board
Effective date: June 30, 2002
Proposal publication date: May 10, 2002
For further information, please call: (254) 773-2250

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

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

CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.7

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §217.7, concerning the reporting of the appointment and termination of a licensee without changes to the proposed text as published in the April 19, 2002, issue of the *Texas Register* (27 TexReg 3324).

In §217.7(d), the Commission clarifies that new licensing standards do not apply to current licensees unless their licenses have expired. The substitution of the word "affidavit" for the word "statement" in subsection (e)(4) is for consistency purposes. The only other adopted change to this section is to the effective date in subsection (i) of this section.

In this section, individuals not currently employed who maintain the required continuing education will be held to the same standards that applied when they were originally licensed.

No comments were received since publication of the prospective order.

This section is adopted under Texas Occupations Code Chapter 1701, §1701.151 General Powers, which authorizes the Commission to promulgate rules for the administration of this chapter.

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

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 June 17, 2002.

TRD-200203742
Edward T. Laine
Chief, Professional Standards and Administrative Operations
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: September 1, 2002
Proposal publication date: April 19, 2002
For further information, please call: (512) 936-7700

♦ ♦ ♦

37 TAC §217.19

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §217.19, concerning reactivation of a license with changes to the proposed text as published in the April 19, 2002, issue of the *Texas Register* (27 TexReg 3324).

In §217.19, the Commission clarifies in subsections (b) and (c) of this section that the reactivation standards are contained in subsection (g), rather than in both subsections (f) and (g), by deleting references to subsection (f) of this section. The only other adopted change to this section is to the effective date in subsection (h) of this section.

The changes made from the publication of the proposed amendment are in subsection (b) and (c) of this section. The inclusion of section numbers §217.19 in subsections (b) and (c) of this section was not proper formatting and they were therefore deleted. This was a non-substantive change.

This section functions as before, as it is only a language clean up.

No comments were received since publication of the prospective order.

This section is adopted under Texas Occupations Code Chapter 1701, §1701.151 General Powers, which authorizes the Commission to promulgate rules for the administration of this chapter.

The following statute is affected by this adopted rule: Texas Occupations Code Chapter 1701, §1701.316. Reactivation of Peace Officer License.

§217.19. Reactivation of a License.

(a) The commission will place all licenses in an inactive status when the licensee has neither 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, nor

(3) met all the continuing education requirements.

(b) Individuals with basic licensure training over two years old must meet the requirements of subsection (g) of this section before they may be appointed.

(c) Individuals with basic licensure examination results over two years old must meet the requirements of subsection (g) of this section 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) This section includes any jailer licenses issued after March 1, 2001.

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

(1) meet the current licensing standards, with successful completion of a basic licensing course current at the time of initial licensure; fulfilling this requirement;

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

(3) make application and submit any required fee(s) for an endorsement in the format currently prescribed by the commission;

(4) obtain an endorsement, issued by the commission, giving the individual eligibility to take the required licensing examination; and

(5) pass the licensing examination for the license to be reactivated. If failed three times, the applicant may not be issued another endorsement of eligibility until successful completion of the current basic licensure course.

(h) The effective date of this section is September 1, 2002.

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 June 17, 2002.

TRD-200203743

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: September 1, 2002

Proposal publication date: April 19, 2002

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

♦ ♦ ♦

CHAPTER 221. PROFICIENCY CERTIFICATES AND OTHER POST-BASIC LICENSES

37 TAC §221.29

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts new §221.29, concerning minimum standards for the awarding of a special investigator proficiency certificate without changes to the proposed text as published in the April 19, 2002, issue of the *Texas Register* (27 TexReg 3325).

In §221.29(a), the Commission establishes the minimum qualifications to receive a special investigator proficiency training certificate by requiring two years of full time salaried experience as a peace officer, an intermediate certificate, completion of a specified training course, and never having had a license suspended or revoked.

In this section, the Commission will award a printed certificate and add a notation to the individual's Commission records that indicates that the person has the requisite training and experience for the award. The Commission's actions will be based on the individual's application and payment of the requisite fee.

No comments have been received since publication of the prospective order.

This section is adopted under Texas Occupations Code Chapter 1701, §1701.151 General Powers, which authorizes the Commission to promulgate rules for the administration of this chapter.

The following statute is affected by this adopted rule: Texas Occupations Code Chapter 1701, §1701.402. Proficiency Certificates.

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 June 17, 2002.

TRD-200203744

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: September 1, 2002

Proposal publication date: April 19, 2002

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

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. TEXAS REHABILITATION COMMISSION

CHAPTER 106. PURCHASE OF GOODS AND SERVICES BY TEXAS REHABILITATION COMMISSION

SUBCHAPTER A. GENERAL

40 TAC §106.3

The Texas Rehabilitation Commission (TRC) adopts a change to Title 40, Chapter 106, §106.3, concerning purchase of goods and services by TRC, without changes to the proposed text as published in the May 10, 2002, issue of the *Texas Register* (27 TexReg 3982).

The change is being adopted to correct an error in the citation to the Government Code for TRC's delegated authority for procuring administrative goods and services.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

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

Filed with the Office of the Secretary of State on June 17, 2002.

TRD-200203722
Sylvia F. Hardman
Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
Effective date: July 7, 2002
Proposal publication date: May 10, 2002
For further information, please call: (512) 424-4050

♦ ♦ ♦

REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Proposed Rule Reviews

Texas Commission for the Blind

Title 40, Part 4

The Texas Commission for the Blind files this notice of its intent to review Chapter 171 of its rules pertaining to Memoranda of Understanding in accordance with the requirements of Texas Government Code, §2001.039, added by Acts 1999, 76th Legislature, chapter 1499, §1.11(a).

The public is invited to make comments on the rules as they exist in 40 TAC, Part 4, Chapter 171. The comment period will last 30 days beginning with the publication of this notice of intention to review.

The Commission's Board will consider comments received in response to this notice at a meeting tentatively scheduled in early November 2002 and will also assess whether the reason for adopting each of the rules in Chapter 171 continues to exist. Any changes to the rules proposed by the Commission after the Board's review of the chapter and consideration of comments received in response to this notice will appear thereafter in the proposed rules section of the *Texas Register* and will be adopted in accordance with state rule-making requirements.

Comments or questions regarding this rule review may be submitted in writing to Jean Crecelius, Policy and Rules Coordinator, Texas Commission for the Blind, P.O. Box 12866, Austin, Texas 78711 or via facsimile at (512) 377-0682.

TRD-200203688
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Filed: June 13, 2002

♦ ♦ ♦

Texas Health and Human Services Commission

Title 1, Part 15

The Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal:

Chapter 353. Medicaid Managed Care.

Subchapter E. Standards for the State of Texas Access Reform (STAR).

The review is being done in accordance with the requirements of Government Code, §2001.039, General Appropriations Act, Art. IX, §9-10.13, 76th Legislature, 1999, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. The text of the rule sections being reviewed will not be published, but may be found in Title 1, Part 15, of the Texas Administrative Code or on the Secretary of State's website at http://www.sos.state.tx.us/tac

Elsewhere in this issue of the *Texas Register* the HHSC also proposes the review of Chapters 354, 357, 371 and 381.

Comments on the review of Chapters 353, 354, 357, 371, and 381 may be submitted in writing to Steve Aragon, General Counsel, P.O. Box 13247, Austin, Texas 78711. Comments may be faxed to (512) 424-6586 or may be submitted electronically via HHSC's web page at http://www.hhsc.state.tex.us/about_HHSC.

TRD-200203832
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: June 19, 2002

♦ ♦ ♦

The Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal:

Chapter 354. Medicaid Health Services

Subchapter A. Purchased Health Services

Subchapter C. Case Management for Children Who Are Blind and Visually Impaired

Subchapter F. Pharmacy Services

Subchapter I. Medicaid Program Appeals Procedures

Subchapter J. Medicaid Third Party Recovery

The review is being done in accordance with the requirements of Government Code, §2001.039, General Appropriations Act, Art. IX, §9-10.13, 76th Legislature, 1999, which requires state agencies, every four years, to assess whether the initial reasons for adopting a

rule continue to exist. The text of the rule sections being reviewed will not be published, but may be found in Title 1, Part 15, of the Texas Administrative Code or on the Secretary of State's website at http://info.sos.state.tx.us/tac

Elsewhere in this issue of the *Texas Register* the HHSC also proposes the review of Chapters 353, 357, 371 and 381.

Comments on the review of Chapters 353, 354, 357, 371 and 381 may be submitted in writing to Steve Aragon, General Counsel, P.O. Box 13247, Austin, Texas 78711. Comments may be faxed to (512) 424-6586 or may be submitted electronically via HHSC's web page at http://www.hhsc.state.tex.us/about_HHSC.

TRD-200203833
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: June 19, 2002

♦ ♦ ♦

The Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal:

Chapter 357. Medical Fair Hearings.

The review is being done in accordance with the requirements of Government Code, §2001.039, General Appropriations Act, Art. IX, §9-10.13, 76th Legislature, 1999, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. The text of the rule sections being reviewed will not be published, but may be found in Title 1, Part 15, of the Texas Administrative Code or on the Secretary of State's website at http://info.sos.state.tx.us/tac

Elsewhere in this issue of the *Texas Register* the HHSC also proposes the review of Chapters 353, 354, 371 and 381.

Comments on the review of Chapters 353, 354, 357, 371 and 381 may be submitted in writing to Steve Aragon, General Counsel, P.O. Box 13247, Austin, Texas 78711. Comments may be faxed to (512) 424-6586 or may be submitted electronically via HHSC's web page at http://www.hhsc.state.tex.us/about_HHSC.

TRD-200203834
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: June 19, 2002

♦ ♦ ♦

The Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal:

Chapter 371. Medicaid Fraud and Abuse Program Integrity.

The review is being done in accordance with the requirements of Government Code, §2001.039, General Appropriations Act, Art. IX, §9-10.13, 76th Legislature, 1999, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. The text of the rule sections being reviewed will not be published, but may be found in Title 1, Part 15, of the Texas Administrative Code or on the Secretary of State's website at http://info.sos.state.tx.us/tac

Elsewhere in this issue of the *Texas Register* the HHSC also proposes the review of Chapters 353, 354, 357 and 381.

Comments on the review of Chapters 353, 354, 357, 371 and 381 may be submitted in writing to Steve Aragon, General Counsel, P.O. Box 13247, Austin, Texas 78711. Comments may be faxed to (512) 424-6586 or may be submitted electronically via HHSC's web page at http://www.hhsc.state.tex.us/about_HHSC.

TRD-200203835
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: June 19, 2002

♦ ♦ ♦

The Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal:

Chapter 381. Guardianship Services.

The review is being done in accordance with the requirements of Government Code, §2001.039, General Appropriations Act, Art. IX, §9-10.13, 76th Legislature, 1999, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. The text of the rule sections being reviewed will not be published, but may be found in Title 1, Part 15, of the Texas Administrative Code or on the Secretary of State's website at http://info.sos.state.tx.us/tac

Elsewhere in this issue of the *Texas Register* the HHSC also proposes the review of Chapters 353, 354, 357 and 371.

Comments on the review of Chapters 353, 354, 357, 371 and 381 may be submitted in writing to Steve Aragon, General Counsel, P.O. Box 13247, Austin, Texas 78711. Comments may be faxed to (512) 424-6586 or may be submitted electronically via HHSC's web page at http://www.hhsc.state.tex.us/about_HHSC.

TRD-200203836
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: June 19, 2002

♦ ♦ ♦

Texas Department of Human Services

Title 40, Part 1

The Texas Department of Human Services files this notice of intention to review Title 40 TAC, Chapter 1 (Presumptive Medicaid Eligibility for Pregnant Women), Chapter 2 (Medically Needy Program), Chapter 3 (Texas Works), Chapter 45 (Community Living Assistance and Support Services), and Chapter 77 (Employment Practices), in accordance with Government Code, §2001.039.

As required by §2001.039, the department will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the rules under review continue to exist.

Any questions or written comments pertaining to this notice of intention to review Chapters 1, 2, or 3 should be directed to Eric McDaniel, Texas Works Policy Section, Texas Department of Human Services W-312, P.O. Box 149030, Austin, Texas 78714-9030 or at (512) 438-2909. Any questions or written comments pertaining to this notice of intention to review Chapter 2 may also be directed to Nick Dauster, Office of Program Integrity, Texas Department of Human Services Y-969, Austin, Texas 78714-9030 or at (512) 231-5776.

Any questions or written comments pertaining to this notice of intention to review Chapter 45 should be directed to Tommy Ford, Long Term Care/CLASS Section, Texas Department of Human Services W-521, P.O. Box 149030, Austin, Texas 78714-9030 or at (512) 438-3689.

Any questions or written comments pertaining to this notice of intention to review Chapter 77 should be directed to Penny Potter, Human Resource Services Division, Texas Department of Human Services W-101, P.O. Box 149030, Austin, Texas 78714-9030 or at (512) 438-3994.

TRD-200203717
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Filed: June 14, 2002

♦ ♦ ♦

Texas State Board of Medical Examiners

Title 22, Part 9

The Texas State Board of Medical Examiners proposes to review Chapter 171 (§§171.1-171.7), concerning, Postgraduate Training Permits, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

The Texas State Board of Medical Examiners will consider, among other things, whether the reasons for adoption of these rules continue to exist.

Comments on the proposed review may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018.

TRD-200203762
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Filed: June 17, 2002

♦ ♦ ♦

The Texas State Board of Medical Examiners proposes to review Chapter 180 (§180.1) concerning, Rehabilitation Orders, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

The Texas State Board of Medical Examiners will consider, among other things, whether the reasons for adoption of these rules continue to exist.

Comments on the proposed review may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018.

TRD-200203763
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Filed: June 17, 2002

♦ ♦ ♦

TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 4 TAC §20.22(a)

Pest Mgmt Zone	~~[Planting Dates]~~	Destruction deadline	~~[Destruction Method (also see footnotes)]~~
1	~~[Feb. 1 - March 31]~~	September 1	~~[shred and plow a,b]~~
2 - Area 1	~~[No dates set]~~	September 1	~~[shred and plow a,b]~~
2 - Area 2	~~[No dates set]~~	September 1	~~[shred and plow a,b]~~
2 - Area 3	~~[No dates set]~~	September 1	~~[shred and plow a,b]~~
2 - Area 4	~~[No dates set]~~	October 1	~~[shred and plow a,b]~~
3 - Area 1	~~[March 5 - May 15]~~	October 1	~~[shred and plow a,b]~~
3 - Area 2	~~[March 5 - May 15]~~	October 15	~~[shred and plow a,b]~~
4	~~[No dates set]~~	October 10	~~[shred and plow a,b]~~
5	~~[No dates set]~~	October 20	~~[shred and/or plow a,c]~~
6	~~[No dates set]~~	October 31	~~[shred and/or plow a,c]~~
7	~~[March 20 - May 31]~~	November 30	~~[shred and/or plow a,c]~~
8 **Area 1**	~~[March 20 - May 31]~~	**October 31** ~~[November 30]~~	~~[shred and/or plow a,c]~~
8 Area 2		**November 30**	
9	~~[No dates set]~~	No date set	~~[shred and plow b,d]~~
10	~~[No dates set]~~	February 1	~~[shred and plow b,d]~~

~~[a/ Alternative destruction methods are allowed (see paragraph (b)).]~~
~~[b/ Destruction shall be performed in a manner to prohibit the presence of live cotton plants.]~~
~~[c/ Destruction shall periodically be performed to prevent presence of fruiting structures.]~~
~~[d/ Soil shall be tilled to a depth of 2 or more inches in Zone 9, and to a depth of 6 or more inches in Zone 10.]~~

Figure: 16 TAC §401.160(g)(10)

TEXAS LOTTERY COMMISSION
RETAILER REGULATORY VIOLATIONS AND RELATED PENALTIES

DESCRIPTION OF VIOLATION	1ST OCCURRENCE	2ND OCCURRENCE	3RD OCCURRENCE
Licensee engages in telecommunication or printed advertising that the director determines to have been false, deceptive or misleading.	Notification in writing to the licensee of the detected violation, including a warning that future violations will result in more severe administrative penalties including Suspension and/or revocation of the license. (Warning Letter)	10-90 day Suspension	30-90 Suspension to Revocation
Licensee conditions redemption of a Lottery prize upon the purchase of any other item or service.	Warning Letter	10-90 day Suspension	30-90 Suspension to Revocation
Licensee imposes a restriction upon the redemption of a Lottery prize not specifically authorized by the director.	Warning Letter	10-90 day Suspension	30-90 Suspension to Revocation
Licensee fails to follow instructions and procedures for the conduct of any particular lottery game, lottery special event or promotion.	Warning Letter	10-90 day Suspension	30-90 Suspension to Revocation
Licensee and/or its employee(s) exhibit discourteous treatment including, but not limited to, abusive language toward customers, commission employees or commission vendors.	Warning Letter	10-90 day Suspension	30-90 Suspension to Revocation
Licensee fails to establish or maintain reasonable security precautions with regard to the handling of lottery tickets and other materials.	Warning Letter	10-90 day Suspension	30-90 Suspension to Revocation
Licensee endangers the security and/or integrity of the lottery games run by the commission.	Warning Letter - Revocation	10-90 Suspension to Revocation	30-90 Suspension to Revocations
Licensee violates any directive or instruction issued by the director.	Warning Letter	10-90 day Suspension	30-90 Suspension to Revocation
Licensee violates any express term or condition of its license not specifically set forth in this subchapter.	Warning Letter	10-90 day Suspension	30-90 Suspension to Revocation

Licensee incurs four (4) notices of nonsufficient fund transfers within a 12-month period.	Revocations	n/a	n/a
Licensee sells an instant ticket from a game that has closed after the date designated for the end of the game.	Warning Letter	10-90 day Suspension	30-90 Suspension to Revocation
Licensee fails to pay a valid prize in the amount specified on the validation slip generated on the licensee's terminal or to pay the authorized amount.	Warning Letter	10-90 day Suspension	30-90 Suspension to Revocation
Licensee fails to pay a valid prize the licensee is required to pay.	Warning Letter	10-90 day Suspension	30-90 Suspension to Revocation
Licensee refuses or fails to sell Lottery tickets during all normal business hours of the lottery retailer during on-line game operating hours.	Warning Letter	10-90 day Suspension	30-90 Suspension to Revocation
Licensee refuses to and/or fails to properly cancel a Pick 3.	Warning Letter	10-90 day Suspension	30-90 Suspension to Revocation
Licensee fails to return an exchange ticket to a prize claimant claiming a prize on a multi-draw ticket if an exchange ticket is produced by the licensee's terminal.	Warning Letter	10-90 day Suspension	30-90 Suspension to Revocation
Licensee fails to keep accurate and complete records of all tickets from confirmed, active, and settled packs that have not been sold.	Warning Letter	10-90 day Suspension	30-90 Suspension to Revocation
Licensee fails to offer a minimum of two instant ticket games for sale if two or more instant games are available from the Lottery.	Warning Letter	10-90 day Suspension	30-90 Suspension to Revocation
Licensee fails to order or accept delivery of the required minimum number of lottery tickets, or fails or refuses to meet minimum sales criteria.	Warning Letter	10-90 day Suspension	30-90 Suspension to Revocation
Licensee fails to meet any requirement under §401.368, Instant Ticket Vending Machine rule if the licensee has been supplied with an ITVM by the commission.	Warning Letter	10-90 day Suspension	30-90 Suspension to Revocation
Licensee fails to take readily achievable measures within the allowed time period to comply with the barrier removal requirements regarding ADA.	Warning Letter	10-90 day Suspension	30-90 Suspension to Revocation

Licensee fails to prominently post license.	Warning Letter	10-90 day Suspension	30-90 Suspension to Revocation
Licensee knowingly sells a ticket or pays a lottery prize to another person who is (A) an officer or an employee of the commission; (B) an officer, member, or employee of a lottery operator; (C) an officer, member, or employee of a contractor or subcontractor that is excluded by the terms of its contract from playing lottery games; (D) the spouse, child, brother, sister, or parent of a person described by paragraph (A), (B), or (C) who resides within the same household as that person.	Warning Letter	10-90 day Suspension	30-90 Suspension to Revocation
Licensee intentionally or knowingly sells a ticket at a price the licensee knows is greater than the price established by the executive director.	10-90 Suspension to Revocation	30-90 Suspension to Revocation	Revocation
Licensee sells tickets issued to a licensed location at another location that is not licensed.	10-90 Suspension to Revocation	30-90 Suspension to Revocation	Revocation
Licensee intentionally or knowingly sells a ticket by extending credit or lends money to enable a person to buy a ticket.	10-90 Suspension to Revocation	30-90 Suspension to Revocation	Revocation
Licensee intentionally or knowingly sells a ticket to a person that the licensee knows is younger than 18 years.	10-90 Suspension to Revocation	10-90 Suspension to Revocation	30-90 Suspension to Revocation
Licensee intentionally or knowingly sells a ticket and accepts anything for payment not specifically allowed under the State Lottery Act .	10-90 Suspension to Revocation	30-90 Suspension to Revocation	Revocation

Licensee sells tickets over the telephone or, via mail order sales, establishes or promotes a group purchase or pooling arrangement under which tickets are purchased on behalf of the group or pool and any prize is divided among the members of the group or pool, and the person intentionally or knowingly: (A) uses any part of the funds solicited or accepted for a purpose other than purchasing tickets on behalf of the group or pool; or (B) retains a share of any prize awarded as compensation for establishing or promoting the group purchase or pooling arrangement.	10-90 Suspension to Revocation	30-90 Suspension to Revocation	Revocation
Licensee intentionally or knowingly alters or forges a ticket.	10-90 Suspension to Revocation	30-90 Suspension to Revocation	Revocation
Licensee intentionally or knowingly influences or attempts to influence the selection of the winner of a lottery game.	10-90 Suspension to Revocation	30-90 Suspension to Revocation	Revocation
Licensee intentionally or knowingly claims a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation; or aids or agrees to aid another person or persons to claim a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation.	10-90 Suspension to Revocation	30-90 Suspension to Revocation	Revocation
Licensee intentionally or knowingly tampers with, damages, defaces, or renders inoperable any vending machine, electronic computer terminal, or other mechanical device used in a lottery game, or fails to exercise due care in the treatment of commission or commission property.	10-90 Suspension to Revocation	30-90 Suspension to Revocation	Revocation
Licensee induces another person to assign or transfer a right to claim a prize, offers for sale the right to claim a prize, or offers, for compensation, to claim the prize of another person.	10-90 Suspension to Revocation	30-90 Suspension to Revocation	Revocation
Licensee intentionally or knowingly makes a statement or entry that the person knows to be false or misleading on a required report.	10-90 Suspension to Revocation	30-90 Suspension to Revocation	Revocation

Licensee fails to maintain or make an entry the licensee knows is required to be maintained or made for a required report.	10-90 Suspension to Revocation	30-90 Suspension to Revocation	Revocation
Licensee knowingly refuses to permit the director of the Lottery Operations Division, the executive director, commission, or the state auditor to examine the agent's books, records, papers or other objects, or refuses to answer any question authorized under the State Lottery Act.	10-90 Suspension to Revocation	30-90 Suspension to Revocation	Revocation
Licensee intentionally or knowingly makes a material and false or incorrect, or deceptive statement, written or oral, to a person conducting an investigation under the State Lottery Act or a rule adopted by the commission.	10-90 Suspension to Revocation	30-90 Suspension to Revocation	Revocation
Licensee commits an offense of conspiracy as defined in the State Lottery Act.	10-90 Suspension to Revocation	30-90 Suspension to Revocation	Revocation
Licensee sells or offers for sale any interest in a lottery of another state or state government or an Indian tribe or tribal government, including an interest in an actual lottery ticket, receipt, contingent promise to pay, order to purchase, or other record of the interest.	10-90 Suspension to Revocation	30-90 Suspension to Revocation	Revocation

Figure: 16 TAC Chapter 402--Preamble

PAGE/LINE NUMBER	CHANGES	EXPLANATION
Page 1/Line 5	Add "pull-tab bingo" immediately before the word "tickets"	Clarification
Page 3/Line 3	Strike "pull-tab bingo" and "or series"	Clarification
Page 3/Line 4	Add "and form number" after the word "number"	Clarification
Page 3/Line 19	Strike the words "top", "pull-tab", and "greater than $5.00" and add the words "two highest" after the word "The"	Clarification to ensure that two highest prize amounts are considered a tier
Page 3/Line 20	Add the word "bingo" immediately after the word "pull-tab"	Clarification
Page 4/Line 1	Add the words "bingo ticket(s) sold" after the word "pull-tab"	Clarification
Page 4/Line 3	Add the word "authorized" immediately before the word "organization"	Clarification
Page 4/Line 5	Strike the word "Paddle" before the word "Wheels"	Clarification. Allows for different forms of wheels
Page 4/Line 6	Strike the word "Amounts" immediately after the word "Pay-Out"	Clarification
Page 4/Line 15	Strike the word "and,"	Clarification
Page 4/Line 16	Strike the word "and" and insert the word "or" after the word "payout" and add the word "; and," after the word "game"	Clarification and to allow for subsection (I), below
Page 4/Line 17	Add the following language as new subsection (I): "the payout of the pull-tab bingo game"	Clarify that the required payout schedule includes the actual payout of the particular pull-tab game
Page 4/Line 19	Strike the word "specific"	Word isn't needed; winning patterns should reflect any prize won, not just a specific prize
Page 5/Line 2	Strike the "s" in "tabs" and add the words "bingo tickets," immediately following the word "tabs"	Minor clarification

Page 6/Line 6	Insert the words "pull-tab bingo" immediately following the word "individual"	Minor clarification
Page 6/Line 15	Add the word "prize" after the word "the", strike the words "of prize winnings per category" after the word "amount" and strike the word "prize" after the word "of"	Minor clarification
Page 6/Line 16	Strike the word "category"; add the words "prize amount" after the word "category" and "pull-tab bingo" after the word "individual"	Minor clarification
Page 6/Line 19	Strike "a" after the word "display" and insert the word "the" after the word "serial"	Minor clarification
Page 7/Lines 6-8	Add the words "along with a list of all other colors that will be printed with the game" after the word "side" and strike "The color artwork must display each color that will be printed on the pull-tab bingo ticket's reverse side."	Rewording of existing language
Page 7/Line 16	Strike the word "series" and insert in lieu thereof the word "serial" immediately before the word "number"	Minor clarification
Page 7/Line 18	Insert the words "pull-tab bingo" immediately after the word "approved"	Minor clarification
Page 8/Line 3	Strike the word "and" and insert in lieu thereof the word "or" immediately after the word "services"	Allow different methods of notification and not require all listed methods of notification
Page 8/Line 17	Add the words "pull-tab bingo" before the word "ticket"	Minor clarification
Page 9/Line 6	Begin line 6 with the word "All", change the "w" in "Winning" to lower case, and add the words "as identified on the payout schedule" immediately following the word "tickets"	Minor clarification
Page 10/Lines 1-4	Strike the existing paragraph (7) and renumber the remaining subsections	Not needed in light of the language contained in proposed subsection (d)(10)
Page 10/Line 14	Strike the word "series" and replace it with the word "deal" immediately following the word "each"	Minor clarification

Page 10/Line 15	Strike the word "series" and replace it with the word "deal" immediately before the word "is"	Minor clarification
Page 10/Line 20	Add the word "bingo" immediately before the word "ticket"	Minor clarification
Page 11/Line 7	Strike the word "Paddle"	Not needed
Page 11/Line 10	Add the words "at least" immediately after the word "spin"	Minor clarification to allow a wheel to spin at least four times
Page 11/Lines 12-13	Add the words "licensed authorized" immediately before the word "organization's"	Minor clarification
Page 11/Line 15	Add the word "licensed" immediately before the word "authorized"	Minor clarification
Page 11/Line 19	Add the word "authorized" immediately after the word "licensed"	Minor clarification
Page 12/Line 1	Add the words "licensed authorized" after the word "the"	Minor clarification
Page 12/Line 2	Add the words "licensed authorized" immediately after the word "two"	Minor clarification
Page 12/Line 4	Add the words "authorized organization" and strike the word "conductors" immediately after the word "Licensed"	Minor clarification
Page 12/Line 14	Strike the following: "A licensed organization may sell bundled different pull-tab bingo tickets from different deal during their licensed times." and add the word "authorized" immediately after the word "licensed"	To clarify what is and isn't prohibited in the way of commingling of pull-tab bingo tickets
Page 12/Line 16	Strike the words "deals and different games" after the word "different" and add the words "form numbers" immediately before the word "and"	To clarify what is and isn't prohibited in the way of commingling of pull-tab bingo tickets
Page 12/Line 20	Add the word "authorized" immediately after the word "licensed"	Minor clarification
Page 13/Line 3	Strike the word "series" and replace it with "deal" immediately after the word "or" and insert the words "pull-tab bingo" immediately before the word "tickets"	Minor clarification

Page 13/Line 5	Strike the words "or distributor" after the word "organization"	A distributor will not maintain the type of log described in subsection (g)
Page 13/Line 10	Strike the word "sale" and replace it with the word "purchase" immediately after the words "the date of the"	Minor clarification
Page 13/Line 11	Add the words "pull-tab bingo" immediately before the word "tickets"	Minor clarification
Page 13/Line 12	Add the words "licensed authorized" immediately before the word "organization"	Minor clarification
Page 13/Line 16	Strike the word "perpetual" immediately before the word "inventory" and change the word "a" to "an" immediately after the word "maintain"	Perpetual means forever; unreasonable to require a licensed authorized organization to keep records for this long a period of time
Page 13/Line 17	Strike the word "and" immediately after the word "reports,"	Minor clarification
Page 13/Line 20	Add the words "and redeemed winning pull-tab bingo tickets of $5.00 or more" immediately after the word "receipts"	To help ensure the integrity of the game
Page 14/Line 1	Add the word "redeemed" immediately before the word "winning" and add the words "and unsold" immediately after the word "winning"	To help ensure the integrity of the game
Page 14/Lines 3-4	Strike the words "and unsold pull-tab bingo tickets" immediately after the word "tickets"	Not needed to ensure the integrity of the game
Page 14/Line 9	Strike the words "a representative of" immediately after the word "by" and add the words ", its authorized representative or designee" immediately after the word "commission"	Clarification to allow authorized persons to witness the destruction
Page 14/Line 14	Strike the word "series" and replace it with the word "deal" immediately after the word "each"	Minor clarification
Page 14/Lines 15-16	Insert the word "bingo" immediately after the word "pull-tab"	Minor clarification

Page 15/Line 11	Insert the word "bingo" immediately after the word "pull-tab" and insert the sentence "The secondary form of verifying a winning pull-tab bingo ticket can include the verification approval as provided in 16 Texas Administrative Code §402.548(i)." immediately after the word "ticket."	Minor clarification; to provide additional forms of secondary verification
Page 15/Lines 13-14	Strike the "s" in the word "Pull-tabs" and insert the words "bingo tickets" immediately before the word "used"	Minor clarification
Page 15/Lines 18-20	Insert the words "approved by the commission" immediately after the word "method"	Clarification to allow for innovative event tickets
	Insert new paragraph (8) as follows: "Multiple Part Event or Multiple Part Instant Ticket. An event ticket that is broken apart and sold in sections by a licensed authorized organization. Each section of the ticket consists of a separate deal with its own corresponding payout structure, serial number, and winner verification."	To allow for innovative pull-tab bingo tickets. This particular ticket is sold in California.

Figure: 22 TAC §1.232(j)

Violation	Rule(s) Cited	Recommended Penalty
Unauthorized duplication of certificate of registration or failure to display certificate of registration as required	Rule 1.62	Administrative penalty or reprimand
Practice of architecture while registration is inactive	Rule 1.68	Administrative penalty
Failure to fulfill mandatory continuing education requirements	Rule 1.69	Administrative penalty or suspension
Failure to use appropriate seal or signature	Rule 1.102 Rule 1.104(c)	Administrative penalty or reprimand
Failure to seal documents or insert statement in lieu of seal as required	Rule 1.103(a) Rule 1.103(d) Rule 1.103(f) Rule 1.103(h)(2) Rule 1.103(i) Rule 1.105(a)(4) Rule 1.122(c) Rule 1.122(e)	Administrative penalty or reprimand
Failure to mark incomplete documents as required	Rule 1.103(b)	Administrative penalty or reprimand
Removal of seal after issuance of documents	Rule 1.103(e)	Administrative penalty or reprimand
Failure to maintain a document for 10 years as required	Rule 1.103(g) Rule 1.105(b) Rule 1.122(d)	Administrative penalty or reprimand
Failure to notify the original design professional as required	Rule 1.103(h)(1)	Administrative penalty or reprimand
Sealing a document prepared by a person not working under the respondent's Supervision and Control	Rule 1.103(h)(3) Rule 1.104(a)	Suspension or revocation
Unauthorized use of a seal or modification of a document	Rule 1.104(b)	Administrative penalty or reprimand
Violation of requirements regarding prototypical design	Rule 1.105(a)(1) Rule 1.105(a)(2) Rule 1.105(a)(3) Rule 1.105(a)(5)	Administrative penalty, reprimand, or suspension
Failure to provide Statement of Jurisdiction	Rule 1.106	Administrative penalty or reprimand
Failure to enter into a written agreement of association when required	Rule 1.122	Administrative penalty or reprimand
Failure to exercise Supervision and Control over the preparation of a document as required	Rule 1.122(a)	Suspension or revocation
Failure to exercise Responsible Charge over the preparation of a document as required	Rule 1.122(e)	Suspension or revocation

Failure to notify the Board upon ceasing to provide architectural services after filing an Architect of Record affidavit	Rule 1.124(c)	Administrative penalty or reprimand
Gross incompetency	Rule 1.142	Suspension or revocation
Recklessness	Rule 1.143	Suspension or revocation
Dishonest practice	Rule 1.144(a) Rule 1.144(c)	Suspension or revocation
Dishonest practice	Rule 1.144(b)	Administrative penalty or reprimand
Conflict of interest	Rule 1.145	Suspension or revocation
Failure to uphold responsibilities to the architectural profession	Rule 1.146(a)	Suspension or revocation
Failure to uphold responsibilities to the architectural profession	Rule 1.146(b) Rule 1.146(c)	Administrative penalty or reprimand
Failure to act in a manner consistent with the Professional Services Procurement Act	Rule 1.147	Administrative penalty or reprimand
Unauthorized practice or use of title "architect"	Rule 1.148	Suspension, revocation, or denial
Criminal conviction	Rule 1.149	Suspension or revocation
Violation by Applicant	Rule 1.148 Rule 1.149 Rule 1.151	Reprimand, administrative penalty, suspension, rejection, denial of right to reapply
Failure to submit a document as required by the Architectural Barriers Act	Rule 1.170	Reprimand or administrative penalty
Failure to respond to a Board inquiry	Rule 1.171	Administrative penalty

Figure: 22 TAC §3.232(j)

Violation	Rule(s) Cited	Recommended Penalty
Unauthorized duplication of certificate of registration or failure to display certificate of registration as required	Rule 3.62	Administrative penalty or reprimand
Practice of landscape architecture while registration is inactive	Rule 3.68	Administrative penalty
Failure to fulfill mandatory continuing education requirements	Rule 3.69	Administrative penalty or suspension
Failure to use appropriate seal or signature	Rule 3.102 Rule 3.104(c)	Administrative penalty or reprimand
Failure to seal documents or insert statement in lieu of seal as required	Rule 3.103(a) Rule 3.103(d) Rule 3.103(f) Rule 3.103(h)(2) Rule 3.103(i) Rule 3.122(c)	Administrative penalty or reprimand
Failure to mark incomplete documents as required	Rule 3.103(b)	Administrative penalty or reprimand
Removal of seal after issuance of documents	Rule 3.103(e)	Administrative penalty or reprimand
Failure to maintain a document for 10 years as required	Rule 3.103(g) Rule 3.122(d)	Administrative penalty or reprimand
Failure to notify the original design professional as required	Rule 3.103(h)(1)	Administrative penalty or reprimand
Sealing a document prepared by a person not working under the respondent's Supervision and Control	Rule 3.103(h)(3) Rule 3.104(a)	Suspension or revocation
Unauthorized use of a seal or modification of a document	Rule 3.104(b)	Administrative penalty or reprimand
Failure to provide Statement of Jurisdiction	Rule 3.105	Administrative penalty or reprimand
Failure to report a course of action taken against the respondent's advice as required	Rule 3.105(b)	Administrative penalty, reprimand, or suspension
Failure to enter into a written agreement of association when required	Rule 3.122	Administrative penalty or reprimand
Failure to exercise Supervision and Control over the preparation of a document as required	Rule 3.122(a)	Suspension or revocation
Failure to notify the Board upon ceasing to provide landscape architectural services after filing a Landscape Architect of Record affidavit	Rule 3.124(c)	Administrative penalty or reprimand
Gross incompetency	Rule 3.142	Suspension or revocation
Recklessness	Rule 3.143	Suspension or revocation
Dishonest practice	Rule 3.144(a) Rule 3.144(c)	Suspension or revocation
Dishonest practice	Rule 3.144(b)	Administrative penalty or reprimand

Conflict of interest	Rule 3.145	Suspension or revocation
Failure to uphold responsibilities to the landscape architectural profession	Rule 3.146(a)	Suspension or revocation
Failure to uphold responsibilities to the landscape architectural profession	Rule 3.146(b) Rule 3.146(c)	Administrative penalty or reprimand
Failure to act in a manner consistent with the Professional Services Procurement Act	Rule 3.147	Administrative penalty or reprimand
Unauthorized practice or use of title "landscape architect"	Rule 3.148	Suspension, revocation, or denial
Criminal conviction	Rule 3.149	Suspension or revocation
Violation by Applicant	Rule 3.148 Rule 3.149 Rule 3.151	Reprimand, administrative penalty, suspension, rejection, denial of right to reapply
Failure to submit a document as required by the Architectural Barriers Act	Rule 3.170	Reprimand or administrative penalty
Failure to respond to a Board inquiry	Rule 3.171	Administrative penalty

Figure: 22 TAC §5.242(j)

Violation	Rule(s) Cited	Recommended Penalty
Unauthorized duplication of certificate of registration or failure to display certificate of registration as required	Rule 5.72	Administrative penalty or reprimand
Practice of interior design while registration is inactive	Rule 5.78	Administrative penalty
Failure to fulfill mandatory continuing education requirements	Rule 5.79	Administrative penalty or suspension
Failure to use appropriate seal or signature	Rule 5.112 Rule 5.114(c)	Administrative penalty or reprimand
Failure to seal documents or insert statement in lieu of seal as required	Rule 5.113(a) Rule 5.113(d) Rule 5.113(f) Rule 5.113(h)(2) Rule 5.113(i) Rule 5.132(c)	Administrative penalty or reprimand
Failure to mark incomplete documents as required	Rule 5.113(b)	Administrative penalty or reprimand
Removal of seal after issuance of documents	Rule 5.113(e)	Administrative penalty or reprimand
Failure to maintain a document for 10 years as required	Rule 5.113(g) Rule 5.132(d)	Administrative penalty or reprimand
Failure to notify the original design professional as required	Rule 5.113(h)(1)	Administrative penalty or reprimand
Sealing a document prepared by a person not working under the respondent's Supervision and Control	Rule 5.113(h)(3) Rule 5.114(a)	Suspension or revocation
Unauthorized use of a seal or modification of a document	Rule 5.114(b)	Administrative penalty or reprimand
Failure to provide Statement of Jurisdiction	Rule 5.115(a)	Administrative penalty or reprimand
Failure to report a course of action taken against the respondent's advice as required	Rule 5.115(b)	Administrative penalty, reprimand, or suspension
Failure to enter into a written agreement of association when required	Rule 5.132	Administrative penalty or reprimand
Failure to exercise Supervision and Control over the preparation of a document as Required	Rule 5.132(a)	Suspension or revocation
Failure to notify the Board upon ceasing to provide interior design services after filing an Interior Designer of Record affidavit	Rule 5.134(c)	Administrative penalty or reprimand
Gross incompetency	Rule 5.152	Suspension or revocation
Recklessness	Rule 5.153	Suspension or revocation
Dishonest practice	Rule 5.154(a) Rule 5.154(c)	Suspension or revocation
Dishonest practice	Rule 5.154(b)	Administrative penalty or reprimand
Conflict of interest	Rule 5.155	Suspension or revocation

Failure to uphold responsibilities to the interior design profession	Rule 5.156(a)	Suspension or revocation
Failure to uphold responsibilities to the interior design profession	Rule 5.156(b) Rule 5.156(c)	Administrative penalty or reprimand
Unauthorized practice or use of title "interior designer" or term "interior design"	Rule 5.157	Suspension, revocation, or denial
Criminal conviction	Rule 5.158	Suspension or revocation
Violation by Applicant	Rule 5.157 Rule 5.158 Rule 5.160	Reprimand, administrative penalty, suspension, rejection, denial of right to reapply
Failure to submit a document as required by the Architectural Barriers Act	Rule 5.180	Reprimand or administrative penalty
Failure to respond to a Board inquiry	Rule 5.181	Administrative penalty

Figure: 22 TAC §184.19(b)

NOTICE CONCERNING COMPLAINTS

Complaints about physicians, as well as other licensees and registrants of the Texas State Board of Medical Examiners, including physician assistants, surgical assistants, and acupuncturists, may be reported for investigation at the following address:

Texas State Board of Medical Examiners
Attention: Investigations
333 Guadalupe, Tower 3, Suite 610
P.O. Box 2018, MC-263
Austin, Texas 78768-2018

Assistance in filing a complaint is available by calling the following telephone number:
1-800-201-9353

Figure: 22 TAC §184.19(c)

AVISO SOBRE QUEJAS

Se pueden presentar quejas acerca de médicos, así también como de otras personas autorizadas y registradas por el Consejo de Suodale Médicos del Estado de Texas (Texas State Board of Medical Examiners), incluyendo a ayudantes médicos, asistentes de cirugia, y acupunturistas, para su investigación, en la siguiente dirección:

Texas State Board of Medical Examiners

Attention: Investigations

333 Guadalupe, Tower 3, Suite 610

P.O. Box 2018, MC-263

Austin, Texas 78768-2018

Se puede obtener ayuda para presentar una queja llamando al siguiente número telefónico:

1-800-201-9353

Figure: 25 TAC §37.63(b)

Individuals ≤185% of poverty are eligible for services from Medicaid and WIC. Individuals ≤200% of poverty are eligible for services from Children's Health Insurance Plan or Children With Special Health Care Needs.

% Poverty Income	Family Size	% Co-Payment
201 – 250	1 – 8	25
251 – 300	1 – 8	50
301 – 350	1 – 8	75

Figure: 25 TAC §97.91(d)

SAMPLE DELEGATION FORM

SIDE A: DELEGATION OF AUTHORITY TO GIVE INFORMED CONSENT FOR IMMUNIZATIONS OF A MINOR

I give permission for

_____

(Name of Adult Giving Consent)

to consent for

_____DOB_____/_____/_____/ to

(Name of Minor)

receive the appropriate immunizations.

Relationship of adult to minor:_____

_____ _____/_____/____

Signature/Parent, Managing Conservator, Guardian, or Authorized Person — Date of Signature

_____ _____/_____/____

Signature/Initials of Counselor — Date of Interview

Figure: 25 TAC §97.92(d)

SAMPLE DOCUMENTATION FORM

SIDE B: DOCUMENTATION OF FAILURE TO CONTACT PARENT, MANAGING CONSERVATOR, GUARDIAN OR OTHER PERSON FOR CONSENT FOR IMMUNIZATIONS OF A MINOR

_____ _____

(Name of Adult Giving Consent) (Relationship to Minor)

_____ DOB____/____/____

(Name of Minor)

_____ cannot be contacted because:

(Name of Parent, etc.)

(1) Whereabouts of parent, managing conservator, guardian, et cetera is unknown; [ ]

(2) Effort to contact parent, et cetera within last 90 days has failed; or [ ]

(3) Parent, et cetera refuses to consent or delegate authority to consent, but has not expressly denied authority to consent to consenting adult. [ ]

If consenting adult is not related to minor, enter the case number and name of the court that entered the order giving the adult the authority to consent.

_____

(Case number) (Name of Court)

_____ ____/_____/_____

Signature of Consenting Adult Date of Signature

_____ ____/_____/_____

Signature/Initials of Counselor Date of Interview

Figure: 25 TAC §230.1(c)(1)

Texas Department of Health
Bureau of Food and Drug Safety

Request for Actual Price Information from a Wholesale Distributor and Average Manufacturer Price Information from a Manufacturer

The Interagency Council on Pharmaceuticals Bulk Purchasing requests pricing information on the following drugs for the month and quarter of

_____:

National Drug Code # 11 Char.	Name of Drug 20 Char.	Name of Manuf. 15 Char.	Form Size 10 Char.	Unit Size 10 Char.	Unit Strength 10 Char.	Manuf. Average Price 10 Char.	Wholesale Dist. Actual Price 10 Char.

Figure: 25 TAC §230.1(c)(2)

Texas Department of Health
Bureau of Food and Drug Safety

Report of Actual Price Information from a Wholesale Distributor and Average Manufacturer Price Information from a Manufacturer

_____

(Name of licensee--identifying number)

Submits the following pricing information on the following drugs for the month and quarter of

_____:

National Drug Code # 11 Char.	Name of Drug 20 Char.	Name of Manuf. 15 Char.	Form Size 10 Char.	Unit Size 10 Char.	Unit Strength 10 Char.	Manuf. Average Price 10 Char.	Wholesale Dist. Actual Price 10 Char.

Figure: 25 TAC §289.252(ii)(2)

Radionuclide	Limit	Unsealed Sources			Sealed Sources
		10^3	10^4	10^5	10^{10}
Ce-142, Pr-141, Nd-144, Nd-145, Sm-146, Sm-147, Sm-148, Gd-148, Gd-150, Gd-151, Gd-152, Tb-159, Dy-154, Dy-156, Ho-165, Hf-174, W-180, Pt-190, Pb-210, Bi-209, Bi-209m, Po-208, Po-209, Po-210, Ra-226, Ac-227, Th-228, Th-229, Th-230, Th-232, Pa-231, U-232, U-233, U-234, U-235, U-236, U-238, Np-235, Np-237, Pu-236, Pu-238, Pu-239, Pu-240, Pu-241, Pu-242, Pu-244, Am-241, Am-242m, Am-243, Cm-242, Cm-243, Cm-244, Cm-245, Cm-246, Cm-247, Cm-248, Bk-247, Bk-249, Cf-248, Cf-249, Cf-250, Cf-251, Cf-252, Es-254, Any alpha-emitting radionuclide not listed above or mixtures of unknown alpha emitters of unknown composition	0.01 µCi	.01 mCi	0.1 mCi	1.0 mCi	100 Ci
Be-10, Al-26, Si-32, Ar-39, Ar-42, K-40, Ca-48, Ti-44, V-49, V-50, Fe-60, Zn-70, Ge-68, Ge-76, Kr-81, Sr-90, Zr-96, Mo-100, Tc-98, Rh-101, Rh-102, Pd-107, Ag-108m, Cd-113m, Cd-116, Sn-121m, Sn-123, Sn-124, Sn-126, Te-121m, Te-123, Te-130, I-129, La-137, La-138, Ce-139, Nd-150, Pm-143, Pm-144, Pm-145, Pm-146, Sm-145, Eu-150, Tb-157, Tb-158, Dy-159, Ho-166m, Lu-173, Lu-174, Lu-174m, Lu-175, Lu-176, Lu-177m, Hf-172, Hf-182, Ta-179, Re-184m, Re-187, Re-189, Os-194, Ir-192m2, Pt-192, Pt-198, Hg-194, Pb-202, Pb-205, Bi-208, Ra-228, Np-236, Bk-248, Any radionuclide other than alpha-emitting radionuclides not listed above or mixtures of beta emitters of unknown composition	0.1 µCi	0.1 mCi	1.0 mCi	10 mCi	1.0 kCi
Na-22, Co-60, Ru-106, Ag-110m, Cs-134, Ce-144, Eu-152, Eu-154, Bi-210	1.0 µCi	1.0 mCi	10 mCi	100 mCi	10 kCi
Cl-36, Ca-45, Mn-54, Ni-63, Zn-65, Se-75, Rb-87, Zr-93, Nb-93m, Cd-109, In-115, Sb-125, Ba-133, Cs-135, Cs-137, Gd-153, Eu-155, Tm-170, Tm-171, W-181, Tl-204	10 µCi	10 mCi	100 mCi	1.0 Ci	100 kCi
C-14, Fe-55, Co-57, Ni-59, Kr-85, Tc-97, Tc-99, Pt-193, Ir-194, Th(natural), U(natural)	100 µCi	100 mCi	1.0 Ci	10 Ci	1.0 MCi
H-3	1.0 mCi	1 Ci	10 Ci	100 Ci	10 MCi

Figure: 25 TAC §289.254(d)(1)

	Category I	Category II	Category III	Category IV
Class I Storage or Processing Facility	10 mCi	100 mCi	1 Ci	10 Ci
Class II Storage Facility	2 Ci	20 Ci	200 Ci	2000 Ci
Class II Processing Facility	1 Ci	10 Ci	100 Ci	1000 Ci

Figure: 25 TAC §289.254(v)(1)

Element	Radionuclide**	Category
Actinium (89)	Ac-227	I
	Ac-228	I
Americium (95)	Am-241	I
	Am-243	I
Antimony (51)	Sb-122	IV
	Sb-124	III
	Sb-125	III
Argon (18)	Ar-37	VI
	Ar-41	II
	Ar-41 (uncompressed)†	V
Arsenic (33)	As-73	IV
	As-74	IV
	As-76	IV
	As-77	IV
Astatine (85	At-211	III
Barium (56)	Ba-131	IV
	Ba-133	II
	Ba-140	III
Berkelium (97)	Bk-249	I
Beryllium (4)	Be-7	IV
Bismuth (83)	Bi-206	IV
	Bi-207	III
	Bi-210	II
	Bi-212	III
Bromine (35	Br-82	IV
Cadmium (48)	Cd-109	IV
Calcium (20)	Cd-115m	III
	Cd-115	IV
Californium (98)	Ca-45	IV
	Ca-47	IV
	Cf-249	I
	Cf-250	I
	Cf-252	I
Carbon (6)	C-14	IV
Cerium (58)	Ce-141	IV
	Ce-143	IV
	Ce-144	III

Cesium (55)	Cs-131	IV
	Cs-134m	III
	Cs-134	III
	Cs-135	IV
	Cs-136	IV
	Cs-137	III
Chlorine (17)	Cl-36	III
	Cl-38	IV
Chromium (24)	Cr-51	IV
Cobalt (27)	Co-56	III
	Co-57	IV
	Co-58m	IV
	Co-58	IV
	Co-60	III
Copper (29)	Cu-64	IV
Curium (96)	Cm-242	I
	Cm-243	I
	Cm-244	I
	Cm-245	I
	Cm-246	I
Dysprosium (66)	Dy-154	III
	Dy-165	IV
	Dy-166	IV
Erbium (68)	Er-169	IV
	Er-171	IV
Europium (63)	Eu-150	III
	Eu-152m	IV
	Eu-152	III
	Eu-154	II
	Eu-155	IV
Fluorine (9)	F-18	IV
Gadolinium (64)	Gd-153	IV
	Gd-159	IV
Gallium (31)	Ga-67	III
	Ga-72	IV
Germanium (32)	Ge-71	IV
Gold (79)	Au-193	III
	Au-194	III
	Au-195	III
	Au-196	IV
	Au-198	IV

	Au-199	IV
Hafnium (72)	Hf-181	IV
Holmium (67)	Ho-166	IV
Hydrogen (1)	H-3 (see tritium)	
Indium (49)	In-113m	IV
	In-114m	III
	In-115m	IV
	In-115	IV
Iodine (53)	I-124	III
	I-125	III
	I-126	III
	I-129	III
	I-131	III
	I-132	IV
	I-133	III
	I-134	IV
	I-135	IV
Iridium (77)	Ir-90	IV
	Ir-192	III
	Ir-194	IV
Iron (26)	Fe-55	IV
	Fe-59	IV
Krypton (36)	Kr-85m	III
	Kr-85m (uncompressed)†	V
	Kr-85	III
	Kr-85 (uncompressed)†	VI
	Kr-87	II
Lanthanum (57)	Kr-87m (uncompressed)†	V
Lead (82)	La-140	IV
	Pb-203	IV
	Pb-210	II
Lutetium (71)	Pb-212	II
	Lu-172	III
Magnesium (12)	Lu-177	IV
Manganese (25)	Mg-28	III
	Mn-52	IV
	Mn-54	IV
	Mn-56	IV
Mercury (80)	Hg-197m	IV
	Hg-197	IV
	Hg-203	IV
Mixed fission products (MFP)		II
Molybdenum (42)	Mo-99	IV
Neodymium (60)	Nd-147	IV
	Nd-149	IV
Neptunium (93)	Np-237	I
	Np-239	I
Nickel (28)	Ni-56	III
Niobium (41)	Ni-59	IV

	Ni-63	IV
	Ni-65	IV
	Nb-93m	IV
	Nb-95	IV
	Nb-97	IV
Osmium (76)	Os-185	IV
	Os-191m	IV
	Os-191	IV
	Os-193	IV
Palladium (46)	Pd-103	IV
	Pd-109	IV
Phosphorus (15)	P-32	IV
Platinum (73)	Pt-191	IV
	Pt-193	IV
	Pt-193m	IV
	Pt-197m	IV
	Pt-197	IV
Plutonium (94)	Pu-238 F	I
	Pu-239 F	I
	Pu-240	I
	Pu-241 F	I
	Pu-242	I
Polonium (84)	Po-210	I
Potassium (19)	K-42	IV
	K-43	III
Praseodymium (59)	Pr-142	IV
	Pr-143	IV
Promethium (61)	Pm-147	IV
	Pm-149	IV
Protactinium (91)	Pa-230	I
	Pa-231	I
	Pa-233	II
Radium (88)	Ra-223	II
	Ra-224	II
	Ra-226	I
	Ra-228	I
Radon (86)	Rn-220	IV
	Rn-222	II
Rhenium (75)	Re-183	IV
	Re-186	IV
	Re-187	IV
	Re-188	IV
	Re-Natural	IV
Rhodium (45)	Rh-103m	IV
	Rh-105	IV
Rubidium (37)	Rb-86	IV
	Rb-87	IV
	Rb-Natural	IV
Ruthenium (44)	Ru-97	IV

	Ru-103	IV
	Ru-105	IV
	Ru-106	III
Samarium (62)	Sm-145	III
	Sm-147	III
	Sm-151	IV
	Sm-153	IV
Scandium (21)	Sc-46	III
	Sc-47	IV
	Sc-48	IV
Selenium (34)	Se-75	IV
Silicon (14)	Si-31	IV
Silver (47)	Ag-105	IV
	Ag-110m	III
	Ag-111	IV
Sodium (11)	Na-22	III
	Na-24	IV
Strontium (38)	Sr-85m	IV
	Sr-85	IV
	Sr-89	III
	Sr-90	II
	Sr-91	III
	Sr-92	IV
Sulfur (16)	S-35	IV
Tantalum (73)	Ta-182	III
Technetium (43)	Tc-96m	IV
	Tc-96	IV
	Tc-97m	IV
	Tc-97	IV
	Tc-99m	IV
	Tc-99	IV
Tellurium (52)	Te-125	IV
	Te-127m	IV
	Te-127	IV
	Te-129m	III
	Te-129	IV
	Te-131m	III
	Te-132	IV
Terbium (65)	Tb-160	III
Thallium (81)	Tl-200	IV
	Tl-201	IV
	Tl-202	IV
	Tl-204	III
Thorium (90)	Th-227	II
	Th-228	I
	Th-230	I
	Th-231	I
	Th-232	III
	Th-234	II
	Th-Natural	III
Thulium (69)	Tm-168	III

	Tm-170	III
	Tm-171	IV
Tin (50)	Sn-113	IV
	Sn-117m	III
	Sn-121	III
	Sn-125	IV
Tritium (1)	H-3	IV
	H-3 (as a gas, as luminuous paint, or adsorbed on solid material.)	VII
Tungsten (74)	W-181	IV
	W-185	IV
	W-187	IV
Uranium (92)	U-230	II
	U-232	I
	U-233 F	II
	U-234	II
	U-235 F	III
	U-236	II
	U-238	III
	U-Natural	III
	U-Enriched F	III
	U-Depleted	III
Vanadium (23)	V-48	IV
	V-49	III
Xenon (54)	Xe-125	III
	Xe-131m	III
	Xe-131m (uncompressed) †	V
	Xe-133	III
	Xe-133 (uncompressed) †	VI
	Xe-135	II
Ytterbium (70)	Xe-135 (uncompressed) †	V
Yttrium (39)	Yb-175	IV
	Y-88	III
	Y-90	III
	Y-91m	III
	Y-91	IV
	Y-92	IV
Zinc (30)	Y-93	IV
	Zn-65	IV
	Zn-69m	IV
Zirconium (40)	Zn-69	IV
	Zr-93	III
	Zr-95	IV
	Zr-97	

* Atomic number shown in parentheses.
** Atomic mass number shown after the element symbol.
† Metastable state.

Figure: 25 TAC §289.254(v)(2)

	RADIOACTIVE HALF-LIFE		
Radionuclide	0 to 1000 days	1000 days to 10^6 years	Over 10^6 years
Atomic No. 1-81	Category III	Category II	Category III
Atomic No. 82 and over	Category I	Category I	Category III

IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture

Notice of Public Hearings

The Texas Department of Agriculture (the department) will hold six public hearings to take public comment on proposed amendments to the department's general cotton pest control program and cotton stalk destruction program rules, Title 4, Part 1, §§20.1, 20.3, 20.20, 20.22, and the proposed repeal of §20.23, which have been filed by the department for publication in the Friday, June 28, 2002 issue of the *Texas Register*.

The hearings will be held as follows:

(1) On Tuesday, July 2, 2002, beginning at 9:00 a.m., at the Wharton County Electric Cooperative, Inc, 1701 East Jackson, El Campo, Texas. For more information please contact Jennifer Bailey, Regional Director, Texas Department of Agriculture Gulf Coast Regional Office, 2646 S. Loop West, Suite 630, Houston, Texas 77054, (713) 666-8491.

(2) On Tuesday, July 9, 2002, beginning at 9:00 a.m., at the Texas Department of Agriculture Valley Regional Office, 900-B E. Expressway 83, San Juan, Texas, For more information, please contact Steve Bearden, Regional Director, Texas Department of Agriculture Valley Regional Office, 900-B E. Expressway 83, San Juan, Texas, (956) 787-8866.

(3) On Tuesday, July 9, 2002, beginning at 3:00 p.m., at the Texas A&M Cooperative Extension Center-Robstown, 10345 Agnes Street (Hwy. 44, 5 miles west of airport), Corpus Christi, Texas. For more information, please contact Steve Bearden, Regional Director, Texas Department of Agriculture Valley Regional Office, 900-B E. Expressway 83, San Juan, Texas, (956) 787-8866.

(4) Monday, July 15, 2002, beginning at 3:00 p.m., at the Texas A&M Cooperative Extension Center, 1300 A&M Circle, El Paso, Texas. For more information, please contact Ronald Bertrand, Regional Director, Texas Department of Agriculture West Texas Regional Office, 4502 Englewood Avenue, Lubbock, Texas, (806) 799- 8555.

(5) On Thursday, July 18, 2002, beginning at 1:00 p.m., at the Texas A&M Cooperative Extension Office, 126 South Covington, Hillsboro, Texas. For more information, please contact E.W. Wesley, Regional Director, Texas Department of Agriculture North Texas Regional Office, 1720 Regal Row, Suite 118, Dallas, Texas 75235, (214) 631-0265.

(6) On Tuesday, July 23, beginning at 1:30 p.m., at the Texas Boll Weevil Eradication Foundation Offices, 304 West Hwy. 79, Thorndale, Texas. For more information, please contact E.W. Wesley, Regional Director, Texas Department of Agriculture North Texas Regional Office, 1720 Regal Row, Suite 118, Dallas, Texas 75235, (214) 631-0265.

For more information regarding the rule proposal, please contact Ed Gage, Coordinator for Pest Management and Citrus Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, (512) 463-7619.

TRD-200203846
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: June 19, 2002

♦ ♦ ♦

Office of the Attorney General

Texas Solid Waste Disposal Act and the Texas Water Code Enforcement Settlement Notice

The State of Texas hereby gives notice of the proposed resolution of an environmental enforcement lawsuit brought pursuant to the Texas Solid Waste Disposal Act and Texas Water Code. Before the State may settle a judicial enforcement action, pursuant to Section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed settlement agreement. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Law.

Case Title and Court: State of Texas v. The Isiah Thomas Facility PRP Group, No. GV2- 01707 in the 261st Judicial District, Travis County, Texas.

Nature of Suit: This suit concerns disposal of municipal solid wastes at a site consisting of approximately ten acres located south of Broadway Road, approximately 0.2 miles east of the intersection of Broadway Road and Main Street in the Tamina area of Montgomery County, Texas (the Property).

Proposed Settlement Agreement and Release: The proposed Settlement Agreement and Release settles all of the claims in the suit. The Settlement Agreement and Release releases the members of Defendant, The Isiah Thomas Facility PRP Group, and any other persons with whom the Defendant has settled with regard to the Property, from further liability to the State with respect to the Property in exchange for Defendant's remediation of the Property in accordance with a Remedial Action Plan approved by the Texas Natural Resource Conservation Commission.

For a complete description of the proposed settlement, the complete proposed Settlement Agreement and Release should be reviewed. Requests for copies of the agreement and written comments on the proposed settlement should be directed to Liz Bills, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, please contact A.G. Younger, Agency Liaison, at (512) 463-2110

TRD-200203827
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: June 18, 2002

♦ ♦ ♦

Texas Building and Procurement Commission

Addendum #1 to Notice of Contract Airline Fares Request for Proposal

The Texas Building and Procurement Commission (TBPC) announces Addendum #1 to Request for Proposal (RFP) for Contract Airline Fares (RFP #12-0502AF) to be provided to the State of Texas pursuant to the Texas Government Code, §2171.052. Any contract which results from this RFP shall be for the term of September 1, 2002, through August 31, 2003.

Pre-proposal Conference:

Addendum #1 reflects needed revisions that were identified at the pre-proposal conference held June 6, 2002, and written questions received by June 11, 2002. A summary of the questions and clarification requests is also available.

Submission of Response to the RFP:

Responses to the RFP shall be submitted to and received by the TBPC Bid Tabulation on or before 3:00 p.m., Central Daylight Time, on July 23, 2002, and shall be delivered or sent to: The Texas Building and Procurement Commission, Attn: Bid Tabulation, RFP #12-0502AF, 1711 San Jacinto Boulevard, Room 180, Austin, Texas 78701, or P.O. Box 13047, Austin, Texas 78711-3047.

Copies of RFP:

If you are interested in receiving a copy of the RFP and Addendum #1, contact Ms. Bonnie Barrington, at (512) 463-5773 to request a copy.

TRD-200203719
Juliet U. King
Legal Counsel
Texas Building and Procurement Commission
Filed: June 14, 2002

♦ ♦ ♦

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 June 7, 2002, through June 13, 2002. The public comment period for these projects will close at 5:00 p.m. on July 19, 2002.

FEDERAL AGENCY ACTIONS:

Applicant: Texas City Terminal Railway Company; Location: The project is located at the Texas City Turning Basin and Industrial Canal berthing areas, Texas City Channel, Port of Texas City, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Virginia Point, Texas. Approximate UTM Coordinates: Zone 15; Easting: 316500; Northing: 3249500. Project Description: The applicant requests, on behalf of a coalition of companies, an amendment to authorize new-work hydraulic or mechanical dredging and maintenance dredging to -45 feet mean low tide for a 10 year period at berthing areas numbers 11, 12, 40, and 41. New-work dredged material consisting of virgin clay materials would include an estimated 188,300 cubic yards at berthing areas 11 and 12 and an estimated 226,700 cubic yards at berthing areas 40 and 41. The applicant also requests to continue maintenance dredging of other berthing areas to previously authorized depths for a 10 year period. Dredged material would be placed in Snake Island Disposal Area. CCC Project No.: 02-0159-F1; Type of Application: U.S.A.C.E. permit application #17599(03) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: AIMCOR, Inc.; Location: The project is located at AIMCOR's existing facility on the Texas City Ship Channel, Texas City, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Virginia Point, Texas. Approximate UTM Coordinates: Zone 15; Easting: 316000; Northing: 3249600. Project Description: The applicant proposes to amend the permit to include the removal and replacement of two existing breasting dolphins located on the east side of their facility. In addition, one new breasting dolphin will be installed resulting in spacing changes between the four previously authorized breasting dolphins. The applicant also proposes to demolish the existing bridge between the east end of the existing bulkhead and the chute maintenance platform and to install a new bridge between the platform and the existing shoreline. CCC Project No.: 02-0160-F1; Type of Application: U.S.A.C.E. permit application #16686(10) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at 512/475-0680.

TRD-200203842
Larry Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: June 19, 2002

♦ ♦ ♦

Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective July 1, 2002

LOCAL SALES TAX RATE CHANGES EFFECTIVE JULY 1, 2002

A 1/4% city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective July 1, 2002 in the city listed below.

CITY NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Douglassville (Cass Co)	2034082	.002500	.065000

* **Note:** The City of Douglassville did not have local sales tax prior to this election and will be listed as a new city that is adopting a beginning sales tax rate of ¼% to fund their 4B industrial development corporation projects.

The 1/2% city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** was abolished and the new rate will become effective July1, 2002 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Kirbyville (Jasper Co)	2121013	.010000	.072500

An additional 1/2% city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective July 1, 2002 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Crowley (Johnson Co)	2220228	.015000	.077500
Crowley (Tarrant Co)	2220228	.015000	.077500
Northlake (Denton Co)	2061319	.020000	.082500
Rollingwood (Travis Co)	2227052	.015000	.082500

An additional 1/4% city sales and use tax for Municipal Street Maintenance and Repair as permitted under Section 327 of the Texas Tax Code will become effective July 1, 2002, in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Evant (Coryell Co)	2097031	.017500	.080000
Evant (Hamilton Co)	2097031	.017500	.080000
Hickory Creek (Denton Co)	2061186	.012500	.075000
Pantego (Tarrant Co)	2220148	.017500	.080000
Taft (San Patricio Co)	2205030	.017500	.080000

An additional 3/4% city sales and use tax that includes an additional 1/2% for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** plus an additional 1/4% city sales and use tax for Municipal Street Maintenance and Repair as permitted under Section 327 of the Texas Tax Code will become effective July 1, 2002 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Bartonville (Denton Co)	2061211	.017500	.080000

A 1/2% Special Purpose District sales and use tax will become effective July 1, 2002 in the Special Purpose Districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Blanco County South Library District	5016501	.005000	SEE NOTE 1
San Diego Municipal Devel. Dist.	5066500	.005000	SEE NOTE 2

NOTE 1: The Blanco County South Library District is located in the southern portion of Blanco County, which has a county sales and use tax, but the district does not include all of Blanco County. The Blanco County South Library District does **not** include any area within the City of Blanco. The unincorporated area of Blanco County in ZIP codes 78027, 78070, 78606, and 78620 is partially located within the Blanco County South Library District. Contact the district representative at 830/833-4280 for additional boundary information.

NOTE 2: The boundary of the San Diego Municipal Development District is the portion of the City of San Diego located in Duval County. The district does **not** include any area of the city within Jim Wells County. Contact the City of San Diego at 361/279-3341 for additional boundary information.

TRD-200203786
Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
Filed: June 18, 2002

♦ ♦ ♦

Notice of Award

Pursuant to Sections 403.011, 2155.001, and 2156.121, Texas Government Code and Chapter 54, Subchapters F and G, Texas Education Code, the Comptroller of Public Accounts (Comptroller) announces this notice of contract award.

The original notice of request for proposals (RFP #129b) was published in the September 28, 2001 issue of the *Texas Register* at (26 TexReg 7618). The first Amended Notice of Request for Proposals was published in the October 5, 2001 issue of the *Texas Register* at (26 TexReg 7917). The second Amended Notice of Request for Proposals was published in the October 19, 2001 issue of the *Texas Register* at (26 TexReg 8368).

The contractor will assist the Comptroller by providing plan manager services for the higher education Section 529 savings plan administered by the Texas Prepaid Higher Education Tuition Board as authorized under Senate Bill 555.

The contract is awarded to Enterprise Capital Management, Inc., Atlanta Financial Center, 3343 Peachtree Road, N.E., Suite 450, Atlanta, Georgia 30326-1022. The total amount of the contract is based on the market value of assets managed. The contract was executed on June 17, 2002. The term of the contract is June 17, 2002 through August 31, 2007 (plus 2 one-year options to renew).

TRD-200203837
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: June 19, 2002

♦ ♦ ♦

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 #143a) from qualified, independent firms to provide consulting services to Comptroller. The successful respondent will assist Comptroller in conducting a management and performance review of the Clear Creek Independent School District (Clear Creek ISD). Comptroller reserves the right, in its sole discretion, to award one or more contracts for a review of the Clear Creek ISD included in this RFP. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about October 1, 2002.

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, June 28, 2002, 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://esbd.tbpc.state.tx.us after 2 p.m. (CZT) on Friday, June 28, 2002.

Mandatory Letters of Intent and Questions: All Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Harris at: (512) 475-0973, not later than 2:00 p.m. (CZT), on Tuesday,

July 16, 2002. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace no later than July 18, 2002, or as soon thereafter as practical. Mandatory Letters of Intent received after the 2:00 p.m., July 16th deadline will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Mandatory Letters of Intent to propose.

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, July 29, 2002. Proposals received after this time and date will not be considered. Proposals will not be accepted from respondents that do not submit mandatory letters of intent by the July 16, 2002, deadline. Respondents shall be solely responsible for confirming the timely receipt of proposals.

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 or contracts. 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 any contracts 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 - June 28, 2002, 2 p.m. CZT; All Mandatory Letters of Intent and Questions Due - July 16, 2002, 2 p.m. CZT; Official Responses to Questions Posted - July 18, 2002, or as soon thereafter as practical; Proposals Due - July 29, 2002, 2 p.m. CZT; Contract Execution - August 15, 2002, or as soon thereafter as practical; Commencement of Project Activities - October 1, 2002.

TRD-200203838
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller Of Public Accounts
Filed: June 19, 2002

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in 303.003, 303.009, and 304.003, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 06/24/02 - 06/30/02 is 18% for Consumer [1]/Agricultural/Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 06/24/02 - 06/30/02 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 07/01/02 - 07/31/02 is 10% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 07/01/02 - 07/31/02 is 10% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200203790
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 18, 2002

♦ ♦ ♦

Credit Union Department

Application(s) for a Merger or Consolidation

Notice is given that the following application has been filed with the Texas Credit Union Department and is under consideration:

An application was received from Texaco Houston Credit Union (Bellaire) seeking approval to merge with ChevronTexaco Federal Credit Union (Oakland, California) with the latter being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.tcud/applications.html. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200203822
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 18, 2002

♦ ♦ ♦

Application(s) to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application for a name change was received for Tarrant County Employees Credit Union, Fort Worth, Texas. The proposed new name is Tarrant County Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.tcud.state.tx.us/applications.html. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200203820
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 18, 2002

♦ ♦ ♦

Application(s) to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from GPS Community Credit Union, Galena Park, Texas to expand its field of membership. The proposal would permit persons who live, work, or attend school in the North Channel Area, excluding persons primarily eligible for membership in an occupation or association based credit union as of the date of this amendment (June 6, 2002) having an office within this area, to be eligible for membership in the credit union.

An application was received from Employees Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit persons who live, work or attend school in Kaufman County, Texas, to be eligible for membership in the credit union.

An application was received from Government Employees Credit Union of El Paso, El Paso, Texas to expand its field of membership. The proposal would remove the exclusionary language protecting the field of membership of certain occupational-based credit unions having offices within El Paso County.

An application was received from Keystone Credit Union, Tyler, Texas, to expand its field of membership. The proposal would permit persons who live or work within a 10-mile radius of the following locations: 11877 CR 492, Tyler, Texas and 1550 Rice Road, Tyler, Texas, to be eligible for membership in the credit union.

An application was received from Medical Community Credit Union, Odessa, Texas, to expand its field of membership. The proposal would permit persons who live, work or attend school in the following counties: Gaines, Pecos, Reeves, Crane, Upton, Martin and Glasscock County, Texas, to be eligible for membership in the credit union.

An application was received from MemberSource Credit Union, Houston, Texas to expand its field of membership. The proposal would permit employees of Caminus (formerly Altra Technologies) who work in or are paid from New York, New York, to be eligible for membership in the credit union.

An application was received from MemberSource Credit Union, Houston, Texas to expand its field of membership. The proposal would permit employees of CW Rod Tool Company who work in or are paid or supervised from Houston, Texas, to be eligible for membership in the credit union.

An application was received from Midwestern State University Credit Union, Wichita Falls, Texas to expand its field of membership. The proposal would permit all full-time administration, faculty, classified, and at-will employees of Vernon College (including all branches), to be eligible for membership in the credit union.

An application was received from NCE Credit Union, Corpus Christi, Texas to expand its field of membership. The proposal would permit employees of the Nueces County Drainage and Conservation District #2, to be eligible for membership in the credit union.

An application was received from NCE Credit Union, Corpus Christi, Texas to expand its field of membership. The proposal would permit employees of the Nueces County Water Control District #3, to be eligible for membership in the credit union.

An application was received from Neighborhood Credit Union, Dallas, Texas to expand its field of membership. The proposal would remove exclusionary language protecting the field of membership of certain occupational based credit unions having offices in the City of Arlington, Texas.

An application was received from Texas Bay Area Credit Union, Pasadena, Texas to expand its field of membership. The proposal would permit persons who live or work within the City of Pasadena, City of Deer Park, and the City of La Porte, Texas, to be eligible for membership in the credit union.

An application was received from Texas Bay Area Credit Union, Pasadena, Texas to expand its field of membership. The proposal would permit persons who live or work within an area bounded by Lake Houston on the north, US Hwy 59 and I-610 on the West, San Jacinto River on the east, and the Houston Ship Channel on the south in Harris County, Texas, to be eligible for membership in the credit union.

An application was received from Premier Credit Union, Chatsworth, California to expand its field of membership of its branch office located in Houston, Texas. The proposal would permit employees, annuitants, and their family members of Baker Hughes Business Support Services, Houston, Texas, to be eligible for membership in the credit union.

An application was received from Star One Credit Union, Sunnyvale, California to expand its field of membership of its branch office located in Austin, Texas. The proposal would permit employees of Hire.com who work at or are paid from or supervised from or headquartered in Austin, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.tcud.state.tx.us/applications.html. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200203819
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 18, 2002

♦ ♦ ♦

Notice of Final Action Taken

In accordance with the provisions of 7 TAC Section 91.103, the Credit Union Department provides notice of the final action taken on the following application(s):

Application(s) to Expand Field of Membership - Approved

Benchmark Credit Union, Midland, Texas - See *Texas Register* issue dated February 22, 2002.

Texans Credit Union (2 applications), Richardson, Texas - See *Texas Register* issue dated February 22, 2002.

Texas Dow Employees Credit Union, Lake Jackson, Texas - See *Texas Register* issue dated March 29, 2002.

East Texas Professional Credit Union, Longview, Texas - See *Texas Register* issue dated April 26, 2002.

Ward County Teacher's Credit Union, Monahans, Texas - See *Texas Register* issue dated April 26, 2002.

Application(s) to Amend Articles of Incorporation - Approved

Corpus Christi Area Teachers Credit Union, Corpus Christi, Texas - See *Texas Register* issue dated March 29, 2002.

TCUL Credit Union, Dallas, Texas - See *Texas Register* issue dated March 29, 2002.

Application(s) for a Merger or Consolidation - Approved

Wetex Credit Union and Kraft America Credit Union - See *Texas Register* issue dated February 22, 2002.

TRD-200203821
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 18, 2002

♦ ♦ ♦

Texas Department of Criminal Justice

Award Posting Notice

Contract Administrator: T. Ossowski

Texas Department of Criminal Justice

Contracts & Procurement, Contracts Br.

Two Financial Plaza, Suite 525

Huntsville, Texas 77340

Solicitation No: 696-FD-2-B020

Solicitation Title: Re-roof Craft Shop, Beto I Unit, Tennessee Colony, Texas

Contract Number: 696-FD-2-2-C0199

Award Date: 6/14/02

Amount Awarded: $173,455.00

Awarded Vendor: McClung Roofing Inc., 3200 Handley Ederville Rd. Fort Worth, Texas 76118

Vendor is not a HUB

TRD-200203789
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: June 18, 2002

♦ ♦ ♦

Notice to Bidders

The Texas Department of Criminal Justice invites bids for the repair of sewer lines at the Goree Unit, Huntsville, Texas. The project consists of construction of sewer line repair at the existing TDCJ Goree Unit, 7504 Hwy 75 South, Huntsville, Texas 77344. The work includes sewer line repair, as further shown in the Contract Documents prepared by, TDCJ A&E, Ron Roche.

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 **5 (five)** consecutive years experience in the repair of sewer lines and provide references for at least three projects 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 Proposals must be accompanied by a Bid Deposit in the amount of 5% of greatest amount bid. 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 **$75.00 (Seventy Five Dollars, nonrefundable)** 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 Texas Department of Criminal Justice:

Texas Department of Criminal Justice

Contract and Procurement Department

Two Financial Plaza, Ste 525, Huntsville, Texas 77340

Contact: Thomas M. Ossowski CTP

Ph: (936) 437 7131; Fax: (936) 437 7009

A Pre-Bid conference will be held at **2:00PM** on **July 9, 2002** at the Goree Unit, Huntsville, Texas, **followed by a site-visit. ONLY ONE SCHEDULED SITE VISIT WILL BE HELD FOR REASONS OF SECURITY AND PUBLIC SAFETY; THEREFORE, BIDDERS ARE STRONGLY ENCOURAGED TO ATTEND.**

Bids will be publicly opened and read at **10:00AM on July 24, 2002**, in the Contracts and Procurement Conference Room located in the West Hill Mall, Suite 525, Two Financial Plaza, Huntsville, Texas.

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. Documents will be available on June 24, 2002.

TRD-200203764
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: June 17, 2002

♦ ♦ ♦

Texas Council for Developmental Disabilities

Intent to Award Funds

The Texas Council for Developmental Disabilities announces its intent to award grant funds to the Texas Association of Child Care Resource and Referral Agencies for a project that will assist families to access inclusive child-care resources throughout Texas.

Background:

At least 37 states, including Texas, have a statewide network of child-care resource and referral agencies. The Texas Association of Child Care Resource and Referral Agencies (TACCRRA) was established as a non-profit organization in 1990 by local child-care resource and referral agencies that provide services to parents, providers, and communities. TACCRRA also offers a variety of tools and services to child-care providers and parents, including one-on-one guidance and assistance. TACCRRA became the statewide network to provide child-care resource and referral services in Texas under federal funding through the Texas Workforce Commission in the fall of 2000, now authorized by HB 1307, 77th Legislature (R).

Description of Project:

The Texas Association of Child Care Resource and Referral Agencies, will assist families with children ages 0-22 who have developmental disabilities or developmental delays, or who are at risk for developmental delays, to find and access inclusive child-care in their communities.

The project will work on building new and reinforcing existing collaborative relationships at the state and local levels including ECI, TEA, TYC, local education agencies, local mental health agencies, etc., develop an inclusive child-care resource guide for use by the parent-counselors in the 8 regional TACCRRA offices, develop a training program on inclusion to be used in training activities for all parent-counselors throughout the state, create a permanent inclusive childcare specialist position at the state office, and expand and improve TACCRRA's information resources.

Terms and Funds:

The Texas Council for Developmental Disabilities intends to award funds to the Texas Association of Child Care Resource and Referral Agencies for this project. Estimated funding not to exceed $125,000 will be made available for up to 18 months beginning July 1, 2002 and concluding December 31, 2003. The Texas Council for Developmental Disabilities reserves the rights to discontinue funding if grants performance criteria are not met or funds are unavailable due to changes in grants funding priorities.

For information regarding this announcement please contact Carl Risinger, Grants Management Director, Texas Council for Developmental Disabilities, (512) 437-5435.

TRD-200203826
Roger A. Webb
Executive Director
Texas Council for Developmental Disabilities
Filed: June 18, 2002

♦ ♦ ♦

Edwards Aquifer Authority

Additional Notice of Proposed Initial Regular Permits and Technical Summaries Based on the Filing of Amendments to Applications for an Initial Regular Permit

The Edwards Aquifer Authority Hereby Gives Additional Notice of the issuance of Proposed Initial Regular Permits ("PIRP") and proposed denials of Applications for Initial Regular Permits ("IRP Applications"). On November 8, 2002, the Edwards Aquifer Authority ("Authority") filed with the Secretary of State and issued its Notice of Proposed Initial Regular Permits and Technical Summaries ("PIRP Notice"). The PIRP Notice was published in the November 17, 2000, issue of the *Texas Register* (25 TexReg 11557) (2000). After this date, the following IRP Applications were substantively and materially amended:

Application No.	Applicant Name	Date of Amendment	Nature of Amendment
BE00003	Cadillac Water Corporation.	12/6/00	Increased Maximum Historical Use Claim
BE00010	Baptist Childrens Home	9/28/01	Increased Maximum Historical Use Claim
BE00035	M M Schumann Investments. Inc.	12/12/00	Increased Maximum Historical Use Claim
BE00045	Rctama Partners Ltd.	4/18/02	Increased Maximum Historical Use Claim
BE00080	City of Selma Water Utilities	6/3/02	Increased Maximum Historical Use Claim
BE00097	Johnson & Roberts LLC	2/19/02	Increased Maximum Historical Use Claim
BE00120	L&H Packing Company	8/18/01	Increased Maximum Historical Use Claim
BE00211	Richard Vogt	2/20/02	Increased Maximum Historical Use Claim
BE00249	City of San Antonio	2/15/02	Increased Maximum Historical Use Claim
HA00227	Don B. & Karen S.Meador	10/2/01	Increased Maximum Historical Use Claim
HA00230	Arthur Douglas Tipps	12/11/00	Increased Maximum Historical Use Claim
ME00358	Kathleen Davenport Carskadden	9/28/01	Increased Maximum Historical Use Claim
ME00444	Russel Bros. Cattle Co.	12/18/00	Increased Maximum Historical Use Claim
ME00467	Larry& Stephen Bourquin dba L&S Bourquin Farm	12/18/00	Increased Maximum Historical Use Claim
ME00476	Stull Farm	9/24/01	Increased Maximum Historical Use Claim
UV00434	Glenn W Morgan	12/11/00	Increased Maximum Historical Use Claim
UV00571	Briscoe Ranch Inc.	2/11/02	Increased Maximum Historical Use Claim
BE00092	Division Laundry & Cleaners	4/11/02	Increased Maximum Historical Use Claim

The General Manager has determined that the amendments to the above-referenced IRP Applications are of such a character to require that the Amended IRP Applications be subjected to additional technical review pursuant to §707.504 of the Authority rules. The General Manager of the Authority has completed the additional technical review of the Amended IRP Applications and has prepared PIRPs

and proposed denials of the Amended IRP Applications, as well as technical summaries of these proposed actions. On June 14, 2002, the General Manager noticed the above-referenced applicants by mail that technical review of the Amended IRP Applications was complete and provided the applicants with a copy of the PIRPs or denials and the technical summaries. Additionally, the General Manager has determined that an additional Notice of Proposed Initial Regular Permits and Technical Summaries based on the filing of amendments to IRP Applications be published in accordance with §707.510 of the Authority's rules.

The PIRPs, if issued as final Initial Regular Permits, would authorize the permittees to withdraw groundwater from the Edwards Aquifer according to the terms and conditions set forth in the permits. The conditions contained in the PIRPs concern the permit term, groundwater withdrawal amounts, purpose of use, location of points of withdrawal, place of use, meters, maximum rate of withdrawal, maximum historical use, statutory minimums, phase-1 proportionally adjusted amounts, step-up amounts, phase-2 proportionally adjusted amounts, equal percentage reduction amounts, transfers, reporting, fees, beneficial use, waste, other water sources, termination, interruption, and suspension of groundwater withdrawal amounts, restoration of groundwater withdrawal amounts, diversions of surface water from the Guadalupe River, amendments, conservation, reuse, registration of wells, water use reporting, water quality, well construction, operation, maintenance and closure, well head protection and spacing, interim authorization, filing and recording of permits, change of address or telephone numbers, compliance with applicable law, and enforcement.

A copy of the PIRPs and proposed denials of Amended IRP Applications, along with the Technical Summaries, are available for public inspection at the offices of the Edwards Aquifer Authority, 1615 North St. Mary's Street, San Antonio, Texas 78215, Monday through Friday between the hours of 7:30 a.m. and 4:30 p.m.

A brief description of the PIRPs and proposed denials of Amended IRP Applications, summary of the reasons for denials, and Technical Summaries are set out in the attached Table of Proposed Initial Regular Permits and Proposed Denials of Applications for Initial Regular Permits.

All PIRPs and any proposed denials of Amended IRP Applications, will be presented to the board of directors for action within 60 days of the date of this Notice, unless a Request for a Contested Case Hearing is submitted within 30 days after publication of this Notice in the Texas Register pursuant to §§707.601-.604 (relating to Procedures for Contested Case Hearings on Application) of the Authority's rules.

An applicant, another applicant for a groundwater withdrawal permit, or a permittee holding a groundwater withdrawal permit may request a hearing on an Amended IRP Application by filing with the Docket Clerk of the Authority on or before the 30th day after the publication of this notice in the *Texas Register* in accordance with §§707.601-.604. Specifically, the deadline for filing a Request for a Contested Case Hearing is on or before July 29, 2002, at 4:30 p.m. at the Authority's offices.

A Request for a Contested Hearing Packet and instructions for filing a Request for a Contested Case Hearing may be obtained by contacting the Docket Clerk of the Authority, Ms. Brenda J. Davis.

This Additional Notice of Proposed Initial Regular Permits and Technical Summaries Based on the Filing of Amendments to Applications for an Initial Regular Permit is published pursuant to §707.510(b) of the Authority's rules, and will be published in the Texas Register and in the following six newspapers with circulation within the jurisdiction of the Authority: Hondo Anvil Herald; Medina Valley Times; New Braunfels Herald Zeitung; San Antonio Express-News; San Marcos Daily Record; and the Uvalde Leader-News.

If you have questions on any information in this notice or in the event you require additional information on hearing procedures, you may contact Ms. Brenda J. Davis, Docket Clerk for the Authority, at (210) 222-2204 or 1-800-292-1047.

EXPLANATION FOR PROPOSED ACTION

D	Deny
G	Grant
L	The applicant did not file a Declaration of Historical Use on or before December 30, 1996 (25 Tex. Reg. 7586 (2000) to be codified at 31 TEX. ADMIN. CODE § 711.98(j)(1));
1	The application does not identify an existing well (*see id.* § 711.98(j)(3));
2	on June 1, 1993, the applicant, or a prior user who is the applicant's predecessor or in interest, did not own the well for which the withdrawals were made. (*see id.* § 711.98(j)(4));
3	The groundwater withdrawn from the well immediately prior to its intake into the well casing was not physically located within and discharged directly from the Edwards Aquifer (*see id.* § 711.98(j)(7)), (i.e. the well is not an Edwards Aquifer well);
4	The withdrawals were not made during the historical period (*see id.* § 711.98(j)(9);
5	The withdrawals were not placed to a beneficial use for irrigation, municipal, or industrial use (*see id.* § 711.98(j)(11));
E	The well qualifies for exempt well status (*see id.* § 711.98(j)(12);

TABLE OF PROPOSED INITIAL REGULAR PERMITS AND PROPOSED DENIALS OF APPLICATIONS FOR INITIAL REGULAR PERMITS (TECHNICAL SUMMARIES)

Applicant Number	Applicant Name	Purpose	Proposed Action	Original Claim	Amended Claim	Proposed IRP	Pool	Place of Use
BE00003	Cadillac Water Corporation	Municipal	G	52.450	75.000	29.898	San Antonio	Bexar
BE00010	Baptist Childrens Home	Municipal	G	6.830	25.000	4.867	San Antonio	Bexar
BE00035	MM Schumann Investments, Inc.	Irrigation	G	284.000	340.000	291.400	San Antonio	Bexar
BE00045	Retama Partners, Ltd.	Irrigation	G	0	492.000	492.000	San Antonio	Bexar
BE00045	Retama Partners, Ltd.	Industrial	D4	966.000	837.000	0	San Antonio	Bexar
BE00080	City of Selma Water Utilities	Municipal	G	163.090	163.090	110.628	San Antonio	Bexar
BE00080	City of Selma Water Utilities	Irrigation	G	0	226.000	226.000	San Antonio	Bexar
BE00097	Johnson & Roberts, L.L.C.	Industrial	G	156.000	409.700	111.155	San Antonio	Bexar
BE00120	L&H Packing Company	Industrial	G	636.000	794.000	453.170	San Antonio	Bexar
BE00211	Richard Vogt	Irrigation	G	288.000	294.000	184.000	San Antonio	Bexar
BE00249	San Antonio Water System	Municipal	D4	52.790	60.400	0	San Antonio	Bexar
HA00227	Don B. and Karen S. Meador	Irrigation	G	81.000	141.000	133.200	San Antonio	Hays
HA00230	Arthur Douglas Tipps	Irrigation	G	10.000	58.000	14.800	San Antonio	Hays
ME00358	Kathleen Davenport Carskadden	Irrigation	G	1270.000	1346.000	1346.000	San Antonio	Medina
ME00444	Russell Bros. Cattle Co.	Irrigation	G	292.000	306.000	292.000	San Antonio	Medina
ME00467	Larry & Stephen Bourquin dba L&S Bourquin Farm	Irrigation	G	583.800	617.800	583.800	San Antonio	Medina
ME00476	Stull Farm	Irrigation	G	152.120	336.000	75.000	San Antonio	Medina
UV00434	Glen W. Morgan	Irrigation	D5	648.600	900.00	0	Uvalde	Uvalde
UV00571	Briscoe Ranch, Inc.	Irrigation	G	2639.880	3058.670	2088.949	Uvalde	Uvalde
BE00092	Division Laundry & Cleaners	Industrial	G	102.000	192.930	72.663	San Antonio	Bexar

♦ ♦ ♦

TRD-200203844
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Filed: June 19, 2002

Texas Department of Health

Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Pet Imaging SWH LTD	L05462	Houston	00	4/25/02
N Richland Hills	Naresh H. Patel, M.D. PA	L05520	NRichland Hills	00	4/15/02
Throughout TX	H L Zumwalt Construction Inc	L05551	Helotes	00	4/30/02
Tyler	Allens Nutech Inc.	L05511	Tyler	00	4/15/02

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Abilene	Hendrick Medical Center	L02433	Abilene	74	4/16/02
Abilene	Hendrick Medical Center	L02433	Abilene	75	4/24/02
Amarillo	Amarillo Heart Group PA	L04697	Amarillo	16	4/29/02
Arlington	D Harris Consulting	L04845	Arlington	04	4/23/02
Amarillo	Baptist St. Anthonys Health System	L01259	Amarillo	65	4/18/02
Austin	Heart Hospital IV LP	L05428	Austin	04	4/19/02
Austin	Columbia St Davids Healthcare System LP	L03273	Austin	47	4/28/02
Beaumont	Exxonmobil Chemical Company	L02316	Beaumont	30	4/15/02
Bedford	Carter Bloodcare	L00630	Bedford	38	4/22/02
Big Spring	Alon USA LP	L04950	Big Spring	04	4/24/02
Channelview	Equistar Chemicals LP	L00064	Channelview	36	4/17/02
Channelview	Enpro Systems Incorporated	L04990	Channelview	06	4/26/02
Cleburne	Walls Regional Hospital	L02039	Cleburne	21	4/26/02
College Station	College Station Hospital LP	L02559	College Station	40	4/22/02
Dallas	Baylor University Medical Center	L01290	Dallas	56	4/16/02
Dallas	Pet Net Pharmaceuticals, Inc.	L05193	Dallas	10	4/16/02
Dallas	Methodist Hospitals of Dallas	L00659	Dallas	40	4/18/02
Denton	Network Cancer Care of Denton	L05348	Denton	08	4/16/02
Dumas	Memorial Hospital	L03540	Dumas	17	4/18/02
Ft Worth	Ft Worth Osteopathic Hospital Inc	L00730	Ft Worth	52	4/23/02
Ft. Worth	Radiology Associates of Tarrant County PA	L05387	Ft. Worth	02	4/18/02
Garland	Garland Physicians Hospital LTD	L02333	Garland	25	4/29/02
Harlingen	Valley Baptist Medical Center	L01909	Harlingen	50	4/16/02
Houston	Texas Nuclear Imaging Inc	L05009	Houston	16	4/22/02
Houston	Columbia Hospital Corp of Houston	L02038	Houston	36	4/22/02
Houston	Cooperheat-MQS Inc	L00087	Houston	94	4/23/02
Houston	BIOTECX Laboratories Inc	L04396	Houston	03	4/24/02
Huntsville	Huntsville Memorial Hospital	L02822	Huntsville	09	4/24/02
Kingwood	RCOA Imaging Services Inc	L05329	Kingwood	04	4/24/02
Lake Jackson	Non Destructive Inspection Corporation	L02712	Lake Jackson	98	4/25/02
Lubbock	University Medical Center	L04719	Lubbock	48	4/19/02

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Lubbock	M Fawwaz Shoukfeh MD PA	L05276	Lubbock	08	4/24/02
Mauriceville	S & T International Inc	L03652	Mauriceville	32	4/29/02
Midland, TX	Herndon OCI Inc	L04861	Midland	06	4/30/02
New Braunfels	McKenna Memorial Hospital	L02429	New Braunfels	31	4/16/02
Paris	Texas Oncology PA	L05489	Paris	06	4/23/02
Pasadena	CHCA Bayshore LP	L00153	Pasadena	74	4/15/02
Rosenberg	Visions Metals	L05253	Rosenberg	01	4/16/02
San Angelo	Shannon Clinic	L04216	San Angelo	22	4/25/02
San Antonio	Methodist Healthcare System of San Antonio	L05440	San Antonio	02	4/15/02
San Antonio	Diagnostic Imaging Associates of San Antonio	L05187	San Antonio	02	4/19/02
San Antonio	Baptist Health System	L00455	San Antonio	109	4/24/02
San Benito	Healthmont of Texas I LLC	L04567	San Benito	08	4/30/02
Sunray	Diamond Shamrock Refining	L04398	Sunray	11	4/23/02
Throughout TX	Solutia, Inc.	L00219	Alvin	65	4/18/02
Throughout TX	Global Xray & Testing Corporation	L03663	Aransas Pass	89	4/29/02
Throughout TX	Lower Colorado River Authority	L02738	Austin	30	4/16/02
Throughout TX	Texas Natural Resource Conservation Com	L01715	Austin	33	4/25/02
Throughout TX	Texas Dept of Transportation	L00197	Austin	91	4/30/02
Throughout TX	Phillips Pipe Line Company	L02083	Bartlesville, OK	17	4/15/02
Throughout TX	Gulf Coast Weld Spec	L05426	Buna	13	4/16/02
Throughout TX	Amtech Roofing Consultants. Inc.	L04486	Dallas	04	4/17/02
Throughout TX	Pro-Log	L01828	Denver City	21	4/17/02
Throughout TX	Pro-Log	L01828	Denver City	22	4/30/02
Throughout TX	City of Granbury	L05326	Granbury	01	4/30/02
Throughout TX	Cooperheat-MQS, Inc.	L00087	Houston	93	4/15/02
Throughout TX	Williams Brothers Construction Company	L04823	Houston	04	4/24/02
Throughout TX	Oceaneering International Inc	L04463	Houston	27	4/25/02
Throughout TX	Washington Group International Inc	L02662	Houston	82	4/30/02
Throughout TX	Perf-O-Log, Inc.	L05478	Iowa Colony	01	4/17/02
Throughout TX	Longview Inspection Inc	L01774	La Porte	178	4/22/02
Throughout TX	Mundy Maintenance and Service LLC	L04360	Pampa	24	4/30/02
Throughout TX	Conam Inspection	L05010	Pasadena	50	4/16/02
Throughout TX	Technical Welding Laboratory, Inc.	L02187	Pasadena	145	4/17/02
Throughout TX	Wheeler Coatings Asphalt Inc	L05059	Round Rock	02	4/23/02
Throughout TX	Radiological Consultants Inc	L04309	Saginaw	07	4/23/02
Tyler	East Texas Medical Center	L00977	Tyler	91	4/29/02
Wichita Falls	US Oncology Inc	L05287	Wichita Falls	04	4/16/02

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Greenville	L3 Communications Integrated Systems LP	L00856	Greenville	23	4/29/02
Laredo	Laredo Regional Medical Center LP	L02192	Laredo	27	4/24/02
Throughout TX	Link Field Services Inc	L05383	Eastland	06	4/30/02

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
L04934	Gulf Coast International Inspection Inc	L04934	Houston	17	4/30/02

In issuing new licenses, amending and renewing existing licenses, or approving exemptions to Title 25 Texas Administrative Code (TAC) Chapter 289, 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 25 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 new, amended, or renewed license (s) or the issuance of the exemption (s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A licensee, applicant, or person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

♦ ♦ ♦

Licensing Actions for Radioactive Materials

TRD-200203795
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 18, 2002

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	Dallas Cardiology Associates	L05541	Dallas	00	06/05/02
Fort Worth	Dallas Cardiology Associates	L05548	Fort Worth	00	06/11/02
Houston	Syncor Advanced Isotopes LLC	L05536	Houston	00	06/06/02
Houston	Medi Physics Inc.	L05517	Houston	00	06/12/02
Throughout tx	Texas Gamma Ray LLC	L05561	Pasadena	00	05/31/02

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Alvin	Equistar Chemicals LP	L03363	Alvin	20	05/31/02
Alvin	Soluta Inc.	L00219	Alvin	66	06/12/02
Arlington	Physician Reliance Network Inc.	L05116	Arlington	05	06/03/02
Arlington	Arlington Memorial Hospital Foundation Inc.	L02217	Arlington	71	06/12/02
Austin	The University of Texas at Austin	L00485	Austin	60	05/31/02
Austin	Texas Cardiovascular Consultants PA	L05246	Austin	04	06/04/02
Austin	HTI/Venture	L04910	Austin	29	06/10/02
Azle	Harris Methodist Northwest	L03230	Azle	25	06/11/02
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	89	06/04/02
Beaumont	Exxonmobil Chemical Company	L02316	Beaumont	31	06/12/02
Bedford	Dallas Cardiology Associates PA	L05448	Bedford	02	06/03/02
Beeville	Christus Spohn Health System Corporation	L04510	Beeville	14	06/12/02
Coldspring	Services and Compliance Consultants Inc.	L03873	Coldspirng	14	06/03/02
College Station	College Station Hospital LP	L02559	College Station	42	06/13/02
Conroe	CHCA Conroe Lp	L01769	Conroe	61	06/05/02
Dallas	Oak Cliff Medical Foundation	L00202	Dallas	40	06/06/02
Dallas	Tenet Health System Hospitals Dallas Inc.	L02314	Dallas	45	06/06/02
Dallas	Tenet Health System Hospitals Dallas Inc	L02314	Dallas	46	06/07/02
Dallas	PET Net Pharmaceuticals Inc	L05193	Dallas	11	06/07/02
Dallas	Columbia Hosp at Med City Dallas Subsidiary LP	L01976	Dallas	138	06/12/02
Denton	Network Cancer Care of Denton	L05348	Denton	10	05/31/02
Denton	Columbia Medical Ctr of Denton Subsidiary LP	L02764	Denton	50	06/05/02
Duncanville	Duncanville Medical Center Inc	L05471	Duncanville	01	06/03/02
Floresville	Wilson Memorial Hospital	L03471	Floresville	11	06/05/02
Fort Worth	Harris Methodist Fort Worth	L01837	Fort Worth	82	05/31/02
Fort Worth	All Saints/Health South Gamma Knife LLC	L05473	Fort Worth	03	06/05/02
Fort Worth	All Saints/Health South Gamma Knife LLC	L05473	Fort Worth	04	06/12/02
Freeport	The Dow Chemical Company	L00451	Freeport	67	06/12/02
Gruver	Air Products LP	L03181	Gruver	08	06/06/02
Houston	Digirad Imaging Solutions Inc.	L05414	Houston	06	06/05/02
Houston	Tenet Healthcare LTD	L02432	Houston	32	06/03/02
Houston	Sisters of Charity of the Incarnate Word	L02279	Houston	48	06/06/02
Houston	Cardiology Associates	L05500	Houston	01	06/13/02

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Kerrville	Kerrville Radiation Therapy Center	L05135	Kerrville	02	06/04/02
Lubbock	Texas Tech University Health Sciences Center	L01869	Lubbock	69	06/05/02
Mesquite	HMA Mesquite Hospitals Inc.	L02428	Mesquite	29	06/06/02
Mount Pleasant	DX Imaging LTD	L05445	Mount Pleasant	02	06/06/02
San Angelo	Shannon Clinic	L04216	San Angelo	23	06/12/02
San Antonio	Southwest General Hospital LLP	L02689	San Antonio	24	06/05/02
San Antonio	Methodist Healthcare System of San Antonio	L00594	San Antonio	163	06/06/02
San Marcos	Austin Heart PA	L05452	San Marcos	02	06/11/02
San Marcos	Southwest Texas State University	L03321	San Marcos	12	06/13/02
Sugar Land	Methodist Health Centers	L05472	Sugar Land	03	06/07/02
Texas City	Amoco Oil Company	L00254	Texas City	51	06/06/02
Throughout tx	Professional Service Industries	L04942	Houston	16	06/06/02
Throughout tx	Blazer Inspection Inc.	L04619	Texas City	28	06/06/02
Throughout tx	Cooperheat-MQS Inc	L00087	Houston	97	06/07/02
Throughout tx	The Methodist Hospital Dept. of Radiation Safety	L00457	Houston	105	06/07/02
Throughout tx	High Tech Testing Service Inc.	L05021	Longview	39	06/12/02
Throughout tx	PET Scans of America Corp	L05406	Spring	02	06/13/02
Wharton	South Texas Medical Clinics	L05163	Wharton	07	06/11/02

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Tatum	TXU Energy	L04593	Tatum	07	05/31/02

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
The Woodlands	Enchira Biotechnology Corporation	L04773	The Woodlands	09	06/03/02

LICENSE EXEMPTION ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Paris	Christus St Josephs Health System	L03199	Paris		05/31/02

In issuing new licenses, amending and renewing existing licenses, or approving exemptions to Title 25 Texas Administrative Code (TAC) Chapter 289, 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 25 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 new, amended, or renewed license (s) or the issuance of the exemption (s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A licensee, applicant, or person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200203796
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 18, 2002

♦ ♦ ♦

Notice of Public Meeting on The Children With Special Health Care Needs Program Service Options and Potential Rule Changes

A meeting of the Children With Special Health Care Needs (CSHCN) partners and Texas Department of Health leaders will be held on July 8, 2002, in Room 1410 of the Brown Heatly Building, Texas Health and Human Services Commission, located at 4900 North Lamar Boulevard, Austin, Texas, from 9:00 a.m. to 12:00 p.m.

The purpose of this meeting is to discuss and evaluate various service options and rule changes needed for the CSHCN Program to address budget limitations. The CSHCN program staff will provide summary information on stakeholder input to date. Proposed rule changes are related to 25 Texas Administrative Code, §§38.2 (Definitions), 38.3 (Eligibility for Client Services), 38.4 (Covered Services), 38.10 (Payment of Services), and 38.12 (Denial/Modification/Suspension/Termination of Eligibility and/or Services).

Please direct any inquiries to Anita Freeman, Children With Special Health Care Needs Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas, telephone (512) 458-7111, extension 3132.

TRD-200203825
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 18, 2002

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Multifamily Housing Revenue Bonds (Madison Point Apartments) Series 2002

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at South Oak Cliff High School Auditorium located at 3601 South Marsalis Avenue, Dallas, Texas 75216 at 6:00 p.m. on July 16, 2002 with respect to an issue of tax-exempt multifamily residential rental project revenue bonds in the aggregate principal amount not to exceed $12,500,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Madison Point Limited Partnership, a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing project (the "Project") described as follows: 248-unit multifamily residential rental development to be constructed on approximately 25 acres of land located at 3600 SRL Thornton Freeway in Dallas, Dallas County, Texas 75224. The project will be initially owned and operated by the Borrower.

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 requests for additional information may be directed to Robert Onion at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-3872 and/or ronion@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robert Onion in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robert Onion prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at 1(800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200203847
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 19, 2002

♦ ♦ ♦

Notice of Public Hearing for the Low Income Home Energy Assistance Program (LIHEAP) Plan PY 2003, July 23, 2002

On or about October 1, 2002, the Texas Department of Housing and Community Affairs (TDHCA) anticipates receiving federal funds to continue the operation of certain programs that assist very low-income Texans. While in the process of deciding how to use Low-Income Home Energy Assistance Program (LIHEAP) funds, the Department now seeks opinions of groups affected by LIHEAP programs as well as opinions of other interested citizens.

As part of the public information, consultation, and public hearing requirements for the Low Income Home Energy Assistance Program, the Community Affairs Division of the Texas Department of Housing and Community Affairs (TDHCA) will conduct one public hearing. As its

primary purpose, the hearing solicits comments on the proposed use and distribution of federal fiscal year (FFY) 2003 funds provided under LIHEAP. LIHEAP provides funding for the Weatherization Assistance Program (WAP) and Comprehensive Energy Assistance Program (CEAP).

The public hearing has been scheduled as follows:

Tuesday, July 23, 2002, 2:00 p.m.

Room #119, Stephen F. Austin Building

1700 North Congress Ave.

Austin, Texas 78701

A representative from TDHCA will be present to explain the planning process and receive comments from interested citizens and affected groups regarding the proposed plan. A copy of the Intended Use Report, or Draft Plan, may be obtained, after July 12, 2002, through TDHCA's web site, http://www.tdhca.state.tx.us/ea.htm or by contacting the Texas Department of Housing and Community Affairs, Energy Assistance Section, P.O. Box 13941, Austin, Texas 78711-3941. For questions, contact the Energy Assistance Section, Community Affairs Division, in Austin, at (512) 475-1435 or (toll-free) 1-877-399-8939.

Anyone may submit comments on the intended use of funds in written form or oral testimony at the public hearing. TDHCA must receive written comments no later than the close of business at 5:00 p.m. on July 23, 2002. Comments concerning the Intended Use Report may be submitted via the internet at jtouchet@tdhca.state.tx.us or by fax (512) 475-3935 or through John Touchet at TDHCA using the postal service address provided above. If you have any questions regarding the public hearing process or any of the programs referenced above, please contact the Energy Assistance Section.

Individuals who require auxiliary aids or services for this meeting should contact Ms. Gina Esteves at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200203792
Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 18, 2002

♦ ♦ ♦

Request for Proposal from Qualified Institutions to Serve as Trustee for the Department's Single Family Mortgage Revenue Bond Issues and/or Refundings

SUMMARY

The Texas Department of Housing and Community Affairs ("TDHCA") is issuing a request for proposals ("RFP") from qualified institutions to serve as Trustee for TDHCA's single family bond issues and/or refundings. The respondents are expected to provide trustee services as necessary to complete new money financings and refundings, and to assign experienced professionals employed by the company who are best suited to appropriately respond to TDHCA requests in a timely manner.

Responses to the RFP must be received at TDHCA no later than 4:00 P.M. C.D.T. on Friday, July 26, 2002. To obtain a copy of the RFP, please fax your request to the attention of Byron V. Johnson at (512) 475-3362 or visit the Bond Finance Division web page at www.tdhca.state.tx.us.

TRD-200203745
Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 17, 2002

♦ ♦ ♦

Texas Commission on Human Rights

Notice of Public Hearing on Proposed Rule, 40 TAC §334.1, Review of Fire Fighter Tests

The Texas Commission on Human Rights (TCHR) will conduct a public hearing to receive comments regarding new proposed rule 40 TAC §334.1, Review of Fire Fighter Tests. The proposed rule was published in the May 3, 2002, issue of the *Texas Register*.

The proposed rule concerns the TCHR review of paid or combination local fire department tests. This rule is necessary to provide procedures for the TCHR to review the initial tests administered by paid or combination local fire departments and used to measure the ability of the applicant to perform the essential functions of a job. The TCHR will review the tests to determine whether the tests are administered in a manner that complies with Chapter 21 of the Texas Labor Code.

Additionally, this rule establishes procedures for determining whether the administration of a test has an adverse impact on any covered class. This rule is aimed at reducing actual discrimination through the review process. Therefore, where there are warning signs of potentially harmful employment transactions, the TCHR can provide recommendations and technical assistance to ensure compliance with Chapter 21 of the Labor Code.

Proposed §334.1 clarifies what constitutes an initial test, the general powers and duties of the TCHR, what processes the TCHR will utilize in conducting its review of tests, how many departments are to be reviewed, how the various departments will be selected, and notice requirements the TCHR will use in conducting its review of initial tests.

The TCHR will hold a public hearing on the proposed rule on July 3, 2002 at 10:00 a.m., at the Texas Commission on Human Rights office, 6330 Highway 290 East, Suite 250, Austin, Texas 78723. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. A ten-minute limit may be established at the hearing to assure that enough time is allowed for every person to speak. There will be no open discussion during the hearing; however the TCHR staff members will be available to discuss the proposed rule 30 minutes before the hearing and will answer questions before and after the hearing.

Persons planning to attend the hearing who have special communication or other accommodation needs, should contact the Office of General Counsel, at (512) 437-3455. Requests should be made as far in advance as possible.

Comments may be submitted to Katherine A. Antwi, General Counsel, P. O. Box 13006, Austin, Texas 78711; or by fax at (512) 437-3477; or by e-mail at katherine.antwi@mail.capnet.state.tx.us. All comments must be received by 5:00 p.m. on July 2, 2002. For further information, please contact Katherine A. Antwi, General Counsel, at (512) 437-3455.

TRD-200203793
Katherine A. Antwi
General Counsel
Texas Commission on Human Rights
Filed: June 18, 2002

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application to change the name of COLONIAL PENN MADISON INSURANCE COMPANY to GE INDEMNITY INSURANCE COMPANY a foreign fire and/or casualty company. The home office is in Fort Washington, Pennsylvania.

Application to change the name of COLONIAL PENN FRANKLIN INSURANCE COMPANY to GE CASUALTY INSURANCE COMPANY a foreign fire and/or casualty company. The home office is in Fort Washington, Pennsylvania.

Application to change the name of COLONIAL PENN INSURANCE COMPANY to GE PROPERTY AND CASUALTY INSURANCE COMPANY a foreign fire and/or casualty company. The home office is in Fort Washington, Pennsylvania.

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-200203839
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 19, 2002

♦ ♦ ♦

Correction of Error

The Texas Department of Insurance published notice of an adopted exempt filing under the Insurance Code Chapter 5, Subchapter L. Article 5.96. in the June 14, 2002, *Texas Register* (27 TexReg 5257).

Due to a typographical error in the fifth paragraph of the filing, the reference to "Endorsement 578, Section IV.C.4" was incorrectly printed as "Section II.C.4." The paragraph should read as follows.

"Endorsement 578, Section IV.C.4., subsections a and b; and Endorsement 579, Section IV.C.4., subsections a and b are amended to read as follows."

TRD-200203791

♦ ♦ ♦

Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Metropolitan Property and Casualty Insurance Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting the following flex percentage by territory for all classes: +35 for Bodily Injury, +34 for Property Damage, +30 for Uninsured Motorist, +43 for Uninsured Motorist Property Damage, +43 for Medical Payments, +51 for Personal Injury Protection, +63 for Comprehensive, and +50 for Collision. The overall rate change is +10%.

Copies of the filing may be obtained by contacting Judy Deaver, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 322-3478.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by July 18, 2002.

TRD-200203830
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 19, 2002

♦ ♦ ♦

Notice of Proposed Amendments to the Texas Health Reinsurance System Plan of Operation

The Texas Health Reinsurance System was created by the Legislature in 1993 and began engaging in the reinsurance of small employer group health insurance plans in 1995. The Commissioner of Insurance is an ex-officio member of the Board of Directors of the System. Insurance Code Article 26.55, requires the Board of Directors to adopt a plan of operation. The Plan of Operation becomes effective on the written approval of the Commissioner. The Commissioner approved the Plan of Operation on September 6, 1995.

The Board of Directors of the System recommended the following amendments to Article X of the Plan of Operation:

1. Amend Subpart A, Section 2 to conform to the definition of "small employer" in Insurance Code Art. 26.02(29).

2. Add new Sections 3 and 4 to Subpart B concerning the reinsuring of whole groups by small employer insurance plans.

3. Add a new Section 5 to Subpart B concerning appeal to the board of a denial by the administrator of an application for reinsurance for failure to file within 60 days.

4. Add a new Paragraph e to Subpart F, Section 1, concerning waiver of the System deductible in connection with the use of managed care programs for newborns.

5. Amend Subpart F, Section 3, paragraph a) to change subparagraph numbering for consistency.

The proposed amendments are as follows:

Article X - Eligibility for Reinsurance and Other Reinsurance Guidelines

Reinsurance is available only for coverage of Eligible Employees and Dependents under Small Employer Health Benefit Plans issued by Reinsured Carriers to Small Employers, subject to the provisions in the Act and its related regulations. A Reinsured Carrier may reinsure with the System the coverage of individual Eligible Employees and/or Dependents. Alternatively, a Reinsured Carrier may reinsure coverage for a Small Employer's entire group.

A. Identifying Small Employers Eligible to Participate

1. Small Employer status is determined as of the effective date of a Small Employer Carrier's coverage of a Small Employer Health Benefit Plan.

2. The determination of the number of Eligible Employees shall be based on the most recent Federal or State filing which reflects the number of full-time employees, accompanied by a Small Employer certification of this information; unless the Small Employer submits other verifiable information acceptable to the Reinsured Carrier. As provided in the Act "Small Employer" means a person who employed an average of at least two employees but not more than 50 eligible employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year [~~that is actively engaged in business and that, on at least 50% of its working days during~~

~~the preceding calendar year, employed at least 3 but not more than 50 Eligible Employees, including the employees of an affiliated employer, the majority of whom were employed in Texas~~].

3. Each Reinsured Carrier is responsible for determining whether a person is a Small Employer as of the effective date of coverage, for updating that determination each year, and for obtaining information from the Small Employer to document that determination. The Reinsured Carrier is also responsible for certifying the above determination to the Administering Carrier, if any coverage under a Small Employer's Health Benefit Plan is to be reinsured. If a Reinsured Carrier, while acting in good faith, erroneously certifies a person to be a Small Employer, reinsurance of any employees of that person, or their dependents, shall be terminated within 60 days after the Administering Carrier is notified of the error.

4. Any material statement by an employer or employee, which falsely certifies as to an individual's eligibility for coverage, constitutes cause for termination of reinsurance, without penalty to the Reinsured Carrier. Prompt notice of the discovery shall be made to the Administering Carrier, and reinsurance of any such individuals shall be terminated within 30 days of the notification.

B. Reinsurance Ceding Rules and Premium Levels

1. A Small Employer Carrier must notify the Administering Carrier of its intent to reinsure a specific person covered under a Small Employer's plan as an Eligible Employee or an Eligible Dependent within 60 days of the initial effective date of that person's coverage, or for a newly Eligible Employee or Dependent, within 60 days of the commencement of that individual's coverage.

2. Availability of individual reinsurance is subject to the following rules:

a) The group must be a Small Employer group at the effective date of reinsurance;

b) The individual shall only be reinsured for the coverage provided under a Small Employer Health Benefit Plan;

c) Each person whose coverage is reinsured must be an Eligible Employee or a dependent;

d) The Reinsured Carrier may reinsure coverage of an Eligible Employee without reinsuring coverage of any specific dependent of that Eligible Employee, or may reinsure coverage of a specific dependent without reinsuring coverage of the Eligible Employee or any other of his/her dependent(s);

e) If a Reinsured Carrier has previously withdrawn reinsurance of coverage for any individual, the same Reinsured Carrier cannot reinsure that individual again at any time in the future; and

f) The 60 day period within which a Reinsured Carrier must reinsure any Eligible Employee and/or Eligible Dependent shall be used to review underwriting requirements to determine ceding to the System. Only underwriting requirements may be used by a Reinsured Carrier in determining whether to reinsure any Eligible Employee and his/her Eligible Dependents. Individual claim experience during the 60-day period shall not be used in determining whether to reinsure a risk to the System.

3. A member must notify the administering carrier of its intent to cede all Eligible Employees and Eligible Dependents (whole group) for reinsurance of coverage under a plan covering Eligible Employees of a small employer within 60 days of the initial effective date of the small employer's plan with such member.

4. Availability of whole group reinsurance is subject to the following rules:

a) The Small Employer's Health Benefit Plan can only be reinsured for the coverage provided under the standard or basic health care plan or up to a level of the standard or basic health care plan.

b) Subject to payment of premium, all new entrants eligible to be reinsured, will also be reinsured at the effective dates of their coverage.

c) If a member has previously withdrawn reinsurance of coverage for any group, the member cannot again reinsure the withdrawn group but may reinsure timely new entrants that are eligible to be reinsured on an individual basis described in Section 1 of this Subpart.

d) An amendment rider or other change in the small employer plan shall not constitute a change in initial effective date.

e) Small employer carriers, acquiring business from other small employer carriers doing business in Texas, may not cede small employer groups acquired in such fashion to the System. Such small employer carriers are urged to conduct comprehensive due diligence and expansive negotiations when considering the acquisition of another small employer carrier's block(s) of business. This provision is not intended to restrict a small employer carrier's ability to reinsure a new group or eligible employee or eligible dependent or a timely new entrant to an acquired eligible small employer group.

f) Risks, that were previously ceded and whose reinsurance is inforce from the previous carrier, may continue reinsurance at the option of the acquiring carrier.

5. When the administering carrier rejects a reinsuring carrier's notification to reinsure a life for failure to file the notification with the 60-day period, the reinsuring carrier may file a petition with the Board requesting waiver of the 60-day period. The petition shall describe the circumstances that caused the notification to be filed after the end of the 60-day period. If the Board determines that the failure to timely file the notification was caused by circumstances beyond the knowledge and/or control of the reinsuring carrier the Board may waive the 60-day period if it finds such waiver would be equitable.

C. Period of Reinsurance

1. Reinsurance may continue as long as coverage under the Small Employer Health Benefit Plan for the covered Eligible Employees and dependents remains in effect subject to the regulations passed under the Act.

2. A Small Employer Carrier may terminate reinsurance with the System for one or more of the reinsured employees or dependents of employees of a Small Employer on a contract anniversary of the Small Employer Health Benefit Plans. Written notice must be provided to the System at least 30 days in advance of the withdrawal.

3. Reinsurance of an individual's coverage under a Small Employer's Health Benefit Plan ceases at the termination of the individual's status as an Eligible Employee or dependent, except to the extent that coverage continues as required by law. If the Small Employer Carrier provides coverage for such persons beyond either of the dates indicated above, for contractual or other reasons, reinsurance will be continued for a maximum of 30 days beyond said date.

4. Reinsurance of an individual covered under a Small Employer's Health Benefit Plan (including an individual whose coverage under that plan has continued as required by law) ceases at termination of the Small Employer Carrier's coverage of the group in which that individual was previously covered as an Eligible Employee or dependent.

D. Determination of Reinsurance Premium

1. Tables of reinsurance premium rates for Small Employer Carriers, as calculated by the Actuarial Committee, and approved by the Board, will be communicated to Small Employer Carriers. Separate tables will

be prescribed for HMO's and shall reflect the provisions in art. 26.38 of the Act.

2. For any reinsured individual, the reinsurance premium may be up to 500% of the base reinsurance premium rate established by the System for that classification or individual within a group with similar Case Characteristics and coverage. The Small Employer Carrier will calculate the reinsurance premium for each individual reinsured based on the tables of reinsurance premium rates established by the System.

3. For any reinsured group, the reinsurance premium may be up to 150% of the base reinsurance premium rate established by the System for groups with similar Case Characteristics and coverage. The Small Employer Carrier will calculate the reinsurance premium for each group reinsured based on the table of reinsurance premium rates established by the System.

4. Premium rates charged by the System may reflect the use of effective cost containment and managed care arrangements.

E. Billing and Payment

1. Reinsurance bills will be handled on a "self-billed" basis. Monthly, the Reinsured Carrier will provide the Administering Carrier with a listing of the individuals reinsured and the premium for each individual and such other information as may be required by the System. The Administering Carrier will make any necessary corrections and send a corrected statement to the Reinsured Carrier.

2. The reinsurance premiums charged by the System for each individual will be determined by the Table of Rates in effect on the later of the effective date of the Small Employer's Health Benefit Plan with the Reinsured Carrier or the most recent plan anniversary.

3. Premiums are determined as of the first of the month and are due by the twentieth of the month, and the Reinsured Carrier has thirty days thereafter to pay the premiums owed. If not paid within this thirty day period, then the Reinsured Carrier's participation in the System may be terminated.

4. Reinsurance premium amounts are to be paid based on whole month increments only. If reinsurance is effective between the 1st and the 15th of the month, the entire month's premium must be paid in full. When reinsurance becomes effective between the 16th and the last day of the month, no premiums will be payable until the first of the month following the effective date.

5. Conversely, reinsurance terminations effective between the 1st and the 15th of the month will be allowed refunds for the entire month. Reinsurance terminations effective between the 16th and the last day of the month will not be allowed a premium refund.

6. Reinsurance premium is due monthly to the System regardless of a Reinsured Carrier's ability to charge back or collect the Small Employer's premiums. The System has no responsibility for the collection of Small Employer's premiums.

F. Reinsurance Claim Section

1. Statement of Reinsurance

The System shall indemnify Small Employer Carriers for the covered claims incurred with respect to employees and dependents whose coverage with the Small Employer Carrier is reinsured with the System as described in the Act and subject to the following:

a) The System will reimburse a Reinsured Carrier for covered claims. However, no payments will be made unless the accumulated amount due to the Reinsured Carrier for all reinsured individuals as of the end of any month exceeds $5,000. Regardless of this limitation, all balances due will be paid by the System to Reinsured Carriers no less often than every three months.

b) For the purposes of this section, "covered claims" shall mean only such amounts as are actually paid by Small Employer Carriers for benefits provided for individuals reinsured by the System, but covered claims shall not include:

(1) Claim expenses or salaries paid to Reinsured Carriers' employees who are not providers of health care services;

(2) Court costs, attorney's fees or other legal expenses;

(3) Any amount paid by the Reinsured Carriers for:

(i) Punitive or exemplary damages; or

(ii) Compensatory or other damages awarded as a result of the conduct of the Reinsured Carriers in the investigation, trial, or settlement of any claim or failure to pay or delay in payment of any benefits under any policy; or the operation of any managed care, cost containment, or related programs; and

(4) Any statutory penalty imposed upon a Reinsured Carrier on account of any unfair trade practice or any unfair insurance practice.

c) The initial level of benefits paid has been set at $5,000 plus 10% of the next $50,000 in claims for each reinsured individual in a calendar year for all Small Employer Health Benefit Plans. A Reinsured Carrier's maximum liability limit shall not exceed $10,000 with respect to any reinsured individual during one calendar year. The initial level of benefit and the maximum liability limit amounts may be adjusted by the Board annually in accordance with art. 26.58 § (e).

d) No reinsurance shall be provided until the initial level of benefits paid has been met during a calendar year for a reinsured employee or dependent.

e) Paragraph d) of this section does not apply to a reinsured carrier that has complied with the provisions of the Operations and Procedures Manual of the administering carrier regarding utilization of managed care programs for newborn claims.

2. General Requirements

a) Reinsured Carriers will promptly investigate, settle or defend all claims arising under the risks reinsured and will forward promptly to the System copies of such reports of investigation as may be requested by the System.

b) Reinsured Carriers will adjudicate all claims on ceded risks.

c) Reinsured Carriers will use their normal case management programs to control costs on reinsured business to the same extent that they would use such programs on their non reinsured business, including but not limited to utilization review, individual case management, and preferred provider provisions. The failure to follow such procedures will result in the denial or reduction of reinsurance reimbursements, as determined by the Board and approved by the Commissioner.

d) The System shall have the right, at its own expense, to participate jointly with a Reinsured Carrier in the investigation, adjustment or defense of any claim. Reinsured Carriers will be required to assure that their claim management practices are consistent between reinsured and non-reinsured risks. The failure to follow such procedures will result in the denial or reduction of reinsurance reimbursements, as determined by the Board and approved by the Commissioner.

e) The System shall have the right to inspect the records of a Reinsured Carrier in connection with the risks reinsured with the System and the Reinsured Carrier shall submit to the System any additional information it may require in connection with claims submitted to the System

for reimbursement in the format specified by the Board. Reinsured Carriers shall secure necessary authorizations from reinsured individuals for this purpose.

f) All information disclosed to the System by a Small Employer Carrier or to a Small Employer Carrier by the System, in connection with this Plan, shall be considered to be privileged information by the Small Employer Carriers, the System and the Administering Carrier.

g) If any payment is made by the System to a Reinsured Carrier and the Reinsured Carrier is reimbursed by another party for the same expenses (benefits paid), the System shall be reimbursed or subrogated to the extent that the Reinsured Carrier is reimbursed. The Reinsured Carrier shall execute and deliver instruments and do whatever is necessary to preserve and secure such reimbursement rights.

h) HMO's which pay for certain provider services on a basis other than fee for service will be allowed reimbursement for those costs on reinsured persons from the System through a methodology approved by the Board.

i) Except as approved by the Board, reinsurance will be provided only for covered claims submitted within two years from the date on which the claims expenses were incurred.

3. Claims Reporting

a) Within 20 days after the close of each calendar month reporting period, the Reinsured Carriers shall furnish to the System the following information with respect to reinsured claims submitted to the System by the Reinsured Carrier during said reporting period:

(1) [~~(i)~~] the Small Employer's identification number;

(2) [~~(ii)~~] the employee's name and social security number;

(3) [~~(iii)~~] the claimant's name and date of birth;

(4) [~~(iv)~~] the claim incurred date and paid date;

(5) [~~(v)~~] the reinsurance claim amount;

(6) [~~(vi)~~] the claim coding as required by the Board (e.g., CPT and ICD9).

(7) [~~(vii)~~] where appropriate, the relationship of the reinsured individual to the Eligible Employee.

b) Reinsured Carriers shall notify the System as soon as reasonably possible of all claims or potential claims for a reinsured employee or dependent where the claims expected to be paid by the Reinsured Carrier will exceed $100,000 in the aggregate.

Comments must be submitted in writing within 15 days of publication of the proposal in the *Texas Register* to Archie Clayton, Staff Attorney, Legal & Compliance Division, Texas Department of Insurance, Mail Code 110-1A, P. O. Box 149104, Austin, Texas 78714-9104.

TRD-200203845
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 19, 2002

♦ ♦ ♦

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 Ceridian Benefits Services, Inc., a foreign third party administrator. The home office is St. Petersburg, Florida.

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-200203843
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 19, 2002

♦ ♦ ♦

Manufactured Housing Division

Notice of Administrative Hearing

Tuesday, July 9, 2002, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor,

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Texas Department of Housing and Community Affairs vs. Juan Diaz dba Diaz House Movers to hear alleged violations of §7(d) of the Act and §80.123(e) of the Rules regarding installation of a manufactured home without obtaining, maintaining or possessing a valid installer's license. SOAH 332-02-3311. Department MHD2001001816-UI.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-2894, jschroed@tdhca.state.tx.us

TRD-200203693
Bobbie Hill
Executive Director
Manufactured Housing Division
Filed: June 14, 2002

♦ ♦ ♦

Notice of Administrative Hearing

Wednesday, July 10, 2002, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor,

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Texas Department of Housing and Community Affairs vs. Mike Altom dba Mike Altom Mobile Service to hear alleged violations of §4(d) and §7(d) of the Act and §80.54(a) and §80.123(e) of the Rules regarding installation of a manufactured home without obtaining, maintaining or possessing a valid installer's license and not properly installing the manufactured home. SOAH 332-02-3312. Department MHD2002000258-UI.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-2894, jschroed@tdhca.state.tx.us

TRD-200203692

Bobbie Hill
Executive Director
Manufactured Housing Division
Filed: June 14, 2002

♦ ♦ ♦

Notice of Administrative Hearing

Wednesday, July 17, 2002, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor,

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Texas Department of Housing and Community Affairs vs. The American MobileHome Company/TAMCO to hear alleged violations of §7(j)(6) of the Act and §80.119(f)(1) of the Rules regarding not submitting the Form T/Installation Report for a manufactured home in a timely manner. SOAH 332-02-3313. Department MHD2001001830-IW.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-2894, jschroed@tdhca.state.tx.us

TRD-200203694
Bobbie Hill
Executive Director
Manufactured Housing Division
Filed: June 14, 2002

♦ ♦ ♦

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 preparing the plan for Fiscal Year (FY) 2003 in order to describe the intended use of the Federal Community Mental Health Block Grant funds. These funds must be utilized by TDMHMR to develop new initiatives and/or enhance already existing service delivery systems for adults with severe mental illness and children with serious emotional disturbance.

Copies of the current FY2002 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 the following address: http://www.mhmr.state.tx.us/CentralOffice/ProgramStatisticsPlanning/BGrants. htm; 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 the development of the FY2003 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, July 19, 2002.

TRD-200203939
Andrew Hardin
Chairman, Texas Mental Health and Mental Retardation
Texas Department of Mental Health and Mental Retardation
Filed: June 24, 2002

♦ ♦ ♦

Texas Natural Resource Conservation Commission

Enforcement Orders

An agreed order was entered regarding GABBERT OIL COMPANY AND VILLAGE CAR WASH, INC., Docket No. 1999-1373-PST-E on June 10, 2002 assessing $11,550 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting LISA LEMANCZYK, Staff Attorney at (512)239-5915, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ROBERT M. ROBERT DBA ROMARK UTILITY CO., Docket No. 2000-0426-PWS-E on June 10, 2002 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JOHN SUMNER, Staff Attorney at (915)620-6118, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding IMPORT AUTO SALVAGE/ SERVICE, INC., Docket No. 2000-0693-AIR-E on June 10, 2002 assessing $1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting ROBERT HERNANDEZ, Staff Attorney at (210)403-4016, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding GBAK PROPERTIES, INC., Docket No. 1999-1389- PST-E on June 10, 2002 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting KELLY MEGO, Staff Attorney at (713)422-8916, Enforcement Coordinator at , Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHUKRAN, INC. DBA AMIGO MART, Docket No. 2000-0965-PST-E on June 10, 2002 assessing $21,750 in administrative penalties with $21,150 deferred.

Information concerning any aspect of this order may be obtained by contacting ROBERT HERNANDEZ, 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 JAMES M. BARTON, SR., Docket No. 2001-0486-OSI- E on June 10, 2002.

Information concerning any aspect of this order may be obtained by contacting SCOTT MCDONALD, Staff Attorney at (817)588-5888, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An amended agreed order was entered regarding UNION OIL COMPANY OF CALIFORNIA, INC., Docket No. 1994-0141-SWR-E on June 10, 2002.

Information concerning any aspect of this order may be obtained by contacting DAVID SPEAKER, Staff Attorney at (512)239-2548, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MASTERS RESOURCES, LLC, Docket No. 2001-1481- AIR-E on June 10, 2002 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting SUSHIL MODAK, Enforcement Coordinator at (512)239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEMPE WATER SUPPLY CORPORATION, Docket No. 2001-0818-PWS-E on June 10, 2002 assessing $10,000 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 STONE RECYCLING, INC., Docket No. 2001-0753- MSW-E on June 10, 2002 assessing $250 in administrative penalties with $50 deferred.

Information concerning any aspect of this order may be obtained by contacting ERIKA FAIR, Enforcement Coordinator at (512)239-6673, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHEMICAL SPECIALTIES, INC., Docket No. 2001- 0839-IWD-E on June 10, 2002 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting TEL CROSTON, Enforcement Coordinator at (512)239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF COOLIDGE, Docket No. 2001-1288-PWS-E on June 10, 2002 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting MICHELLE HARRIS, Enforcement Coordinator at (512)239-0492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UNITED STATES DEPARTMENT OF AGRICULTURE, Docket No. 2001-1243-MWD-E on June 10, 2002 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JAIME GARZA, Enforcement Coordinator at (956)430-6030, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HAT OIL AND GAS, INC., Docket No. 2001-0972- AIR-E on June 10, 2002 assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting STACEY YOUNG, Enforcement Coordinator at (512)239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF FORNEY, Docket No. 2001-0757-MWD-E on June 10, 2002 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JORGE IBARRA, Enforcement Coordinator at (817)588-5890, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 50'S CLASSIC CAR WASH OF ABILENE, INC. AND JGP CORPORATION, Docket No. 2001-0935-PST-E on June 10, 2002 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting CAROLYN EASLEY, Enforcement Coordinator at (915)698-9674, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ANADARKO PETROLEUM CORPORATION, Docket No. 2001-1190-AIR-E on June 10, 2002 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting TEL CROSTON, Enforcement Coordinator at (512)239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF BRYAN, Docket No. 2001-1139-AIR-E on June 10, 2002 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting JAMES JACKSON, Enforcement Coordinator at (254)751-0335, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DEREK SEAN MIZERT DBA FAMILY TIRE AND SERVICE, Docket No. 2001-1208-AIR-E on June 10, 2002 assessing $625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting STEVEN LOPEZ, Enforcement Coordinator at (512)239-1896, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HAIGOOD & CAMPBELL L.L.C., Docket No. 2001- 1531-PST-E on June 10, 2002 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting CAROLYN EASLEY, Enforcement Coordinator at (915)698-9674, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FLOWERS BAKING COMPANY OF TYLER, LLC, Docket No. 2001-0985-AIR-E on June 10, 2002 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting CAROLYN LIND, Enforcement Coordinator at (903)535-5145, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MASTERS RESOURCES, LLC, Docket No. 2001-1482- AIR-E on June 10, 2002 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting SUSHIL MODAK, Enforcement Coordinator at (512)239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ROYCE GROFF OIL COMPANY, Docket No. 2001- 1454-PST-E on June 10, 2002 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting REBECCA CLAUSEWITZ, Enforcement Coordinator at (210)403-4012, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TECON WATER COMPANIES, INC. ET AL, Docket No. 2000-1217-PWS-E on June 10, 2002 assessing $52,426 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting BRIAN LEHMKUHLE, Enforcement Coordinator at (512)239-4482, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHAHJI INVESTMENT CO. DBA EZY SHOP, Docket No. 2001-1351-PST-E on June 10, 2002 assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting CATHERINE ALBRECHT, Enforcement Coordinator at (713)767-3672, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF SAN MARCOS, Docket No. 2001-0825-PWS- E on June 10, 2002 assessing $10,763 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting KATHARINE HODGINS, SEP Coordinator at (512)239-5731, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ATLAS OIL & GAS EXPLORATION, L.L.C., Docket No. 2001-1273-AIR-E on June 10, 2002 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting REBECCA JOHNSON, Enforcement Coordinator at (713)422-8931, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MOHAMMED ASLAM DBA JACK'S SUPER DRIVE IN GROCERY #2, Docket No. 2001-1444-PST-E on June 10, 2002 assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting CATHERINE ALBRECHT, Enforcement Coordinator at (713)767-3672, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JUST PLANE FUN AIRPARK, INC. DBA HIDDEN MEADOWS PROPERTY OWNERS' ASSOCIATION, Docket No. 2001-1500-PWS-E on June 10, 2002 assessing $2,750 in administrative penalties with $550 deferred.

Information concerning any aspect of this order may be obtained by contacting KIMBERLY MCGUIRE, Enforcement Coordinator at (512)239-4761, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF STAFFORD, Docket No. 2001-1353-PST-E on June 10, 2002 assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting CATHERINE ALBRECHT, Enforcement Coordinator at (713)767-3672, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TERRY CLOVEN WALLS, Docket No. 2001-1072- AGR-E on June 10, 2002 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting MICHAEL LIMOS, 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 TRIAD HOSPITALS, INC. DBA ALICE REGIONAL HOSPITAL, Docket No. 2001-1160-PST-E on June 10, 2002 assessing $4,050 in administrative penalties with $810 deferred.

Information concerning any aspect of this order may be obtained by contacting AUDRA BAUMGARTNER, Enforcement Coordinator at (361)825-3312, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CALHOUN ELECTRIC COMPANY,, INC.., Docket No. 2001-1233-MLM-E on June 10, 2002 assessing $5,400 in administrative penalties with $1,080 deferred.

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 JOBE CONCRETE PRODUCTS, INC., Docket No. 2001-1339-AIR-E on June 10, 2002 assessing $10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting ROBERT HERNANDEZ, 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 PATRICIA CROWLEY DBA METRO CONCRETE PRODUCTS, Docket No. 2001-0051-MSW-E on June 10, 2002 assessing $8,000 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 HYDRO-WALK ENERGY, INC., Docket No. 2001- 1344-PST-E on June 10, 2002 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting SANDY VANCLEAVE, Enforcement Coordinator at (512)239-0667, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200203817
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 18, 2002

♦ ♦ ♦

Notice of Public Meeting (Rogers Delinted Cottonseed Company)

The Texas Natural Resource Conservation Commission (commission) is required under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361, as amended (the Act), to publish annually a state registry that identifies facilities that may constitute an imminent

and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The most recent registry listing of these facilities was published in the May 24, 2002 issue of the *Texas Register* (27 TexReg 4633).

In accordance with §361.184(a), the commission must publish a notice of intent to list a facility on the state registry of state Superfund sites in the *Texas Register* and in a newspaper of general circulation in the county in which the facility is located. With this publication, the commission hereby gives notice of a facility or area that the executive director has determined eligible for listing and which the executive director proposes to list on the state registry. The commission also gives notice in accordance with the Act, §361.1855, that it proposes a land use other than residential as appropriate for the facility identified below. The commission proposes a commercial/industrial land use designation. Determination of appropriate land use may impact the remedial investigation and remedial action for the site.

This publication also specifies the general nature of the potential endangerment to public health and safety or the environment as determined by information currently available to the executive director. The notice of intent to list this facility was also published on June 27, 2002 in the *Farmersville Times.*

The facility proposed for listing is the Rogers Delinted Cottonseed Company, located approximately one mile east of Farmersville, Texas at the intersection of SH 380 and FM 547 in Collin County, Texas. The geographic coordinates of the site are latitude 33ø 09 18.74 N and longitude 96ø 19 46.93 W. The description of the site is based on information available at the time the site was evaluated with the Hazard Ranking System (HRS). The HRS is the principal screening guide used by the commission to evaluate potential relative risk to public health and the environment from releases or threatened releases of hazardous substances. The description may change as additional information is gathered on the sources and extent of contamination.

The facility known as Rogers Delinted Cottonseed Company covers approximately 81 acres. The facility operated at its current location for approximately 19 years from 1965 to 1984, when it was abandoned. The site may be divided into three separate areas: 1) the processing area in the northwest corner of the site (approximately 20 acres); 2) irrigation fields located south and east of the processing area (approximately 30 acres); and 3) remaining undeveloped land located along the eastern part of the site. Arsenic compounds were used to defoliate the cotton plants. The facility then delinted the cottonseeds by washing them with 5.0% sulfuric acid to chemically remove husks, lints, fibers, and other suspended particulate matters. The process also included the use of a fungicide to protect the delinted cottonseeds. The spent acid solution from the process area was collected in two surface impoundments. The impoundments were used as settling ponds to separate the suspended solids from the acid solution. The water from the impoundments was discharged by evaporation and irrigation of the cotton fields.

A screening site inspection (SSI) conducted in 1995, identified and investigated the specific areas where hazardous substances were either used, stored, or spilled. These include: 1) two inactive surface impoundments; 2) two 15,000 gallon above-ground sulfuric acid storage tanks; 3) the pesticide drum storage area; 4) the seed storage silo area; 5) the irrigation field south and east of the processing area; and 6) the tail water pond located in the northeast corner of the property. In addition, some of the hazardous substances are reportedly stored inside the process building.

Nineteen soil/sediment samples were collected and analyzed during the SSI. The analytical data indicated no apparent release of site contaminants to the surface water pathway. However, soil sample analytical data documented the presence of dieldrin, aroclor 1254 and 1260, arsenic, cadmium, copper, lead, selenium, and zinc in soil in concentrations at least three times the background level.

A public meeting will be held August 15, 2002, at 6:00 pm, City of Farmersville, City Council Chambers, 205 South Main Street, Farmersville. The purpose of this meeting is to obtain additional information regarding the site relative to its eligibility for listing on the state registry, identify additional potential responsible parties, and obtain public input and information regarding the appropriate use of land on which the facility, that is the subject of this notice, is located. The public meeting will be legislative in nature and not a contested case hearing under the Texas Administrative Procedure Act (Texas Government Code, Chapter 2001).

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m., August 15 2002, and should be sent in writing to Mr. Subhash Pal, P.E., Project Manager, Superfund Cleanup Section, Remediation Division, Texas Natural Resource Conservation Commission, MC 143, P. O. Box 13087, Austin, Texas 78711-3087, or by facsimile at (512) 239-2450. The public comment period for this action will end at the close of the public meeting on August 15, 2002.

A portion of the records for this site, including documents pertinent to the executive director's determination of eligibility, is available for review at the Charles J. Rike Memorial Library, 203 Orange Street, Farmersville Texas, 75422, at (972) 782-6681, during regular business hours. Copies of the complete public record file may be obtained during regular business hours at the commission's Records Management Center, Building E, First Floor, 12100 Park 35 Circle, Austin, Texas 78753, telephone numbers (800) 633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee. Handicapped parking is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

TRD-200203787
Paul Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: June 18, 2002

Notice of Submission of the Texas Visibility Protection Periodic Review and Report to EPA

The Texas Natural Resource Conservation Commission (commission) has submitted a State of Texas Visibility Protection Periodic Review and Report to the United States Environmental Protection Agency (EPA). This report is submitted to meet requirements of 40 Code of Federal Regulations Part 51, Subpart P, Protection of Visibility, §51.306, Long-Term Strategy, and to fulfill the commitment in the State Implementation Plan (SIP) for Visibility Protection in Class I Areas Phase I. The report was submitted to EPA on June 11, 2002.

Under the provisions of the SIP and to comply with the federal requirements, the state must conduct a periodic review and report on the provisions and effectiveness of the long-term strategy for Big Bend and Guadalupe Mountains National Parks, the state's two Federal Class I areas.

The report can be obtained from the commission's website at the following address: *www.tnrcc.state.tx.us/oprd/sips/index.html*. If additional information is needed, please contact Gerry Wolfe, Program Specialist, SIP Development Section at (512) 239-4703 or by email at *gwolfe@tnrcc.state.tx.us*.

TRD-200203794

Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: June 18, 2002

♦ ♦ ♦

Notice of Water Rights Application

Notices mailed during the period June 11, 2002 through June 18, 2002

APPLICATION NO 4088B Winnie D. Anderson, P.O. Box 181, Rising Star, Texas 76471 and Custer D. Swift, et al, 1303 Haven Drive, Comanche, Texas 76442-1509, applicants, seek to amend Water Use Permit No. 3844 (Application No. 4088), as amended, pursuant to Texas Water Code 11.122 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. The Executive Director recommends that notice should be published and mailed pursuant to 30 TAC 295.158 (b)(8) to the water right holders in the Brazos River Basin. Water Use Permit No. 3844 (Application No. 4088), as amended, authorizes the permittees to close the ports on SCS Dam No. 2 and impound therein 421 acre-feet of water on Copperas (Rush) Creek, tributary of the Leon River, tributary of the Little River, tributary of the Brazos River, in the Brazos River Basin, Comanche County. Winnie D. Anderson, permittee, is authorized to divert and use not to exceed 246 acre-feet of water per annum for agricultural use to irrigate 123 acres of land of two tracts totaling 480 acres of land in the J. C. Whiteside Survey Abstract Nos. 1349 and 1845 in Comanche County. Custer D. Swift, et al are authorized to divert and use 156 acre-feet of water per annum for agricultural use to irrigate 78 acres of land out of 371 acre tract of land in the Stanley and Jacobs Survey, Abstract No. 1838; S. J. Poteet Survey, Abstract No. 1799; and the T. F. Singletary Survey, Abstract No. 1599 in Comanche County. Permittees can use the bed and banks of Copperas (Rush) Creek to convey stored water from the reservoir to the diversion point on Copperas (Rush) Creek. The time priority November 10, 1980. The permit contains a special condition whereby the rights to divert from the reservoir will expire December 31, 2000. Other Special Conditions apply. Permittees are authorized to divert water from the perimeter of the reservoir located at approximately 32.080 degrees N latitude, 98.827 degrees W longitude. The midpoint of the dam at the stream is S 40.86 degrees W, 1,513 feet from the northeast corner of the J. C. Whitesides Survey, Abstract No. 1845, 18 miles northwest of Comanche, Comanche County, Texas. Winnie Anderson is also authorized to divert water from a point on the left, or north, bank of Copperas (Rush) Creek, S 41.3 degrees E, 2,349 feet from the aforesaid Whitesides Survey and at 32.073 degrees N latitude, 98.802 degrees W longitude. The maximum combined diversion rate for all the diversion points is 5.0 cfs (2,260 gpm). Owner seeks to amend Water Use Permit No. 3844 (Application No. 4088), as amended, by extending or deleting the expiration date of December 31, 2000. The application was received on December 18, 2000. Additional information was received February 1, 2001, March 8, 2002, and March 21, 2002. The application was determined to be administratively complete on May 3, 2002. 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.

APPLICATION NO 4087B Mary Frazier Clark, Don Frazier Clark, and Donna Clark Jones, P.O. Box 947, Comanche, Texas 76442, applicants seek to amend a Water Use Permit No. 3808 (Application No. 4087), as amended, pursuant to Texas Water Code 11.122 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. The Executive Director recommends that notice should be published and mailed pursuant to 30 TAC 295.158 (b)(8) to the water right holders in the Brazos River Basin. Water Use Permit No. 3808 (Application No. 4087), as amended, authorizes permittees to close the ports on the Soil Conservation Service (SCS) Floodwater Retarding Dam No. 1, Rush Creek Watershed, on Copperas (or Rush) Creek, tributary of Leon River, tributary of the Little River, tributary of the Brazos River, in the Brazos River Basin, thereby impounding 1,271 acre-feet of water. Permittees are authorized to divert and use not to exceed 1,060 acre-feet of water per annum from the reservoir at a diversion rate of 6.0 cfs (2,700gpm) to irrigate 530 acres of land out of 2,035 acres tract of land in Comanche and Eastland Counties. The dam and reservoir are located upstream of Lake Proctor approximately 20 miles northwest of Comanche, Texas. Water Use Permit No. 3808, as amended, contains a Special Condition whereby the authorization to divert and use the water will expire on December 31, 2000. Other Special Conditions apply. The dam is located in the A. S. Foard Survey No. 285, Abstract No. 376 and the W. E. Vernon Survey No. 60, Abstract No. 1743 Comanche County Texas. Station 29 + 80 on the centerline of the dam is S 72.9 degrees E, 4,271 feet from the Northwest corner of the Vernon Survey. Diversion Point No. 1 is located on the left, or north, shore of the reservoir S 41.867 degrees E, 1,720 feet from the northwest corner of the W. E. Vernon Survey No. 60, Abstract No. 1743 and at approximately 32.144 degrees N Latitude, 98.659 degrees W Longitude. Diversion Point No. 2 is located on the left, or north, shore of the reservoir, S 82.83 degrees E, 3,222 feet from the northwest corner of the Vernon Survey and at approximately 32.144 degrees N Latitude, 98.659 degrees W Longitude. Diversion Point No. 3 is located on the right, or south bank of the Copperas (Rush) Creek, N 36 degrees E, 590 feet from the southwest corner of the T. J. Goss Survey No. 46, Abstract No. 2150 and at approximately 32.084 degrees N Latitude, 98.847 degrees W Longitude. Permittees seek to amend Water Use Permit No. 3808 (Application No. 4087), as amended, by extending or deleting the expiration date of December 31, 2000. The application was received on Apirl 12, 2000. Additional information was received September 8, 2000 and October 27, 2000. The application was determined to be administratively complete on November 6, 2000. 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.

APPLICATION 5349A Brazos Farm Ltd., P. O. Box 3460, Bryan, Texas 77805, applicant, seeks to amend Water Use Permit No. 5349 pursuant to Texas Water Code 11.122 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. The Executive Director recommends that notice should be published and mailed pursuant to 30 TAC 295.158 (b)(8) to the water right holders in the Brazos River Basin. Water Use Permit No. 5349 authorizes the permittee to divert and use to not exceed 780 acre-feet of water per annum from the Brazos River, in the Brazos River Basin for agricultural purposes to irrigate 589.516 acres out of a 68.640 acre tract and a 520.876

acre-tract in the William Mathis Grant Abstract No. 37 and the J. Curtis, Jr. Grant, Abstract No. 12 approximately ten (10) miles southwest of Bryan, Brazos County, Texas. The maximum diversion rate is 13.4 cfs (6,000 gpm). The permit contains a special condition whereby the authorization to divert the water will expire on December 31, 2001. The permit also contains other special conditions. Ownership of the land to be irrigated is evidence by Warranty Deed Volume 386, Page 164 of the Brazos County Records. The diversion point is located on the left, or north, bank of the Brazos River at 30.16 degrees N Latitude and 97.36 degrees W Longitude, also being S 53.5 degrees W, 10,065 feet from the southeast corner of the aforesaid Mathis Grant. Applicant seeks to amend Water Use Permit No. 5349, by extending or deleting the expiration date of December 31, 2001. The application was received on April 12, 2002. Additional information was received May 23, 2002. The application was determined to be administratively complete on May 31, 2002. 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.

APPLICATION 12-3485C. H. L. Perrin and Erma Lee Perrin, RR 1 Box 120, Ranger, Texas 76470, and Ronnie N. Love and Barbara Ann Love, 5202 FM 571, Ranger, Texas 76470-7607, applicants, seek to amend Certificate of Adjudication No. 12-3485, as amended, pursuant to Texas Water Code 11.122 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. The Executive Director recommends that notice should be published and mailed pursuant to 30 TAC 295.152 & 295.158 (b)(8) to the water right holders in the Brazos River Basin. Certificate of Adjudication No. 12-3485, as amended, authorizes H. L. Perrin, et ux and Ronnie N. Love, et ux to maintain an existing dam and reservoir on Salt Branch, tributary of the Leon River, tributary of the Little River, tributary of the Brazos River, the Brazos River Basin, and impound therein not to exceed 350 acre-feet of water. Ronnie N. Love, et ux are also authorized to divert 148 acre-feet of water per annum out of the aforesaid reservoir at a maximum total division rate of 2.9 cfs (1300 gpm) for agricultural use to irrigate 148 acres out of a 316.4 acre tract of land in the Thomas A. Howell Survey, Abstract No. 152 in Eastland County. The time priority of the 148 acre-feet of water to irrigate 74 acres at a maximum rate of 1.11 cfs (500 gpm) is January 2, 1973. The time priority for irrigation of the additional 74 acres of land with a maximum diversion rate of 1.78 cfs (800 gpm) is April 6, 1973. The diversion point is located on the perimeter of the reservoir at approximately 32.347 degrees N Latitude, 98.603 degrees Longitude. The Certificate contains a special condition whereby the authorization to divert the water will expire on December 31, 2000. Other special conditions apply. Applicants seek to amend Certificate of Adjudication No. 12-3485, as amended, by extending or deleting the expiration date of December 31, 2000. The application was received on December 19, 2000. Additional information was received January 14, 2002. The application was determined to be administratively complete on May 3, 2002. 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.

APPLICATION 4263B. Troy Morris and Darnell Morris, 751 County Road 493, DeLeon, Texas 76444, applicants, seek to amend Water Use Permit No. 3934 (Application No. 4263), as amended, pursuant to Texas Water Code11.122 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. The Executive Director recommends that notice should be published and mailed pursuant to 30 TAC 295.152 & 295.153 (c) (1) to the water right holders downstream of the diversion point in the Brazos River Basin. Water Use Permit No. 3934 (Application No. 4263), as amended, authorizes permittees to divert and use not to exceed 25 acre-feet of water per annum from an exempt dam and reservoir on an unnamed tributary of the Leon River, tributary of the Little River, tributary of the Brazos River, in the Brazos River Basin for agricultural use to irrigate 50 acres of land out of a 120 acre tract of land in the J. P. Stephenson Survey, Abstract No. 833, approximately 18.75 miles north-northeast of Comanche in Comanche County. The maximum diversion rate is 0.45 cfs (200 gpm). The time priority is November 8, 1982. The permit contains a special condition whereby the permit will expire December 31, 2000. Other special conditions apply. The diversion point is located on the perimeter of the reservoir at approximately 32.165 degrees N Latitude, 98.557 degrees W Longitude. Applicants seek to amend Water Use Permit No. 3934 (Application No. 4263), as amended, by extending or deleting the expiration date of December 31, 2000. Applicant indicated that they have groundwater wells that can be used as an alternate water supply source. The wells produce good quality water at 50 gpm. The application was received on December 18, 2000. Additional information was received March 14, 2002. The application was determined to be administratively complete on May 7, 2002. 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.

APPLICATION 5161B William D. and Mary L. Carroll, 3450 Highway 2247, Comanche, Texas 76442, applicants, seek to amend Water Use Permit No. 5161, as amended, pursuant to Texas Water Code 11.122 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. The Executive Director recommends that notice should be published and mailed pursuant to 30 TAC 295.152 & 295.153 (c) (1) to the water right holders downstream of the diversion point in the Brazos River Basin. Water Use Permit No. 5161, as amended, authorizes owners to divert and use to not exceed 54 acre-feet of water per annum from two reservoirs (reservoir 1 is an exempt on-channel and reservoir 2 is off channel) to irrigate 150 acres of land out of three tracts totaling 336.704 acres located in the David H. Mc Fadden Survey, Abstract 647 in Comanche County. The maximum diversion rate is 2.2cfs (1,000 gpm). Reservoir 1 has a maximum capacity of 97.7 acre-feet of water and is located on an unnamed tributary of Copperas (Rush) Creek, tributary of the Leon River, tributary of the Little River,

tributary of the Brazos River in the Brazos River Basin. Reservoir 2, off-channel, has a capacity 52.7 acre-feet of water. Reservoir Nos. 1 & 2 are located in the aforesaid survey with the midpoint of Dam No. 1 being 950 feet northwest of the southeast corner of the aforesaid survey and a point on the west end of Dam No. 2 being N 86.75 degrees W, 1,500 feet from the aforesaid survey corner, approximately nine miles northwest of Comanche, Comanche County. The time priority is November 13, 1989. The Permit contains a special condition whereby the authorization to divert the water will expire on December 31, 2000. Other special conditions apply. The diversion point is located on the perimeter of the on-channel reservoir at approximately 32.046 degrees N Latitude, 98.638 degrees W Longitude. Applicant seeks to amend Water Use Permit No. 5161, as amended, by extending or deleting the expiration date of December 31, 2000. The application was received on January 2, 2001. Additional information was received April 5, 2002. The application was determined to be administratively complete on May 28, 2002. 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.

APPLICATION 8230 The Brazos River Authority (BRA), 4600 Cobbs Drive, P. O. Box 7555, Waco, Texas 76717-7555, applicant, seeks a temporary permit, for the remainder of the calender year 2002 and calendar year 2003, to authorize the diversion (overdraft) and use of up to 6,500 acre-feet of water each year (a total of 13,000 acre-feet of water during the term of the temporary permit) out of Lake Georgetown, on the San Gabriel River, tributary of the Little River, tributary of the Brazos River, Brazos River Basin, Williamson County, Texas. The requested 6,500 acre-feet of water per annum is in excess of BRA's diversion amount of 13,610 acre-feet per annum authorized by Certificate of Adjudication No. 12-5162. The additional water from Lake Georgetown is required to meet the water demands of the Cities of Georgetown and Round Rock until a pipeline project currently under construction is completed (expected date for completion is currently being evaluated by BRA). The pipeline will convey water from Stillhouse Hollow Lake on the Lampasas River, tributary of Little River, tributary of the Brazos River, Brazos River Basin in Bell County to Lake Georgetown in Williamson County, and eliminate the necessity of over-drafting Lake Georgetown in the future. If granted, this temporary permit will be junior in priority to all existing water rights in the Brazos River Basin. There are 71 water rights owners with diversion points downstream of Lake Georgetown. Owners of these water rights are being provided a copy of this notice to make them aware of BRA's request. A copy of this notice is also being provided to the TNRCC Regional Office Austin, Texas. The application was received by the TNRCC on May 16, 2002. The Executive Director of the TNRCC has reviewed the application and declared it to be administratively complete on May 23, 2002. 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 July 9, 2002. 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 July 9, 2002. The Executive Director may approve the application unless a written request for a contested case hearing is filed.

APPLICATION. G. H. Bingham, d/b/a 4-B Farms, 350 County Road 152, Comanche, Texas 76442, applicants, seek to amend Certificate of Adjudication No. 12-3573, as amended, pursuant to Texas Water Code 11.122 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. The Executive Director recommends that notice should be published and mailed pursuant to 30 TAC 295.153 (c) (1) to the water right holders downstream of the diversion point in the Brazos River Basin. Certificate of Adjudication No. 12-3573, as amended, authorizes the owner to divert and use not to exceed 60 acre-feet of water per annum from an exempt reservoir impounding 115 acre-feet of water on an unnamed tributary of Copperas (Rush) Creek, tributary of the Leon River, tributary of the Little River, a tributary of the Brazos River, in the Brazos River Basin for agricultural use to irrigate 125 acres of land out of a larger tract located in the P.M. Miller Survey, Abstract 670; the M. E. Pace Survey, Abstract 1308; the S. E. Welch Survey, Abstract 1976; and the C.W. Harrell Survey, Abstract 1966 and the Samuel Killough Survey, Abstract 1760, Comanche County. The maximum diversion rate is 1.34 cfs (600 gpm). The Certificate contains a special condition whereby the rights to divert from the reservoir will expire December 31, 2000. Other Special Conditions apply. The time priority is May 8, 1972. The diversion point is locate on the perimeter of the reservoir at approximately 32.075 degrees N Latitude, 98.724 degrees W Longitude. Owner seeks to amend Certificate of Adjudication No. 12-3573, as amended, by extending or deleting the expiration date of December 31, 2000. The application was received on December 18, 2000. Additional information was received April 1, 2002. The application was determined to be administratively complete on May 3, 2002. 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.

APPLICATION 5274 J. R. Grimshaw and Helen Grimshaw, 6825 FM 2214, Desdemona, Texas 76445, applicants, seek to amend Water Use Permit No. 5274, as amended, pursuant to Texas Water Code 11.122 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. The Executive Director recommends that notice should be published and mailed pursuant to 30 TAC 295.12 & 295.153 (c) (1) to the water right holders downstream of the diversion point in the Brazos River Basin. Water Use Permit No. 5274, as amended, authorizes permittees to divert and use not to exceed 25 acre-feet of water per annum from an existing exempt reservoir impounding 40 acre-feet of water on Rough Branch, tributary of the Leon River, tributary of the Little River, tributary of the Brazos River, in the Brazos River Basin for agricultural use to irrigate 35 acres of land out of a 163.86 acre tract D. S. Richardson Survey, Abstract 414 in Eastland County. The maximum diversion rate is 0.5 cfs (220 gpm). The time priority is December 13, 1989. The permit contains a special condition whereby the authorization to divert the water will expire on December 31, 2000. Other special conditions apply. The diversion point is located on the perimeter of the reservoir at approximately 32.317 degrees N Latitude, 98.605 W Longitude. Applicants seek to amend Water Use Permit No. 5274, as amended, by extending or deleting the expiration date of December

31, 2000. The application was received on December 18, 2000. Additional information was received March 20, 2002. The application was determined to be administratively complete on May 7, 2002. 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.

APPLICATION 4577B. George E. Bingham, Juanita Sue Bingham, Brian Bingham, Kellie Bingham, Carey Bingham, and Julie Ann Bingham, 2191 Highway 2247, Comanche, Texas 76442- 9802, applicants, seek to amend Water Use Permit No. 4264 (Application No. 4577), as amended, pursuant to Texas Water Code 11.122 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. The Executive Director recommends that notice should be published and mailed pursuant to 30 TAC 295.12 & 295.153 (c) (1) to the water right holders downstream of the diversion point in the Brazos River Basin.Water Use Permit No. 4264 (Application No. 4577), as amended, authorizes the permittees to divert and use not to exceed 40 acre-feet of water per annum from an exempt reservoir on an unnamed tributary of Martins Creek, tributary of Copperas (Rush) Creek, tributary of the Leon River, tributary of the Little River, tributary of the Brazos River, in the Brazos River Basin for agricultural use to irrigate 40 acres of land out of a 320 acre tract of land in the ET RR Company Survey, Abstract No. 313 and the Josiah Pomeroy Survey, Abstract No. 760 Comanche County. The maximum diversion rate is 0.9 cfs (400 gpm). The permit contains a special condition whereby the authorization to divert water for irrigation will expire on December 31, 2000. Other special conditions apply. The time priority is June 18, 1985. The diversion point is located on the perimeter of the reservoir at approximately 32.009 degrees N latitude, 98.677 degrees W longitude. Applicants seek to amend Water Use Permit No. 4264 (Application No. 4577), as amended, by extending or deleting the expiration date of December 31, 2000. The application was received on December 19, 2000. Additional information was received March 19, 2002. The application was determined to be administratively complete on May 7, 2002. 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.

APPLICATION NO 12-3555C. Jerry Solomon, 700 County Road 443, DeLeon, Texas 76444, applicant, seeks to amend Certificate of Adjudication No. 12-3555, as amended, pursuant to Texas Water Code 11.122 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. The Executive Director recommends that notice should be published and mailed pursuant to 30 TAC 295.12 & 295.153 (c) (1) to the water right holders downstream of the diversion point in the Brazos River Basin. Certificate of Adjudication No. 12-3555, as amended, authorizes the owner to divert and use not to exceed 100 acre-feet of water per annum from the exempt dam and reservoir with a capacity of 100 acre-feet on an unnamed tributary of the Sabana River, tributary of the Leon river, tributary of the Little River, tributary of the Brazos River, in the Brazos River Basin for agricultural use to irrigate a maximum of 155 acres of land out of a 170 acre tract of land in L. R. Sechrist Survey, Abstract 920, Comanche County. The maximum diversion rate is 0.56 cfs (250 gpm). The time priority of May 22, 1978. The Certificate contains a special condition whereby the rights authorized in the certificate will expire December 31, 2000. Other special conditions apply. The diversion point is located on the perimeter of the reservoir and is at 32.040 degrees N latitude, 98.677 degrees W longitude. Applicant indicated that they have 5 groundwater well that can be used as an alternate water supply source. The wells produce good quality water 175 gpm. Applicant seeks to amend Certificate of Adjudication No. 12-3555, as amended, by extending or deleting the expiration date of December 31, 2000. The application was received on December 29, 2000. Additional information was received March 7, 2002. The application was determined to be administratively complete on May 3, 2002. 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.

APPLICATION 12-3580D George E. Bingham, Juanita Sue Bingham, Brian Bingham, Kellie Bingham, Carey Bingham, and Julie Ann Bingham, 2191 Highway 2247, Comanche, Texas 76442- 9802, applicants, seek to amend Certificate of Adjudication No. 12-3580, as amended, pursuant to Texas Water Code 11.122 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. The Executive Director recommends that notice should be published and mailed pursuant to 30 TAC 295.12 & 295.153 (c) (1) to the water right holders downstream of the diversion point in the Brazos River Basin. Certificate of Adjudication No. 12-3580, as amended, authorizes the owners to divert and use not to exceed 70 acre-feet of water per annum from two exempt reservoirs, one reservoir is located on an unnamed tributary of Beattie Branch and the second reservoir is located on Beattie Branch, tributary of Copperas (Rush) Creek, tributary of the Leon River, tributary of the Little River, tributary of the Brazos River, in the Brazos River Basin to irrigate 100 acres of land out of a 189.11 acre tract Enos Cooper Survey, Abstract No. 136 and the D. H. McFadden Survey, Abstract 647 in Comanche County. The maximum diversion rate is 2.67 cfs (1,200 gpm). The Certificate contains a special condition whereby the authorization to divert the water will expire on December 31, 2000. The time priority is April 24, 1972. Other special conditions apply. Diversion point 1 is located on the perimeter of the reservoir at approximately 32.044 degrees N Latitude, 98.686 degrees W Longitude. Diversion point 2 is located on the perimeter of the reservoir at approximately 32.040 degrees N Latitude, 98.686 degrees W Longitude. Applicants seek to amend Certificate of Adjudication No.12-3580, as amended, by extending or deleting the expiration date of December 31, 2000. The application was received on December 19, 2000. Additional information was received March 19, 2002. The application was determined to be administratively complete on May 7, 2002. 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.

APPLICATION 5774 Cliff Johnson, 1293 Anderson County Road No. 419, Palestine, Texas 75803, applicant, seeks a Water Use Permit pursuant to 11.121, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. Pursuant to TAC 295.152(a) and TAC 295.153(b), notice is being published and mailed to the water right holders of record in the Trinity River Basin. Applicant seeks authorization to construct and maintain a dam, creating a reservoir on an unnamed tributary of Keechie Creek, a tributary of the Trinity River, Trinity River Basin located in the Anderson County School Land Survey, Abstract 71, and the John W. Carpenter Survey, Abstract 222, approximately 18 miles SW from Palestine, Texas for agricultural purposes including wildlife management. The midpoint on the centerline of the dam is located N 08 degrees W, 8,600 feet from the NW corner of the Daniel Parker Original Survey, Abstract No. 52, also being Latitude 31.72 degrees N and Longitude 95.79 degrees W. The reservoir will have a surface area of 94.6 acres at a normal operating level and impound 1,104 acre-feet of water. The application was received on January 23, 2002, and additional information was received on April 23, 2002. The application was declared administratively complete on May 20, 2002. 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.

APPLICATION 4210C. Paul Rains Estate c/o Hugh Rains, P.O. Box 245, Wichita Falls, Texas 76307-0245; Dennis L. Shelton, P.O. Box 261, Comanche, Texas 76442: and Gary and Mary L. Hall, P.O. Box 172, Sidney, Texas 76474, applicants, seek to amend Water Use Permit No. 3902 (Application No. 4210), as amended, pursuant to Texas Water Code 11.122 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. The Executive Director recommends that notice should be published and mailed pursuant to 30 TAC 295.152 & 295.153 (c) (1) to the water right holders downstream of the diversion point in the Brazos River Basin. Water Use Permit No. 3902 (Application No. 4210), as amended, authorizes the permittees to impound 25 acre-feet of water in an exempt reservoir on Jimmys Creek, tributary of Sweetwater Creek, tributary of Copperas (Rush) Creek, tributary of the Leon River, tributary of the Little River, tributary of the Brazos River, in the Brazos River Basin Comanche County. Each of the permittees has a recognized portion of the water rights as follow:

Paul Rains-30 acre-feet for agricultural use to irrigate 60 acres out of a 134 acre tract in the Daniel Kincheloe Survey, Abstract No. 592 and James Madison Survey, Abstract No. 679 in Comanche County at a maximum diversion rate of 1.4 cfs (650 gpm).

Gary Hall, et ux-20 acre-feet of water for agricultural use to irrigate 40 acres out of a 132.66 acre tract in the aforesaid Madison Survey in Comanche County at a maximum diversion rate of 1.4 cfs (650 gpm)

Dennis Shelton- 10 acre-feet of water for agricultural use to irrigate 15 acres out of a 51.17 acre tract in the aforesaid Madison Survey in Comanche County at a maximum diversion rate of 0.6 cfs (300 gpm). The diversion points are located on the perimeter of the aforesaid reservoir at approximately 31.938 degrees N Latitude, 98.757 degrees W Longitude. The permit contains a special condition whereby the authorization to divert the water will expire date of December 31, 2000. Other special conditions apply. Applicants seek to amend Water Use Permit No. 3902 (Application No. 4210), as amended, by extending or deleting the expiration date of December 31, 2000. The application was received on January 3, 2001. Additional information was received March 26, 2002. The application was determined to be administratively complete on May 7, 2002. 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.

APPLICATION 5255B Gloria Jean Dukes c/o Keith L. Dukes, agent, 1320 North Lane Street, Comanche, Texas 76442, applicant, seeks to amend Water Use Permit No. 5255, as amended, pursuant to Texas Water Code 11.122 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. The Executive Director recommends that notice should be published and mailed pursuant to 30 TAC 295.152 & 295.153 (c) (1) to the water right holders downstream of the diversion point in the Brazos River Basin.Water Use Permit No. 5255, as amended, authorizes permittee to divert and use not to exceed 75 acre-feet of water per annum from an exempt reservoir impounding 150 acre-feet of water on an unnamed tributary of Copperas (Rush) Creek, tributary of the Leon River, tributary of the Little River, tributary of the Brazos River, in the Brazos River Basin for irrigation of 75 acres of land out of two tracts totaling 210 acres in the W. M.C. Wilkinson Survey, Abstract No. 999 and the G. E. Armstrong Survey No. 406, Abstract No. 1191, Comanche County. The time priority is August 28, 1989. The permit contains a special condition whereby the authorization to divert the water will expire date of December 31, 2000. Other special conditions apply. The diversion point is located on the perimeter of the reservoir at approximately 32.056 degrees N Latitude, 98.713 degrees W Longitude at a maximum diversion rate of 1.1 cfs (500 gpm). Applicant seeks to amend Water Use Permit No. 5255, as amended, by extending or deleting the expiration date of December 31, 2000. The application was received on December 29, 2000. Additional information was received April 08, 2002. The application was determined to be administratively complete on May 21, 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.

APPLICATION12-3575C. B. N. Huddleston, P.O Box 109, DeLeon, Texas 76444, applicant, seeks to amend Certificate of Adjudication No. 12-3575, as amended, pursuant to Texas Water Code 11.122 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. The Executive Director recommends that notice should be published and mailed pursuant to 30 TAC 295.152 & 295.153 (c) (1) to the water right holders downstream of the diversion point in the Brazos River Basin. Certificate of Adjudication No. 12-3575, as amended, authorizes owner to divert and use not to exceed 70 acre-feet of water per annum from three exempt reservoirs on unnamed tributaries of Copperas (Rush) Creek and on Copperas (Rush)Creek, tributary of the Leon River, tributary of the Little River, tributary of the Brazos River, in Brazos River Basin for agricultural use to irrigate 85 acres out of a 469.5 acre tract of land in the J. T. Smith Survey, Abstract No. 2047, the C. M. Black Survey, Abstract No. 2061 and the J. H. Ross Survey, Abstract 1083 in Comanche County and divert and use not to exceed 60 acre-feet of water per annum from the aforesaid exempt reservoirs for agricultural use to irrigate 80 acres out of a 160 acre tract of land in the J. T. Smith Survey, Abstract No. 2048 in Comanche County. These authorizations include a special condition whereby the rights to divert water from the reservoirs will expire December 31, 2000. Also included in the Certificate is a perpetual water right that authorizes the owner to divert and use not to exceed 16 acre-feet of water per annum from Copperas (Rush) Creek for agricultural use to irrigate 31 acres of land out of the aforesaid 469.5 acre tract. The diversion rate for the 70 acre-feet of water and 60 acre-feet of water per annum the 194 acre-foot reservoir is 3.78 cfs (1,700 gpm) with a time priority of September 25, 1972; the combined maximum diversion rate from all three reservoir is 7.78 cfs (3,500 gpm) with a time priority of September 8, 1975; and the maximum diversion rate for 16 acre- feet of water for direct diversion from Copperas (Rush) Creek is 1.0 cfs (450 gpm) with a time priority of April 30, 1955 Diversion point 1 is located Copperas (Rush) Creek at approximately 32.079 degrees N Latitude,98.706 degrees W Longitude. Diversion point 2 is located on the perimeter of the reservoir 1 at approximately 32.088 degrees N Latitude, 98.703 degrees W Longitude. Diversion point 3 is located on the perimeter of the reservoir 2 at approximately 32.084 degrees N Latitude, 98.707 degrees W Longitude. Diversion point 4 is located on the perimeter of the reservoir 3 at approximately 32.082 degrees N Latitude, 98.704 degrees W Longitude. Other special conditions apply. Applicant seeks to amend Certificate by extending or deleting the expiration date of December 31, 2000 for the 130 acre-feet of water per annum. (The perpetual 16 acre-feet water right will not be effected by this amendment) The application was received on October 30, 2000. Additional information was received February 6, 2001 and June 4, 2002. The application was determined to be administratively complete on May 31, 2002. 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.

APPLICATION 12-3622C Curtis D. Lesley and Royce G. Lesley, 5350 Highway 2318, Comanche, Texas 76442, applicants, seek to amend Certificate of Adjudication No. 12-3622, as amended, pursuant to Texas Water Code 11.122 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. The Executive Director recommends that notice should be published and mailed pursuant to 30 TAC §§ 295.152 & 295.153 (c) (1) to the water right holders downstream of the diversion point in the Brazos River Basin.Certificate of Adjudication No. 12-3622, as amended, authorizes the owners divert and use not to exceed 50 acre-feet of water from two exempt reservoirs with the capacities of 14 acre-feet and 36 acre-feet on an unnamed tributary of Copperas (Rush) Creek, tributary of the Leon River, tributary of the Little River, tributary of the Brazos River, in the Brazos River Basin, to irrigate 60 acres of land out of 100 acre tract in the Valentine Wilson Survey, Abstract No. 1024 in Comanche County, Texas. The maximum diversion rate is 1.11 cfs (500 gpm). The priority date is June 28, 1976. The Certificate contains a special condition whereby the authorization to divert the water will expire on December 31, 2000. Other special conditions apply. The diversion points are located on the perimeter of the reservoirs at approximately 32.001 degrees N Latitude, 98.542 degrees W Longitude. Applicants seek to amend Certificate of Adjudication No.12-3622, as amended, by extending or deleting the expiration date of December 31, 2000. Applicants indicated that they have groundwater wells that can be used as an alternate water supply source. The wells produce good quality water at 350 gpm. The application was received on December 14, 2000. Additional information was received June 3, 2002. The application was determined to be administratively complete on June 5, 2002. 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.

APPLICATION 5416B. James Donald Chester, 601 County Road 136, Comanche, Texas 76442, applicant, seeks to amend Water Use Permit No. 5416, as amended, pursuant to Texas Water Code 11.122 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. The Executive Director recommends that notice should be published and mailed pursuant to 30 TAC 295.152 & 295.153 (c) (1) to the water right holders downstream of the diversion point in the Brazos River Basin. Water Use Permit No. 5416, as amended, authorizes owner to divert and use not to exceed 10 acre-feet of water per annum from an exempt reservoir impounding 13 acre-feet of water on an unnamed tributary of Martins Branch, tributary of Copperas (Rush) Creek, tributary of the Leon River, tributary of the Little River, tributary of the Brazos River, in the Brazos River Basin for agricultural use to irrigate 11 acres of land out of a 84.62 acre tract H. C. Denny Survey, Abstract No. 272 in Comanche County. The maximum diversion rate is 0.89 cfs (400 gpm). The Permit contains a special condition whereby the authorization to divert the water will expire on December 31, 2000. Other special conditions apply. The time priority is April 15, 1992. The diversion point is on the perimeter of the aforesaid reservoir at approximately 32.012 degrees N Latitude, 98.676 degrees W Longitude. Applicant seeks to amend Water Use Permit No. 5416, as amended, by extending or deleting the expiration date of December 31, 2000. The application was received on December 18, 2000. Additional information was received April 22, 2002. The application was determined to be

administratively complete on May 22, 2002. 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.

APPLICATION 12-3524C. Julia Beth Cook, Jerry R. Skaggs, and Emma Jane Larch, 703 South Lamar, DeLeon, Texas 76444, applicants, seek to amend Certificate of Adjudication No. 12-3524, as amended, pursuant to Texas Water Code 11.122 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. The Executive Director recommends that notice should be published and mailed pursuant to 30 TAC 295.152 & 295.153 (c) (1) to the water right holders downstream of the diversion point in the Brazos River Basin. Certificate of Adjudication No. 12-3524, as amended, authorizes the owner to divert and use not to exceed 25 acre-feet of water per annum from two exempt dams and reservoirs on an unnamed tributary of the Sabana River, tributary of the Leon River , tributary of the Little River, tributary of the Brazos River, in the Brazos River Basin for agricultural use to irrigate a maximum of 41.8 acres of land out of two tracts totalling 200 acres in H. & T. C. RR Co. Survey, Abstract 207 and J.C. Kidd Survey, Abstract 802, Eastland County. The time priority is December 8, 1975. The Certificate contains a special condition whereby the rights to divert from the reservoir will expire December 31, 2000. Other special conditions apply. The diversion points are located on the perimeter of the reservoirs. Diversion point 1 is located at approximately 32.224 degrees N Latitude, 98.730 degrees W Longitude and diversion point 2 is locate at approximately 32.223 degrees N Latitude, 98.730 degrees W Longitude. The maximum combined diversion rate of 0.67 cfs (300 gpm). Applicant seeks to amend Certificate of Adjudication No. 12-3524, as amended, by extending or deleting the expiration date of December 31, 2000. The application was received on December 20, 2000. Additional information was received February 22, 2002. The application was determined to be administratively complete on May 7, 2002. 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.

Information Section

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 an application.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TNRCC Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-200203818
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 18, 2002

♦ ♦ ♦

Proposal for Decision

The State Office Administrative Hearing issued a Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on June 11, 2002 Executive Director of the Texas Natural Resource Conservation Commission, Petitioner v. Las Palmas Veterinary Hospital, Inc.; SOAH Docket No. 582-01-2736; TNRCC Docket No. 1999-1563-AIR-E. In the matter to be considered by the Texas Natural Resource Conservation Commission on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105 TNRCC PO Box 13087, Austin Texas 78711-3087. If you have any questions or need assistance, please contact Doug Kitts, Chief Clerk's Office, (512) 239-3317.

TRD-200203816
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 18, 2002

♦ ♦ ♦

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 June 17, 2002, for retail electric provider (REP) certification, pursuant to §§39.101 -

39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Tara Energy, Inc. for Retail Electric Provider (REP) Certification, Docket Number 26102.

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 July 8, 2002. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200203806
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2002

♦ ♦ ♦

Notice of Joint Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a Joint Application to Amend Certificated Service Area Boundaries. A summary of the application follows.

Docket Style and Number: Joint Application of Entergy Gulf States, Inc. and Sam Houston Electric Cooperative, Inc. to Amend Certificated Service Area Boundaries, Docket Number 26069 before the Public Utility Commission.

The Application: Applicants stated that no municipalities were involved in this proposed boundary change as the affected property lies in an unincorporated area and that Sam Houston Electric Cooperative, Inc., Entergy Gulf States, Inc. (EGSI), and EGSI's customer have agreed to the proposed amendment, as indicated in Attachment C to the Letter Agreement executed by the parties.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's, Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989.

TRD-200203690
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 13, 2002

♦ ♦ ♦

Notice of Petition for Emergency Rulemaking to Protect Customers From POLR Transfers

The Public Utility Commission of Texas (commission) received a petition on June 4, 2002, from Texas Legal Services Center requesting an emergency rule to prevent massive customer confusion regarding Provider of Last Resort (POLR) services and termination procedures, and to save lives. The petition is assigned Project Number 26091, *Texas Legal Services' Request for Emergency Rule to Protect Customers from POLR Transfers (Severed from Project Number 25360)*. Under the Administrative Procedure Act, Texas Government Code §2001.021, the commission shall either deny the petition in writing, stating its reasons for denial, or initiate a rulemaking proceeding not later than the 60th day after the date the petition is filed.

Comments on the petition may be filed no later than 3:00 p.m. on July 12, 2002. Copies of the petition may be obtained from the commission's Central Records Division, William B. Travis Building, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or through the Interchange on the commission's web site at www.puc.state.tx.us. All inquiries and comments concerning this petition for rulemaking should refer to Project Number 26091.

TRD-200203774
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 17, 2002

♦ ♦ ♦

Notice of Workshop for Rulemaking on Oversight of Independent Organizations in the Competitive Market

The Public Utility Commission of Texas (commission) will hold a workshop relating to the oversight of independent organizations in the competitive electric market. The workshop will be held at the offices of the Public Utility Commission, 1701 North Congress Avenue, Austin, Texas, on Tuesday, July 9, 2002, at 10:00 a.m. in the Commissioners' Hearing Room. Project Number 25959, *Rulemaking on Oversight of Independent Organizations in the Competitive Electric Market*, has been established for this proceeding. Prior to the workshop, the commission will post on its web site an outline of a draft rule prepared by commission staff. The purpose of the workshop will be to permit interested persons to provide their views on this topic and to assist the commission in developing a rule. A proposed rule is not being published for comment at this time. Interested persons will have an opportunity to provide formal comments on this matter when a proposed rule is published for comment.

Questions concerning the workshop or this notice should be referred to Jess Totten, Director, Electric Division at (512) 936-7235. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200203812
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2002

♦ ♦ ♦

Public Notice of Amendment to Interconnection Agreement

On June 14, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Verizon Select Services, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104- 104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26095. 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 26095. 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 July 16, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission, 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 26095.

TRD-200203811
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2002

♦ ♦ ♦

Public Notice of Amendment to Interconnection Agreement

On June 14, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and National Discount Telecom, LLC, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104- 104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26096. 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 26096. 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 July 16, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission, 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 26096.

TRD-200203810
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18,2002

♦ ♦ ♦

Public Notice of Amendment to Interconnection Agreement

On June 14, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and NII Communications, Ltd., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public

Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26097. 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 26097. 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 July 16, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission, 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 26097.

TRD-200203809
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2002

♦ ♦ ♦

Public Notice of Amendment to Interconnection Agreement

On June 14, 2002, Sprint Spectrum, LP and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26100. 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 26100. 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 July 16, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission, 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 26100.

TRD-200203808
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2002

♦ ♦ ♦

Public Notice of Amendment to Interconnection Agreement

On June 14, 2002, AT&T Wireless Services, Inc. and Verizon Southwest, collectively referred to as applicants, filed a joint application for

approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26101. 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 26101. 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 July 16, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission, 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 26101.

TRD-200203807
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2002

♦ ♦ ♦

Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214.

Docket Title and Number. Valor Telecommunications of Texas, LP Application for Approval of LRIC Study for Caller ID, Call Waiting, and Call Waiting ID Features Pursuant to P.U.C. Substantive Rule §26.214 on June 24, 2002, Docket Number 26076.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 26076. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission, Customer Protection Division at (512) 936-7120. Hearing and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200203689
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 13, 2002

♦ ♦ ♦

Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215.

Docket Title and Number. Southwestern Bell Telephone Company's Application for Approval of LRIC Study for Business Category Search Pursuant to P.U.C. Substantive Rule §26.215 on June 24, 2002, Docket Number 26090.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 26090. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission, Customer Protection Division, at (512) 936-7120. Hearing and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200203804
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2002

♦ ♦ ♦

Public Notice of Interconnection Agreement

On June 12, 2002, United Telephone Company of Texas, Inc. doing business as Sprint, Central Telephone Company of Texas doing business as Sprint, and Phone-Link, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications

Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26077. 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 26077. 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 July 15, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission, 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 26077.

TRD-200203803
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2002

♦ ♦ ♦

Public Notice of Interconnection Agreement

On June 13, 2002, WesTex Communications, LLC and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26083. 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 26083. 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 July 16, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission, 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 26083.

TRD-200203802
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2002

♦ ♦ ♦

Public Notice of Interconnection Agreement

On June 13, 2002, Buy-Tel Communications, Inc. and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26084. 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 26084. 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 July 16, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission, 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 26084.

TRD-200203801
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2002

♦ ♦ ♦

Public Notice of Interconnection Agreement

On June 13, 2002, National Discount Telecom, LLC and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26085. 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 26085. 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 July 16, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission, 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 26085.

TRD-200203800
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2002

♦ ♦ ♦

Public Notice of Interconnection Agreement

On June 13, 2002, IQC, LLC and GTE Southwest Incorporated doing business as Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement. 2002) (PURA). The joint application has been designated Docket Number 26086. 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 26086. 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 July 16, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission, 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 26086.

TRD-200203799

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2002

♦ ♦ ♦

Public Notice of Interconnection Agreement

On June 13, 2002, Express Telephone Services, Inc. and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26087. 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 26087. 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 July 16, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission, 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 26087.

TRD-200203798
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2002

♦ ♦ ♦

Public Notice of Interconnection Agreement

On June 13, 2002, Southern Telcom Network, Inc and GTE Southwest Inc. doing business as Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement. 2002) (PURA). The joint application has been designated Docket Number 26088. 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 26088. 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 July 16, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission, 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 26088.

TRD-200203797
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2002

♦ ♦ ♦

Texas Department of Transportation

Request for Proposals for Professional Services - Aviation Division

The Texas Department of Transportation (TxDOT), intends to engage Aviation Professional Services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT, Aviation Division will solicit and receive proposals for professional services as described:

Project Sponsor: Texas Department of Transportation, Aviation Division. TxDOT CSJ #02AIRPORT. Prepare a Feasibility Study; Site Selection; Airport Master Plan and an Enviromental Assessment for a proposed airport to serve Central Texas. (The study area is limited to Travis and adjacent counties.) Project Manager: Linda Howard.

The Proposal Shall Include:

1. Firm name, address, phone number and person to contact regarding the proposal.

2. Proposed project management structure identifying key personnel and subconsultants (if any).

3. Qualifications and recent, relevant experience (past five years) of the firm, key personnel and subconsultants relative to the performance of similar services for aviation planning projects.

4. Proposed project schedule, including major tasks and target completion dates.

5. Technical approach - a detailed discussion of the tasks or steps to accomplish the project.

6. List of references including the name, address, and phone number of the person most closely associated with the firm's prior performance of similar airport planning projects.

7. Statement regarding an Affirmative Action Program.

8. Copy of the "Franchise Tax Certificate of Account Status" from the Texas State Comptroller office that all franchise taxes are paid or that consultant is not subject to franchise taxes.

9. Certification of Child Support payments. Forms are available by calling TxDOT, Grant Management, at (512) 416-4500 or 1-800-68-PILOT.

Those interested consultants should submit seven copies of brief proposals consisting of the minimum number of pages sufficient to provide the above information for the project. Proposals must be postmarked by U. S. Mail by midnight July 18, 2002 (CDST). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDST) on July 19, 2002; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. July 19, 2002 (CDST); hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704.

The selection committee will review all proposals and may select three to five firms for interviews. The final consultant selection by the selection committee will be made following the completion of the review of proposals and/or interviews.

TxDOT reserves the right to reject any or all proposals, and to re-open the consultant selection process.

If there are any questions, please contact Linda Howard, Project Manager, Aviation Division, Texas Department of Transportation, (512) 416-4540 or 1-800-68-PILOT.

TRD-200203788
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: June 18, 2002

♦ ♦ ♦

Texas Workforce Commission

Notice of Opportunity to Comment on the Proposed Workforce Investment Act Waivers to be Submitted to the U.S. Department of Labor

The Texas Workforce Commission (Commission) is providing an opportunity for written public comment on the proposed Workforce Investment Act (WIA) waiver plan, which will be submitted to the U.S. Department of Labor (DOL). WIA §189(i) (29 U.S.C.A. §2939(i)) authorizes a state to request the Secretary of DOL to waive some statutory and regulatory requirements of the WIA. The Commission proposes submitting requests for waivers of the following: 50% cost of training match for customized training, eligible training provider reporting requirements, reallocation requirements, limitations on transfer of funds between the adult and dislocated worker programs, limitations on the use of the eligible training provider system for older and out-of-school youth and the allocation limit on statewide activities.

A copy of the waiver plan is available for public inspection at the Commission office located at 1117 Trinity, Room 504BT, Austin, Texas 78701-1920. The waiver plan is also available online at **www.twc.state.tx.us**.

Written comments concerning the waiver plan should be sent to Luis Macias, 1117 Trinity, Room 504BT, Austin, Texas 78701-1920, by email to **luis.macias@twc.state.tx.us**, or by facsimile transmission to (512) 463-2799. Written comments must be received no later than 5:00 p.m., Friday, July 12, 2002.

TRD-200203805
John Moore
Acting General Counsel
Texas Workforce Commission
Filed: June 18, 2002

♦ ♦ ♦

15 Percent Limit on Statewide Activities

The Texas Workforce Commission (Commission), the administrative entity for the Workforce Investment Act (WIA), is requesting a waiver to remove the 15 percent limit on the amount the Governor may reserve for statewide activities and to allow the Governor to determine the amount reserved for statewide activities. The reserve amount greater than 15 percent will be used for programs and activities administered by the Local Workforce Development Boards (Boards) at the local level. Administrative costs would remain at or below 5 percent at the state level.

This waiver request follows the format identified in WIA §189(i)(4)(B) (29USCA §2939(i)(4)(B)) and WIA Regulations at 20 CFR §661.420(c).

1. Statutory Provisions to be Waived:

• WIA §128(a)(1) (29 USCA §2853(a)(1)) provides that the Governor of a State shall reserve not more than 15 percent of the amounts allotted to the State to carry out statewide youth activities and statewide employment and training activities for adults or dislocated workers.

• 20 CFR §667.130(b) restates that a state is limited to 15 percent for reserving Adult, Dislocated Worker, and Youth funds for statewide activities.

In 1995, with the passage of House Bill 1863, the Commission was created to administer a variety of employment and training programs to help adults and youth develop the job skills necessary to meet the occupational demands of employers and the state. That legislation envisioned a statewide workforce investment system made up of the Commission, the 28 Boards and their service providers, known as the Texas Workforce Network. As a result of the Commission's leadership, Texas implemented WIA in 1999, a full year ahead of the federal mandate. One year later, all 28 Boards were operational and the Texas Workforce Network was delivering services statewide. The Commission oversees the Boards' service delivery that is based on the establishment of local control over large-block granted programs. The Texas Workforce Network has three underlying principals:

• employer focused to meet the workforce needs of businesses and industries;

• locally designed service delivery plans to serve current workers and individuals entering the labor force for the first time; and

• integrated service delivery to allow the broadest range of job seekers to access employment assistance.

WIA formula funded programs are not always able to provide services locally that address employers' demands for skilled employees, or remove job seekers' barriers to employment. Limited to formula funded programs, Boards often lack the freedom to create innovative programs at the local level that are reasonable and necessary to address unexpected needs of their employers and respective customers. Statewide activity funds give Boards the flexibility and resources to provide services to employers and job seekers.

The underlying purpose for the Governor's reserve for statewide activity funds is to further enhance and integrate WIA program activities and to expand existing allowable activities. For example, statewide activity funds are used locally for special initiatives to enhance the One-Stop system and to develop partnerships with the WIA partners. The Commission is committed to system-wide continuous improvement by carrying out required and allowable statewide employment and training activities prescribed in WIA. However, with the current economic slowdown, the demand on statewide activity funds has increased, particularly from employers. The increased demand for statewide activity funds among competing customers may be greater than the amount available with the 15 percent ceiling. Waiving the 15 percent ceiling on statewide funds gives Texas more latitude to increase allowable employment and training activities and gives the Commission and local areas greater flexibility to create programs that improve services to employers and job seekers.

Texas is fully committed to the WIA concept of implementing innovative and comprehensive workforce investment systems tailored to meet the particular needs of local and regional labor markets. This waiver will allow Texas to fully implement this concept.

2. State or Local Statutory or Regulatory Barriers:

There are no state or local statutory or regulatory barriers to implementing the requested waiver. Commission regulations and policy statements are in compliance with current federal law. Upon notification of the approval of this waiver request, Commission regulation and policy will be amended to comply with the terms of the waiver.

3. Goals to be Achieved by the Waiver:

• Improve the ability of Boards to respond to employers and job seekers that do not fit statutory defined populations within their local areas;

• Increase local control for program delivery by encouraging locally designed service delivery plans;

• Provide greater flexibility to Boards in designing and implementing WIA programs; and

• Increase accountability at the state, local, and service provider levels by ensuring that statewide activity expenditures at every level are reported through the existing monitoring and performance accountability system and are based on negotiated performance measures that evaluate the program's effectiveness.

Programmatic Outcomes:

Statewide activity funds enhance the service delivery of the required WIA programs and activities at the local level. Funding statewide activities beyond the 15 percent limit will enable Boards to use these additional funds to tailor their programs to meet real, locally determined employer and job seeker needs and to further reform the state's workforce investment system.

Statewide activity funds provide local areas with the flexibility to respond to the more immediate needs of customers or of the WIA program delivery system. Statewide activity funds are used to address the needs of customers affected by unforeseen events or natural disasters that cause sudden layoffs in workforce areas. For example, the events of 9/11 had a direct affect on two of the state's largest workforce areas.

Two major airlines maintain their operational centers, or hubs in Texas. As passenger numbers declined, the airlines cancelled scheduled flights, reduced routes, and laid off their employees. Layoffs from the airlines impacted other related businesses that depend on the economic health of the airlines, particularly at these hubs. The two workforce areas, where these airlines have their hubs, suffered a disproportionate number of lost jobs. 9/11 made the state aware that the 15 percent limit on statewide activity funds reduces the choices available for workforce areas to respond to the immediate needs of businesses and employees.

These funds are also used to create infrastructures that provide long-term benefits to customers, as well as to improve delivery of direct client services. Statewide funds used for funding innovative demonstration projects often become the models for implementing statewide programs. Because these projects are designed according to the specific needs of local areas, accountability at the local and service provider level is increased. Projects funded at the local level with statewide activity funds promote the workforce system as a valued partner with business, labor, and community organizations.

4. Individuals Impacted by this Waiver:

This waiver will benefit local workforce areas, employers, Boards, service providers, One-Stop center staff, and participants. The economic downturn and the events of 9/11 created new customers that do not fit statutory defined populations. This waiver will allow Boards to assist new customers with specialized needs. The flexibility of these funds encourages Boards to increase their services and become more responsive and innovative with their service providers to meet existing and new customers' needs. This waiver encourages Boards to partner with more employers and business, labor and community organizations, which promotes universal access for any individual to access the One-Stop system.

5. Process to Monitor Progress in Implementing the Waiver:

The Commission, with input from Boards, service providers, and the public, develops programs and activities funded with statewide activity funds. The Commission has a successful monitoring and performance accountability system that measures results for job seekers and employers using the Texas Workforce Network. The Commission continuously analyzes performance reports and compares actual performance with contract benchmarks. The Commission will continue to make adjustments to monitoring performance requirements to ensure that performance goals and objectives are met for all WIA statewide activity programs. The Commission will monitor progress on this waiver by reviewing monthly expenditure and performance reports submitted by Boards and from regularly scheduled conference calls with Board executive directors. Provisions in the contracts for the programs funded with statewide activity funds address specific performance measures.

Notice to Boards. Notice to Boards would occur via issuance of Workforce Development Letter(s), as well as through provision of training and/or technical assistance. These steps would be taken prior to the effective date of the waiver implementation.

Board Opportunity to Comment. Actual notice of the proposed waiver plan will be provided to Board chairpersons, Board executive directors and lead chief elected officials in the workforce areas for comment.

Public Comment Opportunity. Notice of the proposed waiver plan will be available on the Commission website and will be published in the *Texas Register*.

TRD-200203931
John Moore
Acting General Counsel
Texas Workforce Commission
Filed: June 21, 2002

♦ ♦ ♦

Allowing the State to Design a WIA Reallocation Process

The Texas Workforce Commission (Commission), the administrative entity for the Workforce Investment Act (WIA), is requesting a waiver to allow the state to implement a WIA reallocation process that further encourages Local Workforce Development Boards (Boards) to administer effective and efficient programs by increasing their rates of expenditure, and thereby enhancing Texas' ability to maximize allotted WIA funds to provide needed services.

This waiver request follows the format identified in WIA §189(i)(4)(B) (29 USCA §2939(i)(4)(B)) and WIA Regulations at 20 CFR §661.420(c).

1. Statutory Provisions to be Waived:

• WIA §128(c)(2) (29 USCA §2853(c)(2)) and §133(c)(2) (29 USCA §2863(c)(2)) provide that the amount available for reallocation for a program year is equal to the amount by which the unobligated balance of the Board allocation of Youth, Adult, or Dislocated Worker funds exceeds 20 percent.

• WIA §128(c)(4) (29 USCA §2853(c)(4)) and §133(c)(4) (29 USCA §2863(c)(4)) provide that a Board eligible for a reallocation is one that has obligated at least 80 percent of the Board allocation for Youth, Adult, and Dislocated Worker.

• WIA §128(c)(3) (29 USCA §2853(c)(3)) and §133(c)(3) (29 USCA §2863(c)(3)) provide for making reallocations to eligible Board areas for amounts available pursuant to §128(c)(2) and §133(c)(2) for a program year. The governor shall allocate to each eligible Board area within the state an amount based on the relative amount allocated to such Board for Youth, Adult, and Dislocated Worker.

In 1995, with the passage of House Bill 1863, the Commission was created to administer a variety of employment and training programs to help adults and youth develop the job skills necessary to meet the occupational needs of employers and the state. That legislation envisioned a statewide workforce investment system made up of the Commission, the 28 Boards and their service providers, known as the Texas Workforce Network. As a result of the Commission's leadership, Texas implemented WIA in 1999, a full year ahead of the federal mandate. One year later, all 28 Boards were operational and the Texas Workforce Network was delivering services statewide. The Commission oversees the Boards' service delivery that is based on the establishment of local control over large-block granted programs. The Texas Workforce Network has three underlying principals:

• employer focused to meet the workforce needs of businesses and industries;

• locally designed service delivery plans to serve current workers and individuals entering the labor force for the first time; and

• integrated service delivery to allow the broadest range of job seekers to access employment assistance.

The Commission has developed an allocation rule with deobligation benchmarks that apply to nearly $500 million in other block grant programs "to promote effective service delivery and financial planning and management, to ensure full utilization of funding, and to reallocate funds to populations in need." The Commission has effectively managed this variety of block grant funds through this process and now requests a waiver in order to achieve the same success with the WIA program.

In our efforts to encourage Boards to increase their rates of expenditure and to enhance our ability to maximize the available WIA funds allotted to us to provide needed services, we request that this **unobligated** balance standard be waived, and that we be authorized to deobligate when **unexpended** balances of the workforce area allocations exceed 20 percent for a program year.

In concert with our request to waive the 20 percent "**unobligated** balance" standard, in favor of a 20 percent "**unexpended** balance" standard, as referenced above, we hereby request that eligibility for reallocated funds be based upon **expending** 80 percent of the workforce area allocation.

We request, further in pursuit of our objective, that we be authorized to deobligate funds more frequently than at the end of a program year, specifically when **unexpended** balances exceed 67 percent of a workforce area allocation by the end of the second quarter of the program year.

To further enhance the ability of our state to maximize services at the local level and to ensure full utilization of WIA funding, we request the flexibility to establish thresholds in the reallocation process in order to eliminate de minimis or otherwise insignificant funding amounts, which could not impact service delivery in the workforce area.

2. State or Local Statutory or Regulatory Barriers:

There are no state or local statutory or regulatory barriers to implementing the requested waiver. Commission regulations and policy statements are in compliance with current federal law. Upon notification of the approval of this waiver request, Commission regulation and policy will be amended to comply with the terms of the waiver.

3. Goals to be Achieved by the Waiver:

• Increasing accountability for the effective and timely expenditure of available funding;

• Providing more employment and training services to qualified program clients more promptly;

• Increasing state and local flexibility, by providing the state with the ability to hold Boards to a higher standard of effective and timely expenditure of available funding.

Programmatic Outcomes:

Deobligating funds under either option will increase the Boards' rates of expenditure and enhance the Commission's ability to maximize the available WIA funds allotted to the state. The Commission provides Boards with continued technical assistance and program monitoring to encourage them to manage WIA funds to ensure that expenditures on WIA services are reasonable and necessary. However, funds from workforce areas with excess unexpended balances, can be reallocated to those workforce areas that require additional WIA funds to respond to increased demand for services. This increased flexibility to deobligate and reallocate unexpended funds between workforce areas would allow workforce areas to better respond to changes, while allowing the Commission to more effectively direct WIA funds to the workforce areas where they are needed most.

Individuals Impacted by this Waiver:

This waiver will benefit workforce areas, Boards, employers, service providers, One-Stop center staff, and participants. The Commission's ability to deobligate and to reallocate these funds encourages Boards to better manage how WIA funds are used to provide services in their workforce area. Existing and new customers will benefit because services available in the workforce area will be more responsive and innovative. This waiver encourages Boards to partner with more employers and business, labor and community organizations, which promotes universal access for any individual to access the One-Stop system.

Process to Monitor Progress in Implementing the Waiver:

The Commission, with input from Boards, service providers, and the public, develops policy and provides formal guidance to Boards through the issuance of Workforce Development Letters (WD Letters). The Commission has a successful monitoring and performance accountability system that measures results for job seekers and employers using the Texas Workforce Network. The Commission continuously analyzes performance reports and compares actual performance with contract benchmarks. The Commission' will continue to make adjustments to monitoring performance requirements to ensure that performance goals and objectives are met for all WIA programs. The Commission will monitor progress on this waiver by reviewing monthly expenditure and performance reports submitted by Boards and from regularly scheduled conference calls with Board executive directors.

Notice to Boards. As stated above, notice to Boards would occur via issuance of WD Letter(s), as well as through provision of training and/or technical assistance. These steps would be taken prior to the effective date of the waiver implementation.

Board Opportunity to Comment. Actual notice of the proposed waiver plan will be provided to Board chairpersons, Board executive directors and lead chief elected officials in the workforce areas for comment.

Public Comment Opportunity. Notice of the proposed waiver plan will be available on the Commission website and will be published in the *Texas Register*.

TRD-200203928
John Moore
Acting General Counsel
Texas Workforce Commission
Filed: June 21, 2002

♦ ♦ ♦

Customized Training: 50% of Cost of Training Employer Match

The Texas Workforce Commission (Commission), the administrative entity for the Workforce Investment Act (WIA), is requesting a waiver to change the required 50% employer match to a match based on a sliding scale. Through this approach, the employer match would range from 10 to 50 percent based on certain desirable quality characteristics of the training and the transferability of the skills to be attained by the worker.

This waiver request follows the format identified in WIA §189(i)(4)(B) (29 USCA §2939(i)(4)(B)) and WIA Regulations at 20 CFR §661.420(c).

1. Statutory Provisions to be Waived:

WIA §101(8) (29 USCA §2801(8)) defines customized training and requires employers to pay not less than 50% of the cost of the training.

In 1995, with the passage of House Bill 1863, the Commission was created to administer a variety of employment and training programs to help adults and youth develop the job skills necessary to meet the occupational needs of employers and the state. That legislation envisioned a statewide workforce investment system made up of the Commission, the 28 Local Workforce Development Boards (Boards) and their service providers, known as the Texas Workforce Network. As a result of the Commission's leadership, Texas implemented WIA in 1999, a full year ahead of the federal mandate. One year later, all 28 Boards were operational and the Texas Workforce Network was delivering services statewide. The Commission oversees the Boards' service delivery that is based on the establishment of local control over large-block granted programs. The Texas Workforce Network has three underlying principals:

• employer focused to meet the workforce needs of businesses and industries;

• locally designed service delivery plans to serve current workers and individuals entering the labor force for the first time; and

• integrated service delivery to allow the broadest range of job seekers to access employment assistance.

Customized training optimizes the resources available under workforce development initiatives to meet the needs of employers and job seekers. Since 1996, the Commission has successfully administered employer driven customized training programs funded through state resources. Customized training focuses on employers' and job seekers' needs while minimizing programmatic and bureaucratic barriers.

The Commission oversees three customized training programs: Skills Development Fund; Self-Sufficiency Fund; and Achieving Performance Excellence (APEX) Grants. These programs provide job seekers with the necessary skills to meet the demands of business and industry for skilled employees. The Commission directly administers the Skills Development Fund and Self-Sufficiency Fund programs by developing partnerships with employers, public community and technical colleges, community-based organizations, and others. These statewide programs focus on creating new jobs for job seekers and on retraining existing employees according to the employers' needs.

The APEX Grant program is funded with WIA funds that the Commission awards to Boards on a competitive basis. Boards with APEX grants administer their APEX grant locally. Following the approach the Commission uses for administering the Skills Development Fund, Boards pull together employers and training programs to enhance the skills of workers based on the occupational needs of businesses and industries.

The Commission has extensive experience in working with employers and in designing workforce development programs that meet specific employer needs. However, the current 50 percent employer match requirement limits the ability to market customized training programs to local employers. Local employers too often conclude that the 50 percent match requirement creates costs that outweigh the benefits of participating in a WIA customized training program.

The proposed sliding scale for the employer match will create the necessary flexibility for employers to provide the required match at a rate that more appropriately represents a particular business' or industry's cost benefit ratio of contributing to a match amount to receive skilled employees. Allowing businesses and industries to apply the sliding scale to determine the match amount will increase employer participation in WIA customized training programs at the local level. The sliding scale will answer employers' primary reason for not participating in the customized training. Boards will increase their participation rates for skilled job seekers that received training and found employment. Employers will benefit by having a labor pool with the marketable skills they require.

Proposed Employer Match Sliding Scale:

The proposed employer match sliding scale will range from 10 to 50 percent, based on quality characteristics of the customized training. Quality characteristics will be based on goals of the State Strategic Plan for Workforce Development that adhere to the principles of training workers in high demand, high skill, high wage occupations and industries. The Commission will develop the sliding scale and the process by which it will be applied. The Commission is committed to ensuring that participants in customized training programs will acquire the skills to meet workplace requirements for long term employment and work toward sustaining employment in high-skill, high wage occupational areas.

2. State or Local Statutory or Regulatory Barriers:

There are no state or local statutory or regulatory barriers to implementing the requested waiver. Commission regulations and policy statements are in compliance with current federal law. Upon notification of the approval of this waiver request, Commission regulation and policy will be amended to comply with the terms of the waiver.

3. Goals to be Achieved by this Waiver:

• Increase flexibility at the local level to serve business and industry through a value added approach to their specific needs;

• Equip workers with relevant job training with transferable skills that lead to high-skill, high-wage occupations and industries;

• Improve ability of Boards to work with the private sector and respond quickly to changes in their areas; and

• Increase local flexibility for design and control of training programs.

Programmatic Outcomes:

• Increase the percentage of employers using customized training as a means to hire and retain skilled workers.

• Increase the percentage of workers trained and hired through customized training programs.

Although existing data on Board customized training programs is not extensive at this time, it will be used as baseline data to measure progress on outcomes post waiver approval and implementation.

4. Individuals Impacted by this Waiver:

Employers will benefit from the waiver due to the reduced match requirement. This will make customized training a more attractive option for acquiring workers trained to their specifications.

The waiver will impact the provision of training services through customized training to Adults, Older Youth and Dislocated Workers eligible for services under WIA. In particular, WIA eligible individuals with multiple barriers to employment, low basic skills, and English language proficiency stand to benefit the most from customized training.

Trade/NAFTA has impacted workers along the Texas-Mexico Border. Of special concern are the workers formerly in the garment industry and other labor-intensive industries with multiple barriers to employment, in particular, non-English speaking skills. Customized training addresses the specialized needs of job seekers, providing them with the skills necessary to meet employer expectations and the needs of business and industry.

5. Process To Monitor Progress in Implementing the Waiver: The Commission, with input from Boards, employers, and service providers, develops customized training programs. The Commission has a successful monitoring and performance accountability system that measures results for job seekers and employers using the Texas Workforce Network. Technical assistance during the implementation phase of the waiver will cover areas such as procurement, contracting and program design. The Commission continuously analyzes performance reports and compares actual performance with contract benchmarks. The Commission will continue to make adjustments to monitoring performance requirements to ensure that performance goals and objectives are met for all WIA customized training programs. The Commission will monitor progress on this waiver by reviewing monthly expenditure and performance reports submitted by Boards and from regularly scheduled conference calls with Board executive directors. Provisions in the contracts for customized training programs address specific performance measures.

Notice to Boards. Notice to Boards would occur via issuance of Workforce Development Letter(s), as well as through provision of training and/or technical assistance. These steps would be taken prior to the effective date of the waiver implementation.

Board Opportunity to Comment. Actual notice of the proposed waiver plan will be provided to Board chairpersons, Board executive directors and lead chief elected officials in the workforce areas for comment.

Public Comment Opportunity. Notice of the proposed waiver plan will be available on the Commission website and will be published in the *Texas Register*.

TRD-200203925
John Moore
Acting General Counsel
Texas Workforce Commission
Filed: June 21, 2002

♦ ♦ ♦

Eligible Training Provider (ETP) Performance Reporting Requirements for Subsequent Eligibility Determination

The Texas Workforce Commission (Commission), the administrative entity for the Workforce Investment Act (WIA), is requesting waiver of the employment and wage performance reporting requirements for the Participant Universe - ALL for programs that are currently approved by the Texas Higher Education Coordinating Board (THECB). As provided for in WIA §122 (b)(1), these programs are exempted from submitting performance data at time of initial eligibility application. The waiver would apply to submission of specified performance data at time of subsequent eligibility application, as required by WIA §122 (d)(1)(A)(i) (29 USCA §2842(d)(1)(A)(i)), and 20 CFR §§663.535 and 663.540.

This waiver request follows the format identified in WIA §189 (i)(4)(B) (29 USCA §2939(i)(4)(B) and at 20 CFR §661.420(c).

1. Statutory Regulations to be Waived:

WIA §122(d)(1)(A)(i) (29 USCA §2842(d)(1)(A)(i) outlines the subsequent eligibility performance reporting requirements for the Participant Universe - ALL. The Commission is requesting a waiver of the employment and wage performance reporting requirements for programs that are THECB-approved at the time of subsequent eligibility application submission. The primary goals to be accomplished by this request include: (1) eliminating duplication of performance reporting and evaluation processes and (2) ensuring availability of a variety of quality WIA-certified programs from which eligible participants can select training option(s).

In 1995, with the passage of House Bill 1863, the Commission was created to administer a variety of employment and training programs to help adults and youth develop the job skills necessary to meet the occupational needs of employers and the state. That legislation envisioned a statewide workforce investment system made up of the Commission, the 28 Local Workforce Development Boards (Boards) and their service providers, known as the Texas Workforce Network. As a result of the Commission's leadership, Texas implemented WIA in 1999, a full year ahead of the federal mandate. One year later, all 28 Boards were operational and the Texas Workforce Network was delivering services statewide. The Commission oversees the Boards' service delivery that is based on the establishment of local control over large-block granted programs. The Texas Workforce Network has three underlying principals:

• employer focused to meet the workforce needs of businesses and industries;

• locally designed service delivery plans to serve current workers and individuals entering the labor force for the first time; and

• integrated service delivery to allow the broadest range of job seekers to access employment assistance.

THECB-approved programs are subject to the THECB Institutional Effectiveness (IE) review process, and as such, have been reviewed and approved by the agency that oversees the program approval, revision and review process for publicly supported community and technical colleges. The IE review process is a comprehensive approach for verifying the effectiveness of Texas' community and technical colleges in achieving their local and statutory missions. It provides for the systematic use of evaluation results to continuously improve institutional performance and programs.

THECB Institutional Effectiveness Review Process

• **Purpose, Authority, and Expectations:** Provisions of Texas Education Code, §61.051 and U.S. Public Law 105-332 (Carl V. Perkins Vocational and Technical Education Act of 1998), charge the THECB

with the responsibility of evaluating the effectiveness of workforce education programs, academic courses that are included in workforce education program curricula, and student services offered by public community and technical colleges, the Texas State Technical Colleges, and universities that offer applied associate degree programs for the purpose of assuring:

•• Continuous improvement of Texas' community and technical colleges in response to state and federal goals and higher education mandates, including workforce education and training;

• Accountability to the citizens of the state, Texas Legislature, Governor, and to the U.S. Department of Education for expenditures of public funds; and

•• Responsiveness of Texas' public community and technical college programs and services in developing a well-educated citizenry and highly training workforce.

Performance expectations for public community and technical colleges, the Texas State Technical Colleges, and universities that offer applied associate degree programs are stipulated in:

•• Texas Education Code, Sections 130.0035 and 135.01;

••*Criteria for Accreditation Southern Association of Colleges and Schools (SACS);*

••*Guidelines for Instructional Programs in Workforce Education;* and

••*Texas Academic Skills Program Policy Manual.*

• **Evaluation Process:** Two methods of evaluating colleges have been approved by THECB. Each year, the president of each college is asked to select:

•• An on-site evaluation conducted by peer reviewers from public community and technical colleges from across the state and led by a THECB staff member,

OR

•• An information and data review (informally referred to as a "desk review") conducted by THECB staff members. The desk review examines certain elements of the college's activities that have been identified as indicative of program and services quality.

All colleges are automatically scheduled for a desk review unless the president requests an on-site peer review.

• **Evaluation Timeline:** According to statute, each public two-year institution of higher education must be reviewed periodically. The number of public community and technical colleges in Texas dictates that each college is evaluated for institutional effectiveness once every four years.

• **Information Sources that Support the IE Initiative:**

•• The Annual Data Profile, the Statewide Factbook, and the College Profiles summarize and analyze data reported by Texas' public community and technical colleges relating to state-level goals and federal reporting requirements.

•• Information derived from the On-Site Review and Information and Data Review processes is used to support the IE initiative.

•• The Annual Institutional Self-Evaluation is a required component of the annual application for Federal Perkins Act funds. It requires community and technical colleges to provide data on statewide goals and program-level assessments.

• **Review of Outcomes Data:** One aspect of the review process involves collection and analysis of outcomes based measures. The 'Achievement' measures include:

Measure	Standard
Completion Rates for Full-time Students not Receiving Remediation	30% of full-time first-time-in-college students not receiving remediation receive a degree or certificate or transfer within 3 years
Completion Rates for Full-time Students Receiving Remediation	30% of full-time first-time-in-college students receiving remediation receive a degree or certificate or transfer within 4 years
Completion Rates for Part-time Students not Receiving Remediation	15% of part-time first-time-in-college students not receiving remediation receive a degree or certificate or transfer within 5 years
Completion Rates for Part-time Students Receiving Remediation	15% of part-time first-time-in-college students receiving remediation receive a degree or certificate or transfer within 7 years
Retention Rates from Fall to Spring of Full-time First-time-in-College Students (taking ≥ 12 Semester Credit Hours)	Retention from Fall to Spring of students who did and did not receive remediation is not more than five percentage points below the state average
Retention Rates from Fall to Spring of Part-time First-time-in-College Students (taking 6-11 Semester Credit Hours)	Retention from Fall to Spring of part-time students who did and did not receive remediation is not more than five percentage points below the state average
Course Completion	Percentage of contact hours completed is not more than five percentage points below the state average
15 Graduates Over 3 Year Period	90% of all active workforce education programs produce 15 graduates over 3 years (except new programs which received THECB approval or were first offered within last 3 years) [NOTE: In future, documentation on students who do not graduate but who gain skills that lead to employment or advancement in positions related to their training can have a positive impact on the program status rating for those programs that do not meet this standard. When a statewide system is developed with the participation of business and industry to formally and consistently recognize such "marketable skills achievement", these positive program outcomes will be incorporated into the compliance requirements for this standard.]

85% Placement of Workforce Education Program Graduates within One Year of Graduation	100% compliance for all workforce education programs producing graduates (3 year average), except new programs
Technical Non-Completers/Non-Returners Employed or Pursuing Additional Education (does not include students who graduated)	Percent of non-completers/non-returners who are employed or pursuing additional education is not more than five percentage points below the state average
Licensure Pass Rate	90% of students tested on a specific licensure exam pass (Perkins Standard), ***OR*** the percentage of students who take licensure exams and pass is not more than 5% below the state average for the last 3 years for the specific licensure exam

As part of the IE review process, additional inquiry into the quality of one or more programs may be triggered if standards are not met for two of the following three measures:

•• 15 Graduates Over 3 Year Period (overall)

•• 85% Placement

•• Licensure Pass Rate (where applicable)

In order for a new program to be approved, the institution must demonstrate overall institutional effectiveness. With any new program application, colleges must submit their institutional plan for meeting the 15 Graduates Over 3 Year Period' and '85% Placement' standards for any eligible programs that are not meeting these standards. The college must demonstrate successful student outcomes for each current workforce education program it offers. The referenced measures/standards must have been met for each program over the previous three-year reporting period. These standards do not apply to institutional awards not listed on THECB's inventory of programs. The THECB grants exceptions to these standards for programs that have been implemented for less than three years or those currently in deactivation status. If a program is reactivated, the exception for new programs does not apply; the program is expected to meet all institutional effectiveness standards.

2. State or Local Statutory or Regulatory Barriers:

There are no state or local statutory or regulatory barriers to the implementation of the federal law or the implementation of the requested waiver. Commission regulations and policy statements are in compliance with current federal law. Upon notification of the approval of this waiver request, Commission regulation and policy will be amended to comply with the terms of the waiver.

3. Goals to be Achieved by the Waiver:

• Eliminating duplication of performance reporting and evaluation processes by multiple state agencies, while maintaining the accountability of training providers as part of the subsequent eligibility determination process;

• Streamlining the application submission and review process for THECB-approved programs which will have a direct impact on selected providers, Local Workforce Development Boards (Boards) and Commission staff;

• Enhancing and maintaining a robust Eligible Training Provider List (ETPL) in an effort to provide a variety of training options for eligible participants;

• Facilitating continued participation by providers in rural areas with a relatively small number of available providers and/or training locations; and

• Assisting with the provision of a quality workforce for the State of Texas.

Programmatic Outcomes:

Several of Texas' Boards manage workforce areas that cover large geographic areas and/or contain a high percentage of rural, remote locations. Typically, the availability of providers in such areas is much lower. It is critical that providers continue to participate in the WIA certification system in order to ensure that eligible participants have access to training programs, and ideally a variety of programs, that are within a reasonable commuting distance.

The Boards support the IE review process as a comprehensive approach for verifying the effectiveness of Texas' community and technical colleges in achieving their local and statutory missions. The IE review process provides for the systematic use of evaluation results to continuously improve institutional performance and programs. The granting of the waiver request would provide for non-duplication of performance

reporting and evaluation processes and ensuring availability of a variety of quality WIA-certified programs from which eligible participants can select training option(s).

4. Individuals Impacted by the Waiver:

Eligible Training Provider System (ETPS) stakeholders affected by this request include:

• Training Providers with THECB-approved programs that are subject to the IE process, Boards, and the Commission would benefit from streamlined subsequent eligibility application requirements, review and eligibility determination processes.

• WIA participants eligible for training services would have access to a wider variety of training providers, programs and physical training locations.

5. Process used to Monitor Progress and Implementing the Waiver:

The Commission will implement steps that include, but are not be limited to:

• Proposing amendments to Commission Rule addressing performance reporting exceptions for THECB-approved programs;

• Providing notification of adopted Rule amendments by modifying:

•• policy documents issued through Workforce Development Letter(s) (WD Letter);

•• automated, Internet-based application system application items and error handling requirements; and

•• documents posted in the public view of the automated system;

• Providing information to providers by mail and through the applicable provider associations; and

• Providing training and technical assistance to Board contacts responsible for application review and approval.

Notice to Boards. As noted above, notice to Boards would occur via issuance of WD Letter(s), as well as through provision of training and/or technical assistance. These steps would be taken prior to the effective date of the waiver implementation.

Board Opportunity to Comment. Actual notice of the proposed waiver plan will be provided to Board chairpersons, Board executive directors and lead chief elected officials in the workforce areas for comment.

Public Comment Opportunity. Notice of the proposed waiver plan will be available on the Commission website and will be published in the *Texas Register*.

TRD-200203926
John Moore
Acting General Counsel
Texas Workforce Commission
Filed: June 21, 2002

♦ ♦ ♦

Transfer of WIA Funds Between Adult and Dislocated Worker Programs

The Texas Workforce Commission (Commission), the administrative entity for the Workforce Investment Act (WIA), is requesting a waiver to eliminate the 20% limitation on transferring WIA funds between Adult and Dislocated Worker programs. The waiver would provide an unlimited ability to transfer funds between these titles. In granting of this waiver, the Commission will ensure that the critical workforce needs of the local communities are met.

This waiver request follows the format identified in WIA §189(i)(4)(B) (29 USCA §2939(i)(4)(B)) and WIA Regulations at 20 CFR §661.420(c).

1. Statutory Regulations to be Waived:

WIA §133(b)(4) (29 USCA §2863(b)(4)) and WIA Regulations at 20 CFR §667.140, provide that with the approval of the governor, Local Workforce Development (Boards) may transfer up to 20 percent of a program year allocation for adult employment and training activities, and up to 20 percent of a program year allocation for dislocated worker employment and training activities between the two programs.

In 1995, with the passage of House Bill 1863, the Commission was created to administer a variety of employment and training programs to help adults and youth develop the job skills necessary to meet the occupational needs of employers and the state. That legislation envisioned a statewide workforce investment system made up of the Commission, the 28 Boards and their service providers, known as the Texas Workforce Network. As a result of the Commission's leadership, Texas implemented WIA in 1999, a full year ahead of the federal mandate. One year later, all 28 Boards were operational and the Texas Workforce Network was delivering services statewide. The Commission oversees the Boards' service delivery that is based on the establishment of local control over large-block granted programs. The Texas Workforce Network has three underlying principals:

• employer focused to meet the workforce needs of businesses and industries;

• locally designed service delivery plans to serve current workers and individuals entering the labor force for the first time; and

• integrated service delivery to allow the broadest range of job seekers to access employment assistance.

2. State or Local Statutory Regulatory Barriers:

There are no state or local statutory or regulatory barriers to implementing the waiver. Commission regulations and policy statements are in compliance with current federal law. Upon notification of the approval of this waiver, Commission regulation and policy will be amended to comply with the terms of the waiver.

3. Goals to be Achieved by the Waiver:

• Improve the ability of Boards to respond to changes within their local areas;

• Increase local control for program delivery;

• Increase employer collaboration between industry need and worker training;

• Increase accountability at the state, local and service provider levels; and

• Provide greater flexibility to Boards in designing and implementing WIA programs.

Programmatic Outcomes by the Waiver:

Boards have exercised their option under the law to transfer funds. By virtue of Texas' size and diverse population, WIA customer needs vary greatly from one geographical area to another. This increased flexibility and control to transfer funds between adult and dislocated workers would allow Boards to better respond to changes within their areas, thus, allowing Boards the ability to most effectively use these limited funds.

The role of the Boards is to plan, oversee and evaluate the delivery of all workforce training and services in their respective areas through One-Stop centers. Boards would be encouraged to design innovative

programs unique to their Board needs and priorities. Programs designed according to the specific needs of Boards result in increased local and service provider accountability. The Commission supports the Boards in each of those areas, and provides continued technical assistance and program monitoring. The granting of the waiver will allow Texas to continue to meet the challenges of the future with strong partnerships, employer participation, and the continued support of state and federal leaders.

4. Individuals Impacted by the Waiver:

This waiver will benefit Boards, One-Stop centers, employers, customers, and service providers. The following are additional impacts of the waiver:

• Program participants will benefit because Boards will have the flexibility to design programs based on local needs and priorities.

• Increased utilization will result in more customers being served.

• Boards will have the flexibility to move funds where they are needed.

5. Process used to Monitor Progress and Implementing the Waiver:

The Commission has a successful monitoring and performance accountability system that measures results for job seekers and employers using the Texas Workforce Network. The Commission continuously analyzes performance reports and compares actual performance with contract benchmarks. The Commission will continue to make adjustments to monitoring performance requirements to ensure that performance goals and objectives are met for all WIA Adult and Dislocated Worker programs. The Commission will monitor progress on this waiver by reviewing monthly expenditure and performance reports submitted by Boards and from regularly scheduled conference calls with Board executive directors. Provisions in the contracts for the programs funded with statewide activity funds address specific performance measures.

Notice to Boards. Notice to Boards would occur via issuance of Workforce Development Letter(s), as well as through provision of training and/or technical assistance. These steps would be taken prior to the effective date of the waiver implementation.

Board Opportunity to Comment. Actual notice of the proposed waiver plan will be provided to Board chairpersons, Board executive directors and lead chief elected officials in the workforce areas for comment.

Public Comment Opportunity. Notice of the proposed waiver plan will be available on the Commission website and will be published in the *Texas Register*.

TRD-200203929
John Moore
Acting General Counsel
Texas Workforce Commission
Filed: June 21, 2002

♦ ♦ ♦

Use of the Eligible Training Provider System for Older and Out-Of-School Youth

The Texas Workforce Commission (Commission), the administrative entity for the Workforce Investment Act (WIA), is requesting a waiver of the requirement to competitively procure training providers for Older and Out-of-School Youth. Instead, Local Workforce Development Boards (Boards) would have the option to use the Eligible Training Provider system to secure training providers for these two youth populations.

This waiver request follows the format identified in WIA §189(i)(4)(B) (29 USCA §2939(i)(4)(B)) and WIA Regulations at 20 CFR §661.420(c).

1. Statutory Provisions to be Waived:

• WIA §123 (29 USCA §2843) provides that local areas will award grants or contracts for youth services based on a competitive process; and

• WIA §134 (d)(4) (29 USCA §2864(d)(4)) limits access to the eligible training providers to Adults and Dislocated Workers.

In 1995, with the passage of House Bill 1863, the Commission was created to administer a variety of employment and training programs to help adults and youth develop the job skills necessary to meet the occupational needs of employers and the state. That legislation envisioned a statewide workforce investment system made up of the Commission, the 28 Boards and their service providers, known as the Texas Workforce Network. As a result of the Commission's leadership, Texas implemented WIA in 1999, a full year ahead of the federal mandate. One year later, all 28 Boards were operational and the Texas Workforce Network was delivering services statewide. The Commission oversees the Boards' service delivery that is based on the establishment of local control over large-block granted programs. The Texas Workforce Network has three foundations:

• employer focused to meet the workforce needs of businesses and industries;

• locally designed service delivery plans to serve current workers and individuals entering the labor force for the first time; and

• integrated service delivery to allow the broadest range of job seekers to access employment assistance.

The Eligible Training Provider System requires that training providers meet rigid requirements for certification to provide training for Adult and Dislocated Workers. The Commission believes that the Older Youth (19-21) and Out-of-School Youth would benefit from the services provided by these certified training providers. Allowing the Boards to use the Eligible Training Provider System for Older and Out-of-School Youth will result in streamlining services and increasing local flexibility.

The Commission and Boards are committed to ensuring that the appropriate youth services are provided in the ten required program elements. To this end, the Commission has co-sponsored four Youth Forums with the Department of Labor that addressed topics such as how to leverage resources and how to develop partnerships to deliver required program elements. The Commission invested several million dollars in statewide activity funds to ensure Boards and local youth service providers received the technical assistance necessary to deliver quality youth programs.

2. State or Local Statutory or Regulatory Barriers:

There are no state or local statutory or regulatory barriers to implementing the requested waiver. Commission regulations and policy statements are in compliance with current federal law. Upon notification of the approval of this waiver request, Commission regulations and policy will be amended to comply with the terms of the waiver.

3. Goals to be Achieved by the Waiver:

• Improve youth services through increased customer choice in accessing training opportunities in demand occupations;

Increase the number of training providers for Older and Out-of-School Youth;

Provide Boards more flexibility in securing service providers; and

Eliminate duplicate processes for service providers.

Programmatic Outcomes:

The numbers of training providers in workforce areas will increase. Training services for youth will be available in a faster and more efficient manner. Many Boards find it difficult to secure training providers willing to competitively bid to provide training to Older and Out-of-School Youth. When Boards are required to competitively procure training services, the time period for matching training providers to youth who are in need is lengthened considerably. By allowing Boards to purchase training services for Older and Out-of-School Youth from the Eligible Training Provider system , youth will be able to access training services more quickly. Additionally, youth will be able to choose the training provider they prefer, if there is more than one certified training provider to choose from.

4. Individuals Impacted by the Waiver:

• Older and Out-of School Youth will benefit because they will be able to select from a list of certified training providers and will receive services more quickly.

• Boards will benefit because they will not have to direct their resources to costly and time consuming competitive procurements.

• Training providers will benefit because they will not have to follow two separate procedures to provide training for Adult and Dislocated Workers, which requires certification, and for Older and Out-of-School Youths, which requires competitive bidding.

5. Process used to Monitor Progress and Implementing the Waiver:

The Commission will issue a Workforce Development Letter (WD Letter) to the Boards. The WD Letter will provide direction to the Boards on the use of the Eligible Training Provider System for Older and Out-of-School Youth; identify the criteria for determining when the use of Individual Training Accounts is appropriate; provide guidance to Boards on how to assist youth in choosing the appropriate training provider; and provide direction to Boards in modifying their local integrated plan. Progress on the waiver will be monitored through regular dialogue with Boards and training providers who attend the state's Quarterly Youth Forums and through conversations with Board executive directors on the bi-monthly conference calls or Quarterly Director's meetings.

Notice to Boards. As noted above, notice to Boards would occur via issuance of Workforce Development Letter(s), as well as through provision of training and/or technical assistance. These steps would be taken prior to the effective date of the waiver implementation.

Board Opportunity to Comment. Actual notice of the proposed waiver plan will be provided to Board chairpersons, Board executive directors and lead chief elected officials in the workforce areas for comment.

Public Comment Opportunity. Notice of the proposed waiver plan will be available on the Commission website and will be published in the *Texas Register*.

TRD-200203930
John Moore
Acting General Counsel
Texas Workforce Commission
Filed: June 21, 2002

How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

Texas Register
Services

The *Texas Register* offers the following services. Please check the appropriate box (or boxes).

Texas Natural Resource Conservation Commission, Title 30

❑ **Chapter 285** $25 ❑ update service $25/year *(On-Site Wastewater Treatment)*
❑ **Chapter 290** $25 ❑ update service $25/year *(Water Hygiene)*
❑ **Chapter 330** $50 ❑ update service $25/year *(Municipal Solid Waste)*
❑ **Chapter 334** $40 ❑ update service $25/year *(Underground/Aboveground Storage Tanks)*
❑ **Chapter 335** $30 ❑ update service $25/year *(Industrial Solid Waste/Municipal Hazardous Waste)*

Update service should be in ❑ printed format ❑ 3 1/2" diskette

Texas Workers Compensation Commission, Title 28

❑ Update service $25/year

Texas Register Phone Numbers	**(800) 226-7199**
Documents	(512) 463-5561
Circulation	(512) 463-5575
Marketing	(512) 305-9623
Texas Administrative Code	(512) 463-5565

Information For Other Divisions of the Secretary of State's Office

Executive Offices	(512) 463-5701
Corporations/	
Copies and Certifications	(512) 463-5578
Direct Access	(512) 475-2755
Information	(512) 463-5555
Legal Staff	(512) 463-5586
Name Availability	(512) 463-5555
Trademarks	(512) 463-5576
Elections	
Information	(512) 463-5650
Statutory Documents	
Legislation	(512) 463-0872
Notary Public	(512) 463-5705
Uniform Commercial Code	
Information	(512) 475-2700
Financing Statements	(512) 475-2703
Financing Statement Changes	(512) 475-2704
UCC Lien Searches/Certificates	(512) 475-2705

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues required. You may use your VISA or Mastercard. All purchases made by credit card will be subject to an additional 2.1% service charge. Return this form to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824. For more information, please call (800) 226-7199.

☐ **Change of Address**
(Please fill out information below)

☐ **Paper Subscription**
☐ One Year $200 ☐ First Class Mail $300

☐ **Back Issue ($10 per copy)**
_____ Quantity

Volume _____, Issue #_____.
(Prepayment required for back issues)

NAME_____

ORGANIZATION _____

ADDRESS _____

CITY, STATE, ZIP _____

PHONE NUMBER _____

FAX NUMBER _____

Customer ID Number/Subscription Number _____
(Number for change of address only)

Payment Enclosed via ☐ Check ☐ Money Order
Mastercard/VISA Number _____
Expiration Date _____/_____ Signature _____

Please make checks payable to the Secretary of State. Subscription fees are not refundable.
Do not use this form to renew subscriptions.

Visit our home on the internet at http://www.sos.state.tx.us.

_____
_____
Periodical Postage

PAID

Austin, Texas
and additional entry offices

_____
_____