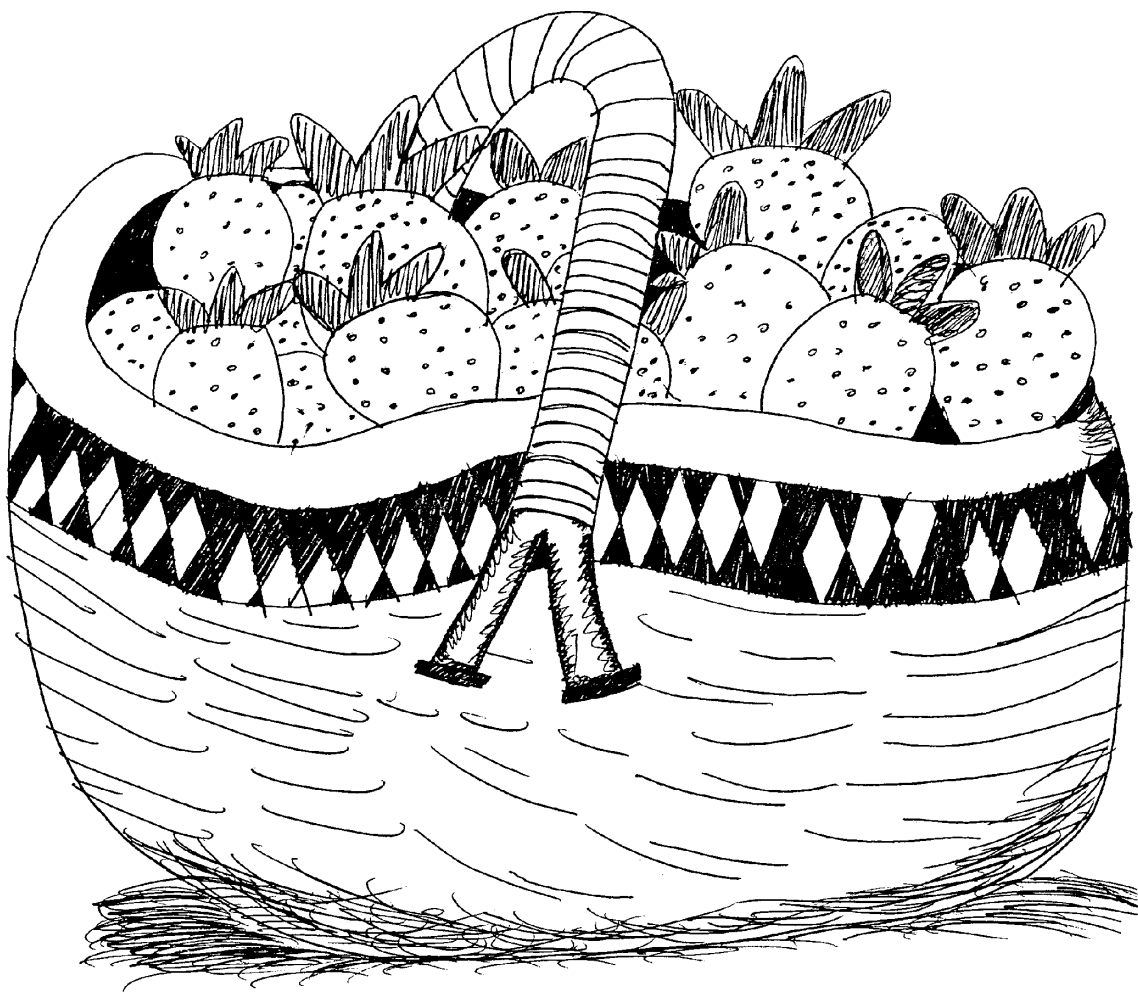


# TEXAS REGISTER

*Volume 26 Number 22 June 1, 2001*

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**This month's front cover artwork:**

**Artist:** *Holli Moore*

*10<sup>th</sup> 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.

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# Open Meetings

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

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

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

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

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

# THE GOVERNOR

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As required by Texas Civil Statutes, Article 6252-13a, §6, the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

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Appointments

**Appointments for May 10, 2001**

Appointed to the Texas Humanities Council for terms to expire December 31, 2002: Maceo Crenshaw Dailey, Jr., Ph.D. of El Paso (reappointed); Maria Ester Cardenas of Brownsville (reappointed).

Appointed to the State Cemetery Commission for a term to expire February 1, 2007: George E. Christian, Sr. of Austin (reappointed).

Appointed to the Governing Board of the Texas School for the Deaf for a term to expire January 31, 2003: Theresa Johnson of Spring (replaced Polly Walton of Beaumont whose term expired).

Appointed to the Governing Board of the Texas School for the Deaf for a term to expire January 31, 2007: Kenneth D. Kesterson of Big Spring (replaced Kent Kennedy of Austin who resigned).

**Appointments for May 14, 2001**

Appointed to the Texas Board of Pardons and Paroles for a term to expire February 1, 2003: James E. Bush of Huntsville (replaced Sandie Walker of Bryan who resigned).

Appointed to the Texas Board of Pardons and Paroles for terms to expire February 1, 2007: Gerald Garrett of Austin (reappointed); Roy Anthony Garcia of Tennessee Colony (replaced James E. Bush of Huntsville whose term expired); Billy Wayne Linson of Cedar Hill (replaced Cynthia Tauss of Angleton whose term expired).

TRD-200102847

Rick Perry

Governor



# OFFICE OF THE ATTORNEY GENERAL

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

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Request for Opinions

**RQ-0381-JC**

The Honorable Tony Goolsby, Chair, House Administration, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910

Re: Limitation on disclosure of drivers license information imposed by the federal Drivers Privacy Protection Act (Request No. 0381-JC)

**Briefs requested by June 11, 2001**

**RQ-0382-JC**

The Honorable Kenneth Armbrister, Chair, Criminal Justice Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068

Re: Constitutionality of House Bill 893, which imposes a motor vehicle registration fee surcharge of \$5.00 for the purpose of funding trauma centers (Request No. 0382-JC)

**Briefs requested by June 16, 2001**

**For further information, please call 512-463-2110.**

TRD-200102877

Susan D. Gusky

Assistant Attorney General

Office of the Attorney General

Filed: May 23, 2001



# PROPOSED RULES

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

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

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## TITLE 1. ADMINISTRATION

### PART 3. OFFICE OF THE ATTORNEY GENERAL

#### CHAPTER 55. CHILD SUPPORT ENFORCEMENT

##### SUBCHAPTER L. FINANCIAL INSTITUTION DATA MATCHES

###### 1 TAC §§55.551 - 55.558

The Office of the Attorney General proposes new §§55.551 - 55.558 concerning the mechanism for a financial institution doing business in Texas to enter into an agreement with the Child Support Division for matching the names of delinquent child support obligors with the names of account holders. Federal law (42 USC 666) requires financial institutions to participate in this matching process. State law (Texas Family Code §231.307) requires the State's Title IV-D agency to establish such procedures by rule.

Howard G. Baldwin, Deputy Attorney General for Child Support, has determined that for the first five years these sections as proposed are in effect, there will be no fiscal implications for state or local government.

Mr. Baldwin has also determined that for each year of the first five years the sections are in effect, the public benefit as a result of these new sections will be increased child support collections as a result of child support liens being imposed on financial accounts owned by delinquent child support obligors. In that these new sections merely describe the procedures that a financial institution will follow in complying with the already existing federal and State statutes, the new sections do not create any new economic costs for financial institutions.

Mr. Baldwin has also determined that there will be no local employment impact as a result of these new sections.

Comments on these proposed sections should be submitted to Michael Generali, Contract Services, Child Support Division, Office of the Attorney General, (physical address) 5500 East Oltorf,

Austin, Texas, 78741 or (mailing address) P.O. Box 12017, mail code 046, Austin, Texas 78711-2017.

The new sections are proposed under Texas Family Code §231.307.

The Family Code section is affected by Federal law (42 UC 666).

###### §55.551. Scope.

Section 466 of the federal Social Security Act (the Act), as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P. L. 104-193), requires each state to establish procedures under which the state's child support enforcement agency (Title IV-D agency) shall enter into agreements with financial institutions for the purpose of securing information leading to the enforcement of child support orders. The Title IV-D agency shall develop and operate, in coordination with such financial institutions and the Federal Parent Locator Service, a data match system in which each financial institution will provide each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each non-custodial parent who maintains an account at such institution and who owes past-due child support, as identified by the Title IV-D agency by name and social security number or other taxpayer identification number.

###### §55.552. Definitions.

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

(1) "Account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money-market mutual fund account.

(2) "Account owner record" means the record used by a financial institution to report account owner information including payee identification information, account balance and account type.

(3) "Account file" means an electronic file submitted to the Title IV-D agency listing all accounts of the financial institution under the option provided by Match Method 1 (infra).

(4) "Authorized representative" means an officer or executive of a financial institution authorized to sign a memorandum of agreement (infra) on behalf of the institution.

(5) "FEIN" means the federal employer identification number.

(6) "Financial institution" means:

(A) a depository institution, as defined in Section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c));

(B) an institution-affiliated party, as defined in Section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u));

(C) any federal credit union or state credit union, as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. 1752), including an institution-affiliated party of such a credit union, as defined in Section 206(r) of such Act (12 U.S.C. 1786(r)); or

(D) any benefit association, insurance company, safe deposit company, money-market mutual fund, or similar entity authorized to do business in the State.

(7) "Financial institution record" means the record used by a financial institution to report identifying information about the financial institution including name, address, service bureau and reporting agent.

(8) "Inquiry file" means electronic files sent by the Title IV-D agency or OCSE (infra) to financial institutions electing to report under Match Method 2 (infra) that contain records of delinquent child support obligors that the institution will use to match against its records.

(9) "Match Method 1" means the process used by a financial institution to submit an electronic file containing all its open accounts to the Title IV-D agency or its agent that is matched against records of delinquent child support obligors.

(10) "Match Method 2" means the process used by a financial institution to conduct matches against an inquiry file (supra).

(11) "Match file" means electronic files sent by a financial institution to the Title IV-D agency or OCSE (infra) that report accounts matched against an inquiry file supplied by the Title IV-D agency or OCSE to the financial institution under Match Method 2 (supra).

(12) "Memorandum of agreement" means a form completed and signed by an authorized representative (supra) and the Title IV-D agency or its agent for the purpose of exchanging information by way of an automated data exchange system that serves as the official agreement between the financial institution and the Title IV-D agency.

(13) "Multi-state financial institution" means any financial institution operating in two or more states that maintains accounts for its customers.

(14) "OCSE" means the Office of Child Support Enforcement within the federal Department of Health and Human Services.

(15) "Record" has the meaning given such term in section 1101 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401).

(16) "Reporting agent" means a service provider who has a contract with a financial institution to report data match information.

(17) "Single-state financial institution" means a financial institution doing business exclusively within the State or a multi-state financial institution declining the option to process data matches through OCSE.

(18) "Total record" means the entire file submitted by a financial institution to report individual accounts and the dollar amount associated with each account, the total number of accounts and total dollar amount of the records contained in the file.

§55.553. *Financial Institution Data Match Reporting Requirements.*

(a) A financial institution doing business in the State shall participate on a calendar quarter basis in the exchange of data with the Title IV-D agency or its agent, matching the names of delinquent child support obligors with the names of account holders and providing information from matched account owner records on all accounts owned by the delinquent child support obligor. A financial institution must share the required information with the Title IV-D agency using data specifications approved by the federal Office of Management and Budget (OMB Control No: 0970-0196) on March 5, 1999, in one of two methods:

(1) Match Method 1 ("all accounts method"): A financial institution shall submit to the Title IV-D agency or its designated agent an account file and total record on a quarterly basis and within fourteen days of the end of the week designated by the financial institution; or

(2) Match Method 2 ("matched accounts"): A financial institution shall conduct a data match against an inquiry file supplied by the Title IV-D agency, OCSE, or authorized agent on all customer accounts maintained by the financial institution. The financial institution must provide an account file on all accounts that were matched with the inquiry file. The financial institution must submit the total record to the Title IV-D agency, OCSE, or authorized agent within 45 days of its receipt of the inquiry file. The financial institution shall destroy, erase, or return the inquiry file to the Title IV-D agency or OCSE within 45 days of its receipt of the inquiry file.

(b) Financial institutions may contract with reporting agents (also known as service agents, service providers, or transmitters). If a financial institution chooses to contract with a service provider to report information for the financial institution, the financial institution, rather than the service provider, must sign the memorandum of agreement and the financial institution remains responsible for compliance with the law.

(c) Financial institutions conducting data matches with the Title IV-D agency that choose to use a reporting agent/transmitter must inform the Title IV-D agency by completing the appropriate section on the memorandum of agreement. The Title IV-D agency must be informed of the institution's decision to use an agent/transmitter in order to ensure the confidentiality of data. Similarly, if an institution wishes the Title IV-D agency to send the match file to a recipient whose Federal Employer Identification Number (FEIN) is different from the institution, the Title IV-D agency must be notified.

(d) Multi-state financial institutions that choose to use a reporting agent/transmitter must inform OCSE by completing the appropriate section on the memorandum of agreement. OCSE must be informed of the institution's decision to use an agent/transmitter in order to ensure the confidentiality of data. Similarly, if an institution wishes OCSE to send the data match file to a recipient whose Federal Employer Identification Number (FEIN) is different from the institution, OCSE must be notified.

§55.554. *Memorandum of Agreement.*

(a) Each financial institution shall complete a memorandum of agreement for the purpose of exchanging information by way of an automated data exchange system implemented and managed by the Title IV-D agency. All data provided shall meet the standards as set forth in the "Financial Data Match Specifications Handbook," dated March 5, 1999. Multi-state financial institutions may choose to conduct the data match through OCSE, and are governed under §55.555 of this subchapter.

(b) The memorandum of agreement shall include all agreements, attachments to agreements, revised attachments, notices, financial institution record, and other documents related to the status of the

agreement between the financial institution and the Title IV-D agency, and shall be governed by the following:

(1) All data and match results, including tapes or other media, shall be addressed to the Title IV-D agency or its agent for data processing as follows, or to such address as the Title IV-D agency shall later designate in writing: Tier Technologies, Building 3, 1st floor, Suite 101, 171 Jersey Street, Trenton, New Jersey 08611.

(2) The financial institution shall submit and, as needed, update a schedule of the quarterly submission dates to the Title IV-D agency.

(3) The financial institution shall file an amended memorandum of agreement with the Title IV-D agency whenever information provided by the financial institution on the agreement changes and shall submit those changes to the Title IV-D agency within 30 days of the effective date of change.

(4) The financial institution shall file an amended memorandum of agreement if the financial institution is involved in any merger, acquisition, change of name, or any other transaction that could affect the financial institution's performance under the agreement.

(5) A memorandum of agreement commences on the date that the last required signature is affixed to it and continues in effect until terminated by mutual consent of the parties, as permitted by federal and state law.

(6) A memorandum of agreement may be amended in writing at any time by mutual consent of the parties.

(7) A memorandum of agreement must be signed by both the financial institution's authorized representative and by the financial institution's agent, if an agent is used to process data matches for the institution, and must include the FEINs for both the financial institution and the financial institution's agent.

(8) The financial institution shall designate a contact person, who may be an agent of the institution, to perform the data match on its behalf, and include the following information:

- (A) title,
- (B) street address,
- (C) mailing address,
- (D) e-mail address,
- (E) telephone number, and
- (F) facsimile number

(9) The financial institution shall provide the name of a contact person who will accept service for the institution of all legal notices resulting from this agreement and include the following information:

- (A) title,
- (B) financial institution name,
- (C) street address,
- (D) mailing address,
- (E) e-mail address,
- (F) telephone number, and
- (G) facsimile number

(10) The financial institution shall provide the name of a contact person for resolution of lien and levy processing and include the following information:

- (A) title
- (B) financial institution name
- (C) street address
- (D) mailing address
- (E) e-mail address
- (F) telephone number, and
- (G) facsimile number

(11) The financial institution shall identify its preferred media format for reporting to and receiving information from the Title IV-D agency's agent from the following options:

- (A) 3480 or 3490 tape cartridges
- (B) EBCDIC or ASCII format
- (C) tape reel
- (D) diskette--3.5 or 5.25 inch
- (E) CD-ROM
- (F) DAT--4mm or 8mm
- (G) file transfer protocol
- (H) internet
- (I) CONNECT: Direct
- (J) any other media format as authorized by the Title

IV-D agency.

(12) The financial institution will indicate on the memorandum of agreement which week of the calendar quarter it will transmit data or perform the data match. Calendar quarters begin January 1, April 1, July 1 and October 1 of each year.

§55.555. Multi-State Financial Institution Data Match Reporting Requirements.

(a) The Child Support Performance and Incentive Act of 1998 (P.L.105-200) modified the federal Social Security Act to better facilitate the data match for multi-state financial institutions. 42 U.S.C. 652(l), as amended, authorizes OCSE to act as the conduit between the States and territories and the multi-state financial institutions in the development and implementation of a centralized, quarterly data match program for the collection of delinquent child support. Multi-state financial institutions may choose to match through OCSE or with the individual states in which they do business. Financial institutions choosing to participate as a multi-state financial institution must use Match Method 2.

(b) A multi-state financial institution choosing to match through OCSE may contact OCSE at: Office of Child Support Enforcement, Multi-state Financial Institution Data Match, Post Office Box 509, Randallstown, Maryland 21133, For assistance call: (410) 277-9312, FAX: (410) 277-9325, e-mail: fidm@ssa.gov, Web site: <http://www.acf.dhhs.gov/programs/cse>.

(c) If a multi-state financial institution discontinues its reporting through OCSE, it shall promptly submit a memorandum of agreement to enter the match process with the Title IV-D agency its agent.

§55.556. Liability of Financial Institutions for Disclosure of Information.

(a) The federal Social Security Act (42 USC 666(a)(17)) provides that a financial institution shall not be liable under any federal or state law to any person

(1) for any disclosure of information to the State child support enforcement agency,

(2) for encumbering or surrendering any assets they hold in response to a notice of lien or levy issued by the state child support enforcement agency, or

(3) for any other action taken in good faith to comply with the requirements of Section 466(a)(17)(A) of the Act. Section 469A of the Act also provides protection from liability for multi-state financial institutions disclosing information to the federal parent locate service through the multi-state financial institution data match.

(b) Section 231.307(d) of the Texas Family Code provides that a financial institution providing information or responding to a notice of child support lien provided under Subchapter G, Chapter 157, or otherwise acting in good faith to comply with the Title IV-D agency's procedures under this section may not be held liable under any federal or state law for any damages that arise from those acts.

§55.557. Reimbursement to Financial Institutions for Data Processing.

Reimbursement to financial institutions for the cost of processing the data required by this subchapter is not available.

§55.558. Confidentiality and Security.

(a) The Title IV-D agency and each financial institution shall develop procedures, subject to State and federal law and regulation, to ensure that information contained in their respective records and obtained from each other shall be kept confidential.

(b) In accordance with section 453 of the Act, the information provided to the financial institutions, or their designated agents, for the purpose of conducting the data matches may not be used by such institutions or agents for any other purpose and may not be disclosed to any person except to the extent necessary to conduct the data matches. The financial institutions or any of its agents shall return, destroy or erase all information provided to the financial institution or any of its agents after completion of the data matches. The total record provided by a financial institution to the Title IV-D agency under this agreement remains confidential under federal law 42 U.S.C. §669a(b).

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

Filed with the Office of the Secretary of State, on May 21, 2001.

TRD-200102844

Susan D. Gusk

Assistant Attorney General

Office of the Attorney General

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For information regarding this publication, please call A.G. Younger at (512) 463-2110



## 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 (the Department) proposes an amendment to 16 TAC, §62.80 concerning the fees for the Career Counseling Services program.

The Department proposes to increase the fees for an original certificate of authority and a renewal certificate of authority from \$750 to \$1,000 each.

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 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.

Jimmy G. Martin, Director Enforcement, 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 changes.

Mr. Martin also has determined that for each year of the first five-year period the proposed amendment is in effect, the public benefit will be an increase in the general revenue of the Department.

Mr. Martin has determined that the cost of compliance and the anticipated economic effect on small businesses and other persons who are required to comply with this section as proposed will be an increase of \$250 per year for persons filing a request with the Department for an original certificate of authority or a renewal certificate of authority.

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

The amendment is proposed under the Texas Occupations Code, Chapter 51, §51.202. The Department interprets §51.202 as authorizing 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, including the Career Counseling Services program.

The statutory provision affected by the proposed amendment is Texas Occupations Code, Chapter 51, §51.202. No other statutes, articles, or codes are affected by the proposed amendment.

*§62.80. Fees - Original Certificate of Authority.*

(a) Original and renewal certificate of authority fee- \$1,000 [\$750].

(b) Late fee-\$50.

(c) Reprint fee-\$25.

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 May 17, 2001.

TRD-200102782



William H. Kuntz, Jr.  
Executive Director  
Texas Department of Licensing and Regulation  
Earliest possible date of adoption: July 1, 2001  
For further information, please call: (512) 463-7348



## CHAPTER 65. BOILER DIVISION

### 16 TAC §65.80

The Texas Department of Licensing and Regulation (the Department) proposes amendments to 16 Texas Administrative Code, §65.80 concerning the inspection fees for the Boiler Division program.

The Department proposes to increase the Certificate of Operation fee from \$45 to \$50; to increase the inspection fee for all boilers other than heating boilers from \$115 to \$120; to increase the inspection fee for heating boilers without a manhole from \$85 to \$90; and to increase the inspection fee for heating boilers with a manhole from \$115 to \$120.

The Department is required by Texas Occupations Code, Chapter 51, §51.202 and Texas Health and Safety Code, Chapter 755, §755.030, to set fees in amounts reasonable and necessary to cover the costs of administering programs, which include the Boiler Division 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 Boiler Division program.

George Ferrie, Director of Code Review and Inspections, has determined that for the first five-year period the proposed amendments are in effect, there will be minimal additional costs to state or local governments as a result of administering or enforcing the fee changes.

Mr. Ferrie also has determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be an increase in the general revenue of the Department which should help to increase the number of Department inspectors and improve the timeliness of Department inspections.

Mr. Ferrie has determined that the cost of compliance and the anticipated economic effect on small businesses, building owners, and other persons who are required to comply with this section as proposed will be an increase of \$5 for each boiler that is inspected.

Comments on the proposal may be submitted to George Ferrie, Director of Code Review and Inspections, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711 or facsimile (512) 463-1376 or electronically: george.ferrie@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under the Texas Occupations Code, Chapter 51, §51.202 and Texas Health and Safety Code, Chapter 755, §755.030. The Department interprets §51.202 as authorizing the Texas Commission of Licensing and Regulation (the Commission) to set fees in amounts reasonable and necessary to cover the costs of administering the programs and activities under its jurisdiction. The Department interprets §755.030

as authorizing the Commission to set fees for performing its inspections and other functions under Chapter 755 with respect to the Boiler Division program.

The statutory provisions affected by the proposed amendments are Texas Occupations Code, Chapter 51, §51.202 and Texas Health and Safety Code, Chapter 755, §755.030. No other statutes, articles, or codes are affected by the proposed amendments.

#### §65.80. Fees.

##### (a) Certificate/inspection fees.

(1) Inspection by authorized inspector. The owner or operator or his/her agent shall make a \$50 [~~\$45~~] payment for the certificate of operation fee.

(2) Inspection by deputy inspector. The owner or operator shall make payment of the appropriate fee as shown below.

(A) The inspection fees for all boilers other than heating boilers shall be \$120 [~~\$115~~].

(B) The inspection fees for heating boilers shall be:

(i) those without a manhole--\$90 [~~\$85~~]; and

(ii) those with a manhole--\$120 [~~\$115~~].

(3) All fees must be paid in full to the Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711 before a certificate of operation will be issued.

(b)-(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 May 17, 2001.

TRD-200102781

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: July 1, 2001

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



## CHAPTER 68. ARCHITECTURAL BARRIERS

### 16 TAC §68.80

The Texas Department of Licensing and Regulation (the Department) proposes amendments to 16 Texas Administrative Code, §68.80 concerning the fees for the Architectural Barriers program.

The Department proposes to increase the filing fee for inspections from \$75 to \$100, to increase the application fee for variances from \$150 to \$175, and to require that filing fees for plan reviews and inspections be paid by persons requesting the Department to perform these reviews and inspections. The Department also proposes to change the name of the "Late Review Fee" to "Late Submittal Fee"; to provide that the late submittal fee apply in lieu of the review fee when construction documents are submitted after completion of a construction project; to require that the project filing fee accompany the registration form and be submitted with the construction documents; and to require that the inspection filing fee be paid within 30 days of completion of construction.

The Department is required by Texas Occupations Code, Chapter 51, §51.202 and Texas Revised Civil Statutes Annotated, Article 9102, §6, to set fees in amounts reasonable and necessary to cover the costs of administering programs, which include the Architectural Barriers 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 Architectural Barriers program.

George Ferrie, Director of Code Review and Inspections, has determined that for the first five-year period the proposed amendments are in effect, there will be minimal additional costs to state or local governments as a result of administering or enforcing the fee changes.

Mr. Ferrie also has determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be an increase in the general revenue of the Department which should help the enforcement program to increase the level of accessibility in new and renovated buildings and facilities in the state. Additionally, the public will benefit because the filing fees will be the same for all plan reviews and inspections, regardless of whether these services are performed by the Department or by independent contract providers.

Mr. Ferrie has determined that the cost of compliance and the anticipated economic effect on small businesses, building owners, and other persons who are required to comply with this section as proposed will be an increase of \$100 per project for persons filing a request for a plan review or inspection to be performed by the Department, an increase of \$25 per project for persons paying the filing fee for an inspection performed by a third-party inspector, and an increase of \$25 for persons filing an application for a variance.

Comments on the proposal may be submitted to George Ferrie, Director of Code Review and Inspections, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711 or facsimile (512) 463-1376 or electronically: george.ferrie@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under the Texas Occupations Code, Chapter 51, §51.202 and Texas Revised Civil Statutes Annotated, Article 9102, §6. The Department interprets §51.202 as authorizing the Texas Commission of Licensing and Regulation (the Commission) to set fees in amounts reasonable and necessary to cover the costs of administering the programs and activities under its jurisdiction. The Department interprets §6 as authorizing the Commission to set fees for performing its functions under Article 9102 with respect to the Architectural Barriers program.

The statutory provisions affected by the proposed amendments are Texas Occupations Code, Chapter 51, §51.202 and Texas Revised Civil Statutes Annotated, Article 9102, §6. No other statutes, articles, or codes are affected by the proposed amendments.

§68.80. *Fees.*

(a) Plan review and inspection fees collected by the department shall be determined by the estimated project cost, not including site acquisition, furnishings, or equipment, and assessed according to the fee schedule. In instances involving multiple facilities with identical drawings, but site adapted, and designed by the same individual or firm and bid as one package, the plan review fee shall be based on the

total construction cost. However, separate inspection fees shall be required. The plan review fee and project filing fee must accompany the registration form and be submitted with the construction documents. The inspection fee and inspection filing fee must be paid and the department notified of point of contact within 30 days of completion of construction.

(b) Fee Schedule:

Figure: 16 TAC §68.80(b)

(c)-(f) (No change.)

(g) When construction documents are submitted after completion of a subject project, the late submittal [review] fee shall apply in lieu of the review fee required by paragraph (b) of this subsection.

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

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TRD-200102780

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: July 1, 2001

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



## CHAPTER 75. AIR CONDITIONING AND REFRIGERATION CONTRACTOR LICENSE LAW

### 16 TAC §75.22, §75.80

The Texas Department of Licensing and Regulation (the Department) proposes amendments to 16 Texas Administrative Code §75.22 and §75.80 concerning license periods and fees for the Air Conditioning and Refrigeration (ACR) program.

The Department proposes to amend §75.22 by changing the license periods for all Class A and B licenses from three years to one year so that license fee revenues may be matched more closely to the annual costs of the ACR program and so that the license periods of ACR licenses will conform with the one-year periods for other licenses, registrations, and certificates issued by the Department.

The Department also proposes to amend §75.80 by reducing the fees for all Class A and B licenses from \$350 to \$125 each. While this change in fees will result in a reduction of annual fee revenues for each license issued or renewed during the first three years the proposed amendment is in effect, it also will result in a \$25 increase in total fee revenues received over a three-year period for each license issued by the Department. Thus, the net effect of the proposed change in fees is to increase the Department's fee revenues by the amount of \$8.33 per ACR license per year.

The Department is required by the Texas Occupations Code, Chapter 51, §51.202 and Texas Revised Civil Statutes Annotated, Article 8861, §3 and §4, to set fees in amounts reasonable and necessary to cover the costs of administering programs under its jurisdiction, including the ACR program. The ACR license fees currently in place are below the amounts needed to cover

ACR program costs in future periods. Without the proposed increase in ACR license fee revenues, there could be an adverse impact on the future administration and enforcement of the ACR program.

The proposed changes to ACR license periods and fees would take effect September 1, 2001. They would apply to all ACR licenses that expire on or after September 1, 2001. They also would apply to all ACR license applications (both initial and renewal) filed with the Department on or after September 1, 2001.

Jimmy G. Martin, Director of Enforcement, 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 changes in ACR license periods and fees.

Mr. Martin also has determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be an increase in the general revenue of the Department.

Mr. Martin has determined that the cost of compliance and the anticipated economic effect on small businesses and other persons who are required to comply with this section as proposed will be an increase of \$8.33 per year for persons obtaining an initial or a renewal ACR license issued by the Department, as well as a reduction in their license period from three years to one year.

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

The amendments are proposed under the Texas Occupations Code, Chapter 51, §51.202 and Texas Revised Civil Statutes Annotated, Article 8861, §3 and §4. The Department interprets §51.202 as authorizing the Texas Commission of Licensing and Regulation (the Commission) to set fees in amounts reasonable and necessary to cover the costs of administering the programs and activities under its jurisdiction. The Department interprets §3 and §4 as authorizing the Commission to set fees for performing its functions under Article 8861 with respect to the ACR program.

The statutory provisions affected by the proposed amendments are Texas Occupations Code, Chapter 51, §51.202 and Texas Revised Civil Statutes Annotated, Article 8861, §3 and §4. No other statutes, articles, or codes are affected by the proposed amendments.

§75.22. *Licensing Requirements--General.*

(a) Unless licensed under the provisions of the Act, with a license of the class and endorsement appropriate for the work described or advertised, it is unlawful for any person, partnership, firm, or corporation to perform or offer to perform air conditioning and refrigeration contracting or to use a license number that is not assigned to that person, partnership, firm, or corporation.

(b) All air conditioning and refrigeration contractor's licenses expire one year [~~three years~~] after the date issued, renewed, or reissued.

(c)-(p) (No change.)

§75.80. *Fees.*

(a) Exam Fees. Class A and Class B exam fees are:

(1) application fee is \$50 per applicant; the application fee is not refundable; and

(2) exam and re-exam fee is \$50 for each exam requested.

(b) License Fees. License fees are:

(1) Class A or B initial license or renewal fee for one year is \$125 [~~three years is \$350~~]; and

(2) late renewal fee is \$50.

(c)-(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 May 17, 2001.

TRD-200102783

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: July 1, 2001

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

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**TITLE 19. EDUCATION**

**PART 2. TEXAS EDUCATION AGENCY**

**CHAPTER 100. CHARTERS**

**SUBCHAPTER A. OPEN-ENROLLMENT**

**CHARTER SCHOOLS**

**19 TAC §100.1**

The Texas Education Agency (TEA) proposes amendments to §100.1, concerning application, selection, and amendment procedures and criteria for open-enrollment charter schools. The section specifies provisions relating to the application form for submission by applicants seeking a charter to operate an open-enrollment charter school; the submission, withdrawal, and review and scoring of an application; applicant interviews; criteria to be considered and additional conditions; and the charter contract and revision of terms.

The proposed amendments to 19 TAC §100.1 include the following. Language has been modified in subsection (h) to remove the no-contact provision between an open-enrollment charter school applicant and a member of the State Board of Education (SBOE) during the time an application form is adopted by the SBOE and the SBOE takes final action awarding charters under that application. However, language has been retained in subsection (h) relating to the no-contact period provision specifying that an open-enrollment charter school applicant may not communicate with a member of an external application review panel during the time an application form is adopted by the SBOE and the SBOE takes final action awarding charters under that application. Language in subsections (i)(1) and (l)(3) has been amended to require a majority, as opposed to unanimous, SBOE committee recommendation for certain actions. Language in subsection (l)(2) has been modified to allow open-enrollment charter schools to amend any extension of the grade levels served or to increase maximum allowable

enrollment to be implemented no earlier than the third year of operation.

Susan Barnes, Managing Director for Charter Schools, 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.

Ms. Barnes and Criss Cloudt, Associate Commissioner for Accountability Reporting and Research, have 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 open-enrollment charter school selection process should be strengthened by specifying the standard procedures and criteria for the selection of open-enrollment charter schools. In addition, the proposed amendment to increase the length of time charter schools must operate before extending grade levels served or increasing enrollment allows charter schools the opportunity to make such decisions based on greater understanding of issues facing them. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Criss Cloudt, 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](mailto:rules@tea.state.tx.us) or faxed to (512) 475-3499. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §§7.102(c)(9), 12.101, and 12.110, which authorizes the SBOE to adopt application and selection procedures and criteria for granting and amending open-enrollment charters.

The amendment implements the Texas Education Code, §§7.102(c)(9), 12.101, and 12.110.

§100.1. *Application, Selection, and Amendment Procedures and Criteria.*

(a)-(g) (No change.)

(h) An applicant for an open-enrollment charter shall not communicate ~~[with a member of the SBOE, or]~~ with a member of an external application review panel appointed by the SBOE~~[-]~~ concerning a charter school application or renewal application beginning on the date the panel member is notified of appointment to serve on a specific review cycle and ending when the SBOE takes final action awarding charters under that application [during the no-contact periods described in paragraphs (1) and (2) of this subsection]. On finding a material violation of the [either] no-contact period, the SBOE shall reject the application or applications affected.

~~{(1) The no-contact period for a member of the SBOE shall begin on the date an application form is adopted by the SBOE for the application cycle and end when the SBOE takes final action awarding charters under that application.}~~

~~{(2) The no-contact period for a member of an external application review panel shall begin on the date the panel member is notified of appointment to serve on a specific review cycle and end when the SBOE takes final action awarding charters under that application.}~~

(i) The SBOE may consider minimum enrollment criteria.

(1) Each application for an open-enrollment charter, for renewal of an existing charter, and for amendment of an existing charter

shall state a minimum student enrollment of no fewer than 50 students. The SBOE may grant a lower minimum student enrollment only on majority ~~[unanimous]~~ recommendation of members voting from the committee with jurisdiction over charters.

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

(j)-(k) (No change.)

(l) The terms of an open-enrollment charter may be revised with the consent of the charter holder by written amendment approved by majority vote of the SBOE, subject to the following procedures.

(1) (No change.)

(2) An open-enrollment charter may not be amended to permit a charter school to extend the grade levels it serves or increase its maximum allowable enrollment figure to be effective before its third ~~[during its first]~~ year of operation.

(3) An amendment permitting an open-enrollment charter school to extend the grade levels it serves or increase its maximum allowable enrollment figure may not be approved later than the first day of June preceding the school year in which the amendment becomes effective. The SBOE may grant an exception upon a majority ~~[unanimous]~~ recommendation of members voting from the committee with jurisdiction over charters.

(4)-(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 May 18, 2001.

TRD-200102800

Criss Cloudt

Associate Commissioner, Accountability Reporting and Research

Texas Education Agency

Earliest possible date of adoption: July 1, 2001

For further information, please call: (512) 463-9701



## CHAPTER 101. ASSESSMENT

The Texas Education Agency (TEA) proposes the repeal of §§101.1 - 101.6 and new §§101.1, 101.3, 101.5, 101.7, 101.9, 101.11, 101.13, 101.21, 101.23, 101.25, 101.27, 101.29, 101.31, 101.33, 101.61, 101.63, 101.65, 101.81, 101.83, and 101.101 concerning the statewide assessment program. The sections provide requirements for the development and administration of tests, testing for graduation, testing accommodations and exemptions, test security and confidentiality, reporting of test results, and administering and reporting group-administered achievement tests as mandated by Texas Education Code (TEC), Chapter 39, Subchapter B.

The statewide assessment program has changed over recent years largely in response to changes required by the Texas Legislature. Changes have also occurred as needed for more effective implementation and administration across the state. A critical part of the accountability system, the assessment program is dynamic and continues to evolve, guided by its goal to provide all eligible Texas students an appropriate statewide assessment that measures and supports their achievement of the state-mandated curriculum. The proposed repeals and new sections include revisions to comply with changes in statute and revisions

related to new assessments as well as other clarifying amendments.

The sections proposed for repeal were largely adopted by the State Board of Education (SBOE) in November 1995 and describe the current statewide assessment program. The intent of the proposed new sections is not only to reflect the recent changes to update the assessment program, but also to more effectively define, reinforce, and communicate state law and rules governing the assessment program. Hence, the new sections represent the following three changes. First, the proposed new sections include revisions to comply with changes in statute, including recently enacted Senate Bill (SB) 676, 77th Texas Legislature, 2001, which immediately modified state testing requirements for certain limited English proficient (LEP) students in Grades 3-8. SB 676 requires the SBOE and the commissioner of education to establish rules for assessing LEP students. Much of the detail on LEP exemptions has been moved to commissioner's rules in accordance with SB 676. Second, the chapter has been reorganized and revised to clarify the policy and standards, roles and responsibilities, and requirements of the statewide assessment program. Finally, the chapter has been revised to improve clarity and readability for all stakeholders in public education so that the rules may more effectively promote public understanding of the assessment program and full compliance with program requirements.

The proposed new sections have taken into consideration the federal court ruling in January 2000 by United States District Court Judge Edward Prado of San Antonio. This ruling in support of standardized, statewide testing in Texas public schools sets forth the constitutional and legal standards that states must meet in developing and implementing high-stakes tests that are valid and reliable and educational policies that are fair and reasonable. The agency has drafted the proposed new sections to ensure that the testing program continues to uphold the standards affirmed in this important case.

Major changes reflected in the proposed new sections include the following. The rule text has been reorganized under subchapters for greater clarity and readability for all public education stakeholders. These subchapters correspond to broad program areas. Reference to open-enrollment charter schools wherever public schools are referenced has been added to emphasize that charter schools must adhere to the requirements of the testing program. In addition, the proposed new sections specify that any testing irregularity would cause a charter to come under review by the SBOE for possible sanction or revocation. The proposed new sections include details relating to the Reading Proficiency Test in English (RPTE) and the State-Developed Alternative Assessment (SDAA) components of the statewide assessment program. Various test development, administration, and reporting requirements are specified. Language related to testing requirements for students receiving special education services has been revised to be consistent with federal law and regulations. The proposed new sections also give emphasis to training for every test administrator in the state that is provided annually by TEA through education service centers and test administrator manuals. Specific reporting deadlines are also mandated for scoring contractors to provide results for machine-scorable assessments.

The proposed new sections emphasize the inclusiveness of the assessment program, and exemption language has been minimized to the greatest extent possible. The decision-making process for providing an appropriate assessment as required

for every eligible student is specified. Grade advancement requirements for the new testing program are specified and the responsibilities at the state and local levels in providing remediation are clarified. In addition, recommendations relating to the assessment program from the Comptroller's Public Education Integrity Task Force have been incorporated in the proposed new sections, including specifying the responsibility of the superintendent for maintaining the integrity of test administration, giving greater emphasis to the penalties for testing and data reporting irregularities, revising the penalties to follow those listed in the State Board for Educator Certification (SBEC) rules, and including parents or legal guardians in rules concerning notification by superintendents of testing requirements. Language is also included to clarify existing policy regarding group-administered tests.

Ann Smisko, Associate Commissioner for Curriculum, Assessment, and Technology, 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. The proposed sections do not have fiscal implications because they contain no new costs but reflect existing testing program requirements. At the state level, the costs involved in the programs covered by the proposed new sections are already accounted for in existing fixed price contracts with the prime testing contractor. At the local level, districts would continue to administer appropriate assessments to students.

Ms. Smisko and Criss Cloudt, Associate Commissioner for Accountability Reporting and Research, have 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 improve the clarity and readability of the rules for all stakeholders in public education so that the rules may more effectively promote public understanding of the assessment program and full compliance with program requirements. The Texas student assessment program provides Texas students, schools, and the public with an accurate gauge of students' academic progress in learning the key components of the Texas Essential Knowledge and Skills. 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.

Comments on the proposal may be submitted to Criss Cloudt, 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](mailto:rules@tea.state.tx.us) or faxed to (512) 475-3499. All requests for a public hearing on the proposed sections submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

#### **19 TAC §§101.1 - 101.6**

*(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 Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeals are proposed under the Texas Education Code, Chapter 39, Subchapter B, which authorizes the State Board of Education to adopt rules to create and implement a statewide assessment program.

The repeals implement the Texas Education Code, Chapter 39, Subchapter B.

- §101.1. *Development and Administration of Tests.*
- §101.2. *Testing Requirements for Graduation.*
- §101.3. *Testing Accommodations and Exemptions.*
- §101.4. *Test Security and Confidentiality.*
- §101.5. *Reporting of Test Results.*
- §101.6. *Administering and Reporting of Group-Administered Achievement Tests.*

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

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 Criss Cloudt  
 Associate Commissioner, Accountability Reporting and Research  
 Texas Education Agency  
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## CHAPTER 101. ASSESSMENT

### SUBCHAPTER A. GENERAL PROVISIONS

#### 19 TAC §§101.1, 101.3, 101.5, 101.7, 101.9, 101.11, 101.13

The new sections are proposed under the Texas Education Code, Chapter 39, Subchapter B, which authorizes the State Board of Education to adopt rules to create and implement a statewide assessment program.

The new sections implement the Texas Education Code, Chapter 39, Subchapter B.

#### §101.1. *Scope of Rules.*

(a) The State Board of Education (SBOE) shall adopt rules to ensure that the statewide assessment program supports the goals of public education, as specified in the Texas Education Code (TEC).

(b) When adopting rules, the SBOE shall maintain the stability of the statewide assessment program to the greatest extent possible in accordance with the TEC, Chapter 39, Subchapter B.

(c) The statewide assessment program consists of the following criterion-referenced tests:

(1) the assessment of academic skills in English and Spanish for the grades and subjects as specified in the TEC, Chapter 39, Subchapter B;

(2) the alternative assessment of academic skills for eligible students receiving special education services as specified in the TEC, Chapter 39, Subchapter B;

(3) the assessments required for graduation as specified in the TEC, Chapter 39, Subchapter B; and

(4) the reading proficiency tests in English for eligible limited English proficient students as specified in the TEC, Chapter 39, Subchapter B.

#### §101.3. *Policy.*

(a) The goal of the statewide assessment program is to provide all eligible Texas students an appropriate statewide assessment that measures and supports their achievement of the essential knowledge and skills of the state-mandated curriculum.

(b) To maximize its effectiveness for educators and students, the statewide assessment program shall be based on the following quality standards.

(1) Tests shall be aligned to the essential knowledge and skills of the state-mandated curriculum.

(2) Tests shall be reliable and valid measures of the essential knowledge and skills and shall be administered in a standardized manner.

(3) Test results at the student, campus, district, regional, and state levels shall be reported in a timely and accurate manner.

#### §101.5. *Student Testing Requirements.*

(a) Every student receiving instruction in the essential knowledge and skills shall take the appropriate criterion-referenced tests, as required by the Texas Education Code (TEC), §39.023(a), (b), (c), (l) and §39.027(e).

(b) A student receiving special education services under the TEC, Chapter 29, Subchapter A, enrolled in Grades 3-8 and who is receiving instruction in the essential knowledge and skills, shall take the assessment of academic skills unless the student's admission, review, and dismissal (ARD) committee determines that it is an inappropriate measure of the student's academic progress as outlined in the student's individualized education program (IEP). If the student's ARD committee determines that the assessment of academic skills is an inappropriate measure of the student's academic progress in whole or part, the student shall take the alternative assessment of academic skills in whole or part. Each testing accommodation shall be documented in the student's IEP in accordance with 34 Code of Federal Regulations (CFR) §300.347(a)(5)(i) and (ii), relating to the content of the IEP and participation in statewide or districtwide assessments. Beginning with the 2004-2005 school year when alternative assessment of academic skills is available for Grades 9-10, this subsection also applies to students enrolled in these grades.

(c) A student receiving special education services under the TEC, Chapter 29, Subchapter A, enrolled in Grades 3-10, according to the grade implementation schedule in subsection (b) of this section, and who is not receiving any instruction in the essential knowledge and skills, shall be considered exempt in accordance with the TEC, §39.027. Each exemption shall be documented in the student's IEP in accordance with 34 CFR §300.347(a)(5)(i) and (ii), relating to the content of the IEP and participation in statewide or districtwide assessments. Each exempted student receiving special education services shall take an appropriate locally selected assessment, as determined by the student's ARD committee, in accordance with procedures developed by the Texas Education Agency (TEA). Student performance results on these alternate assessments must be reported to the TEA.

(d) In Grades 3-12, a limited English proficient (LEP) student, as defined by the TEC, Chapter 29, Subchapter B, shall participate in the assessments as required by this section and Subchapter AA of this chapter (relating to Commissioner's Rules Concerning the Participation of Limited English Proficient Students in State Assessments). In Grades 3-6, the language proficiency assessment committee (LPAC) shall determine whether a nonexempt LEP student whose primary language is Spanish will take the assessment of academic skills in English or in Spanish. The decision as to the language of the assessment shall be based on the assessment that will provide the most appropriate measure of the student's academic progress.

#### §101.7. *Testing Requirements for Graduation.*

(a) To be eligible to receive a high school diploma, a student must demonstrate satisfactory performance as determined by the State Board of Education (SBOE) on the assessments required for graduation

as specified in the Texas Education Code (TEC), Chapter 39, Subchapter B.

(1) To fulfill the testing requirements for graduation, a student must be tested by either a Texas school district, Texas education service center, open-enrollment charter school, the Texas Education Agency (TEA), or other individual or organization designated by the commissioner of education.

(2) On the tests required for graduation, a student shall not be required to demonstrate performance at a standard higher than the one in effect when he or she was first eligible to take the test.

(3) A foreign exchange student who has waived in writing his or her intention to receive a Texas high school diploma may be excused from the exit level testing requirement as specified in the TEC, Chapter 39, Subchapter B.

(b) Beginning with the 2003-2004 school year, students who were enrolled in Grade 8 or a lower grade on or before January 1, 2001, must fulfill testing requirements for graduation with the Grade 11 exit level tests, as specified in the TEC, §39.023(c).

(c) A student receiving special education services under the TEC, Chapter 29, Subchapter A, who successfully completes the requirements of his or her individualized education program (IEP) shall receive a high school diploma.

(d) According to procedures specified in the applicable test administration materials, an eligible student or out-of-school individual who has not met graduation requirements may retest on a schedule determined by the commissioner of education.

#### §101.9. Grade Advancement Requirements.

Each school district and charter school shall test eligible students in accordance to the grade advancement requirements as specified in the Texas Education Code (TEC), §28.0211(a). These requirements pertain to the reading test at Grade 3, beginning in the 2002-2003 school year; the reading and mathematics tests at Grade 5, beginning in the 2004-2005 school year; and the reading and mathematics tests at Grade 8, beginning in the 2007-2008 school year.

(1) The Texas Education Agency (TEA) shall provide three opportunities for the tests required for grade advancement as specified in the TEC, §28.0211(a). The commissioner of education shall specify the dates of these administrations in the assessment calendar.

(2) A school district or charter school shall provide accelerated instruction for students who fail to demonstrate satisfactory performance as specified in the TEC, §28.0211(a).

(3) The commissioner of education shall approve the assessments for local use by school districts or charter schools as provided under the TEC, §28.0211(b).

#### §101.11. Remediation.

(a) Each school district and charter school shall provide remediation for students who fail to demonstrate satisfactory performance on any section of the assessments of academic skills, as required by the Texas Education Code (TEC), §39.024(b).

(b) In compliance with the TEC, §39.024(c), the Texas Education Agency (TEA) shall develop summer remediation study guides to help parents in providing assistance to students who do not perform satisfactorily on one or more parts of the assessments of academic skills specified in the TEC, §39.023(a) and (c). The TEA shall distribute these study guides as required to school districts and charter schools. Each school district and charter school shall distribute the summer remediation study guides in the manner most effective for them, and

shall observe the requirements for maintaining confidentiality of student testing results. Each student who does not perform satisfactorily on one or more subject-area tests shall receive a remediation study guide.

#### §101.13. Notice to Students and Parents.

(a) The superintendent of each school district and chief administrative officer of each charter school shall be responsible for the following in order to provide timely and full notification of graduation requirements:

(1) notifying each student and his or her parent or guardian in writing no later than the beginning of the student's seventh-grade year of the testing requirements for graduation;

(2) notifying each student in Grades 7-12 new to the school district or charter school and his or her parent or guardian in writing of the testing requirements for graduation; and

(3) notifying each student who shall take the tests required for graduation and his or her parent or guardian, as well as out-of-school individuals, of the dates, times, and locations of testing.

(b) The superintendent of each school district and chief administrative officer of each charter school shall be responsible for the following in order to provide timely and full notification of testing requirements for advancement at certain grades:

(1) notifying each student and his or her parent or guardian in writing no later than the beginning of the student's first-grade year or no later than the beginning of the student's kindergarten year, for students attending kindergarten in a public school, of the testing requirements for grade advancement as specified in the Texas Education Code (TEC), §28.0211;

(2) notifying each student in Grades 1-8 who is new to the school district or charter school and his or her parent or guardian in writing of the testing requirements for grade advancement; and

(3) notifying each student required to take the grade advancement tests of the dates, times, and locations of testing.

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

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Criss Cloudt

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## SUBCHAPTER B. DEVELOPMENT AND ADMINISTRATION OF TESTS

### 19 TAC §§101.21, 101.23, 101.25, 101.27, 101.29, 101.31, 101.33

The new sections are proposed under the Texas Education Code, Chapter 39, Subchapter B, which authorizes the State Board of Education to adopt rules to create and implement a statewide assessment program.

The new sections implement the Texas Education Code, Chapter 39, Subchapter B.

§101.21. Test Development.

(a) Texas educators shall assist Texas Education Agency staff in developing test objectives, assessment guidelines, and test items. Advisory committees composed of Texas educators shall reflect the diversity of the state by region, ethnicity, gender, and type and size of school district.

(b) The commissioner of education shall ensure that each criterion-referenced test developed under the Texas Education Code (TEC), Chapter 39, Subchapter B, meets accepted standards for educational testing.

(c) Each public school and charter school shall assist with field-testing and other activities necessary to implement the requirements of the TEC, Chapter 39, Subchapter B.

§101.23. Performance Standards.

(a) Except as otherwise provided by the Texas Education Code (TEC), Chapter 39, Subchapter B, the State Board of Education shall determine the level of performance considered to be satisfactory on the assessment instruments.

(b) The alternative assessment of academic skills will measure annual growth based on appropriate expectations for each student receiving special education services, as determined by the student's admission, review, and dismissal (ARD) committee in accordance with criteria established by the commissioner of education as required by the TEC, §39.024(a).

§101.25. Schedule.

(a) The commissioner of education shall specify the schedule for testing and field testing that supports reliable and valid assessments.

(b) The superintendent of each school district or chief administrative officer of each charter school and any private school administering the tests as allowed under the Texas Education Code (TEC), §39.033, shall be responsible for administering tests.

(c) The commissioner of education may provide alternate dates for the administration of tests required for a high school diploma to students who are migratory children, as defined in the TEC, §39.029, and who are out of the state.

§101.27. Administrative Procedures.

(a) Test administration procedures shall be established by the Texas Education Agency (TEA) in the applicable test administration materials.

(b) A school district, charter school, or private school administering the tests required by the Texas Education Code (TEC), Chapter 39, Subchapter B, shall follow procedures specified in the applicable test administration materials.

(c) The superintendent of each school district and chief administrative officer of each charter school or private school administering tests required by TEC, Chapter 39, Subchapter B, shall be responsible for:

(1) maintaining the integrity of the test administration process; and

(2) ensuring that every test administrator receives at least annual training in these procedures as provided by the TEA through the education service centers.

§101.29. Accommodations.

(a) Testing accommodations on the assessments administered under the Texas Education Code (TEC), Chapter 39, Subchapter B, are

permitted for any student unless they would make a particular test invalid. Decisions regarding testing accommodations shall take into consideration the needs of the student and the accommodations the student routinely receives in classroom instruction.

(b) For a student receiving special education services, the admission, review, and dismissal (ARD) committee shall determine the allowable accommodations necessary for the student to take the assessments administered under the TEC, Chapter 39, Subchapter B, and shall document them in the student's individualized education program.

(c) Permissible testing accommodations shall be described in the appropriate test administration materials.

§101.31. Private Schools.

(a) A private school administering the tests under the Texas Education Code (TEC), Chapter 39, Subchapter B, shall follow procedures specified in the applicable test administration materials. Each private school shall maintain test security and confidentiality as delineated in the TEC, §39.030.

(b) A private school administering the tests under the TEC, Chapter 39, Subchapter B, shall reimburse the Texas Education Agency for each test administered. The per-student cost may not exceed the cost of administering the same test to a student enrolled in a school district.

(c) A private school administering the tests under the TEC, Chapter 39, Subchapter B, shall provide to the commissioner of education, as required by law, academic excellence indicator information described in the TEC, §39.051(b). For indicator information defined and collected through the Public Education Information Management System (PEIMS), private schools shall follow the PEIMS Data Standards.

§101.33. Release of Tests.

At the end of each school year, the Texas Education Agency shall release all test items and answer keys required under the Texas Education Code (TEC), Chapter 39, Subchapter B. After a period of five years, each test item that has been field-tested but not used on a test will be released.

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

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**SUBCHAPTER C. SECURITY AND  
CONFIDENTIALITY**

**19 TAC §§101.61, 101.63, 101.65**

The new sections are proposed under the Texas Education Code, Chapter 39, Subchapter B, which authorizes the State Board of Education to adopt rules to create and implement a statewide assessment program.

The new sections implement the Texas Education Code, Chapter 39, Subchapter B.



§101.61. Security of Tests.

The statewide assessment program as defined by the Texas Education Code (TEC), Chapter 39, Subchapter B, is a secure testing program. Procedures for maintaining security shall be specified in the appropriate test administration materials. Secure test materials must be accounted for before, during, and after each test administration. Only authorized personnel may have access to secure test materials.

§101.63. Confidentiality.

The contents of each test booklet and answer document are confidential in accordance with the Texas Government Code, Chapter 551, and the Family Educational Rights and Privacy Act of 1974. Individual student performance results are confidential as specified under the Texas Education Code (TEC), §39.030(b).

§101.65. Penalties.

(a) Violation of security or confidential integrity of any test required by the Texas Education Code (TEC), Chapter 39, Subchapter B, shall be prohibited.

(b) A person who engages in conduct prohibited by this section may be subject to sanction of credentials.

(c) Charter school test administrators are not required to be certified; however, any irregularity in the administration of any test required by the TEC, Chapter 39, Subchapter B, would cause the charter itself to come under review by the State Board of Education for possible sanctions or revocation, as provided under the TEC, §12.115(a)(3).

(d) Procedures for maintaining the security and confidential integrity of a test shall be specified in the appropriate test administration materials. Conduct that violates the security and confidential integrity of a test is defined as any departure from the test administration procedures established by the commissioner of education. Conduct of this nature may include the following acts and omissions:

- (1) duplicating secure examination materials;
- (2) disclosing the contents of any portion of a secure test;
- (3) providing, suggesting, or indicating to an examinee a response or answer to a secure test item or prompt;
- (4) changing or altering a response or answer of an examinee to a secure test item or prompt;
- (5) aiding or assisting an examinee with a response or answer to a secure test item or prompt;
- (6) encouraging or assisting an individual to engage in the conduct described in paragraphs (1)-(5) of this subsection; or
- (7) failing to report to an appropriate authority that an individual has engaged in conduct outlined in paragraphs (1)-(6) of this subsection.

(e) Any person who violates, assists in the violation of, or solicits another to violate or assist in the violation of test security or confidential integrity, and any person who fails to report such a violation are subject to the following penalties:

- (1) placement of restrictions on the issuance, renewal, or holding of a Texas teacher certificate, either indefinitely or for a set term;
  - (2) issuance of an inscribed or non-inscribed reprimand;
  - (3) suspension of a Texas teacher certificate for a set term;
- or
- (4) revocation or cancellation of a Texas teacher certificate without opportunity for reapplication for a set term or permanently.

(f) Any irregularities in test security or confidential integrity may also result in the invalidation of student results.

(g) The superintendent and campus principal of each school district and chief administrative officer of each charter school and any private school administering the tests as allowed under the TEC, §39.033, shall develop procedures to ensure the security and confidential integrity of the tests specified in the TEC, Chapter 39, Subchapter B, and shall be responsible for notifying the Texas Education Agency in writing of conduct that violates the security or confidential integrity of a test administered under the TEC, Chapter 39, Subchapter B. Failure to report can subject the person responsible to the applicable penalties specified in this section.

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

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## SUBCHAPTER D. SCORING AND REPORTING

### 19 TAC §101.81, §101.83

The new sections are proposed under the Texas Education Code, Chapter 39, Subchapter B, which authorizes the State Board of Education to adopt rules to create and implement a statewide assessment program.

The new sections implement the Texas Education Code, Chapter 39, Subchapter B.

§101.81. Scoring and Reporting.

(a) The superintendent of a school district or chief administrative officer of each charter school shall accurately report all test results as required by the Texas Education Code (TEC), §39.030, with appropriate interpretations, to the school district board of trustees according to the schedule in the applicable test administration materials.

(b) A school district, charter school, or private school that administers criterion-referenced tests under the TEC, Chapter 39, Subchapter B, shall notify each of its students and his or her parent or guardian of test results, observing confidentiality requirements in the TEC, §39.030.

(c) All test results shall be included in each student's academic achievement record and shall be furnished for each student transferring to another school district, charter school, or private school.

(d) The scoring contractor will provide school districts with the results of the machine-scorable assessments administered as required by the TEC, §28.0211, within a ten-day period following the receipt of the test materials from the school district or charter school.

§101.83. National Comparative Data.

(a) In accordance with the Texas Education Code (TEC), §39.028, the commissioner of education shall develop a schedule to obtain nationally comparative results for the grades and subject areas

for which assessments of academic skills are adopted under TEC, §39.023.

(b) The Texas Education Agency will use sampling and other techniques to minimize the disruption to schools and loss of instructional time required of school districts to obtain nationally comparative data.

(c) The nationally comparative data will be collected by using nationally recognized instruments for obtaining valid and reliable normative data from a sample of Texas students.

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

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## SUBCHAPTER E. LOCAL OPTION

### 19 TAC §101.101

The new section is proposed under the Texas Education Code, Chapter 39, Subchapter B, which authorizes the State Board of Education to adopt rules to create and implement a statewide assessment program.

The new section implements the Texas Education Code, Chapter 39, Subchapter B.

#### §101.101. Group-Administered Tests.

(a) An assessment instrument required under the Texas Education Code (TEC), §39.032, is defined as a nationally normed achievement test that is group administered and reported publicly in the aggregate. A test given for a special purpose, such as program placement or individual evaluation, is not included in this definition. The commissioner of education shall provide annually to school districts and charter schools a list of state-approved group-administered achievement tests that test publishers certify meet the requirements of TEC, §39.032.

(b) A company or organization scoring a test defined in subsection (a) of this section shall send test results to the school district for verification. The school district shall have 90 days to verify the accuracy of the data and report the results to the school district board of trustees. The company or organization shall provide results to the Texas Education Agency annually and data shall include the name, level, and form of the test; the year in which the test was normed; and the mean normal curve equivalent aggregated for each subject area by grade, campus, and district. State norms shall be provided if available.

(c) A company or organization that reports results using national norms that do not comply with the TEC, §39.032(c), is liable for damages as stated in the TEC, §39.032(d).

(d) To maintain the security and confidential integrity of group-administered achievement tests, school districts and charter schools shall follow the procedures for test security and confidentiality delineated in Subchapter C of this chapter (relating to Security and Confidentiality).

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

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## CHAPTER 117. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR FINE ARTS SUBCHAPTER C. HIGH SCHOOL

### 19 TAC §117.54, §117.55

The Texas Education Agency (TEA) proposes amendments to §117.54 and §117.55, concerning fine arts. The sections establish the essential knowledge and skills for high school art courses that students may use to fulfill fine arts and elective requirements for graduation, including certain Advanced Placement (AP) and International Baccalaureate (IB) courses.

Courses in Art, Levels III and IV, include three College Board Advanced Placement courses. One of those courses, the AP General Art Portfolio course, will be retired by the College Board and will not be offered after the 2000-2001 school year. In its place, two new portfolio courses, AP Two-Dimensional Design Portfolio and AP Three-Dimensional Design Portfolio, will be introduced. The other two current AP courses, AP History of Art and AP Drawing Portfolio, will remain, but the AP Drawing Portfolio course will be revised slightly so that all three portfolio courses are parallel in structure. In order for students to receive state graduation credit for successful completion of these two new AP courses, the courses must be approved by the State Board of Education (SBOE) and listed in 19 TAC Chapter 117, Texas Essential Knowledge and Skills for Fine Arts, Subchapter C, High School, §117.54, Art, Level III, and §117.55, Art, Level IV. In addition, one of the options of the four advanced measures required of students pursuing the Distinguished Achievement Program is earning a score of three or above on a College Board AP examination. The two new courses would be among those for which students may earn advanced measures. The proposed amendments to 19 TAC §117.54 and §117.55 would retire the AP General Art Portfolio course and add the new AP Two-Dimensional Design Portfolio and AP Three-Dimensional Design Portfolio courses to the list of AP courses that school districts may offer for state graduation credit in Art, Levels III and IV.

Ann Smisko, Associate Commissioner for Curriculum, Assessment, and Technology, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state and local government as a result of enforcing or administering the sections. The TEA currently pays for student examinations taken in AP courses. The addition of new AP courses would increase the amount of funds disseminated through the Texas Advanced Placement incentive program. If a student achieves a score of three or greater on the examination, a fiscal incentive of up to \$100 per student is provided. It is not possible, however, to estimate the total cost to state or local government prior to the implementation of the new courses.

Ms. Smisko and Criss Cloudt, Associate Commissioner for Accountability Reporting and Research, have 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 that students will have increased options when selecting academically challenging courses and will have additional opportunities to earn advanced measures for the Distinguished Achievement Program. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Criss Cloudt, 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](mailto:rules@tea.state.tx.us) or faxed to (512) 475-3499. All requests for a public hearing on the proposed sections submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §28.002, which directs the State Board of Education to adopt rules identifying the essential knowledge and skills of each subject of the required curriculum, which includes an enrichment curriculum. In addition, Texas Education Code, §28.051, establishes the definition of college advanced placement courses.

The amendments implement the Texas Education Code, §28.002 and §28.051.

§117.54. *Art, Level III.*

(a) General requirements. Students may fulfill fine arts and elective requirements for graduation by successfully completing one or more of the following art courses: Drawing III, Painting III, Printmaking III, Fibers III, Ceramics III, Sculpture III, Jewelry III, Photography III, Art History III, Graphic Design III, Electronic Media III, the College Board Advanced Placement (AP) Drawing Portfolio, AP Two-Dimensional Design Portfolio, AP Three-Dimensional Design Portfolio, [AP General Art Portfolio,] AP History of Art, International Baccalaureate (IB) Art/Design SL Option A, IB Art/Design SL Option B, IB Art/Design HL (one credit per course). The prerequisite for Art History III, Graphic Design III, AP Two-Dimensional Design Portfolio, AP Three-Dimensional Design Portfolio, [AP General Art Portfolio,] AP History of Art, IB Art/Design SL Option A, IB Art/Design SL Option B, and IB Art/Design HL is one credit of any Art II course. The prerequisite for all other Level III art courses is one credit of Art II in the corresponding discipline.

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

§117.55. *Art, Level IV.*

(a) General requirements. Students may fulfill fine arts and elective requirements for graduation by successfully completing one or more of the following art courses: Drawing IV, Painting IV, Printmaking IV, Fibers IV, Ceramics IV, Sculpture IV, Jewelry IV, Photography IV, Graphic Design IV, Electronic Media IV, the College Board Advanced Placement (AP) Drawing Portfolio, AP Two-Dimensional Design Portfolio, AP Three-Dimensional Design Portfolio, [AP General Art Portfolio,] AP History of Art, International Baccalaureate (IB) Art/Design SL Option A, IB Art/Design SL Option B, and IB Art/Design HL (one credit per course). The prerequisite for AP Two-Dimensional Design Portfolio, AP Three-Dimensional Design Portfolio, [AP General Art Portfolio,] AP History of Art, IB Art/Design SL Option A, IB Art/Design SL Option B, and IB Art/Design HL is one credit of any

Art II course. The prerequisite for all other Level IV art courses is one credit of Art III in the corresponding discipline.

(b)-(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 May 18, 2001.

TRD-200102807

Criss Cloudt

Associate Commissioner, Policy Planning and Research  
Texas Education Agency

Earliest possible date of adoption: July 1, 2001

For further information, please call: (512) 463-9701



## PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

### CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION SUBCHAPTER A. ASSESSMENT OF EDUCATORS

#### 19 TAC §230.5

The State Board for Educator Certification (SBEC) proposes an amendment to §230.5, relating educator assessment.

The proposed amendment is designed to eliminate unnecessary barriers to candidates seeking the standard educator. Under §230.5(c), educator preparation programs currently determine the readiness of their candidates to take the tests required for certification. Candidates are prohibited from taking certification tests until the entity authorizes them to. However, many candidates who have completed their program are being denied opportunities to take the tests even after they have satisfied all other conditions for certification, such as completing their coursework, student teaching/internship, and degree requirements.

The amendment is designed to provide the candidate with the right to take the appropriate certification tests when deemed ready by the individual's program or upon *successful completion* of the individual's program requirements, whichever comes first. "Successful completion" means the candidate has completed all of the program's requirements for certification except for taking the necessary certification tests. However, many candidates do take all of their tests prior to completing program requirements, and these individuals would not be affected by this proposed rule.

The effective date of the amendment is anticipated to be September 1, 2001, and so would apply to the 2001-2002 school year.

Barry Alaimo, Director of Accounting and Financial Operations, has determined that for the first five year period the amendment is in effect, there will be no significant fiscal impact as a result of the amendment to §230.5(c). Limiting the ability of educator preparation programs to keep candidates from testing may result in more examinations being given but the number cannot be determined now. The Board did not change the examination fee.

Dan Junell, General Counsel, has determined that the public would benefit from the amendment to the educator assessment

rule by allowing qualified educator candidates to become certified and assume their duties more expeditiously without unduly compromising their preparation. The public should incur no additional costs as a result of the implementation of the proposed rule.

Interested persons wishing to comment on the proposed rules must submit their comments in writing to Dan Junell, General Counsel, State Board for Educator Certification, 1001 Trinity, Austin, Texas 78701-2603, within the 30-day comment period, which begins on the date of publication of this issue of the *Texas Register*. The comments should contain the following title or reference: "Comments on the proposed amendment to 19 TAC §230.5(c), relating to educator assessment."

The amendment is proposed under the authority of the following sections of the Texas Education Code: §21.031, which empowers the State Board for Educator Certification to regulate and oversee all aspects of the certification while requiring the Board to ensure that all candidates for certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §21.041(b)(1), which requires the board to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, Education Code in a manner consistent with the subchapter; §21.041(b)(4), which requires the board to propose rules that specify the requirements for the issuance of an educator certificate; §21.044, which requires the board to propose rules establishing the training requirements a person must accomplish to obtain a certificate; and §21.048, which requires the board to propose rules prescribing comprehensive examinations for each class of certificate issued by the Board.

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

§230.5. *Educator Assessment.*

(a) (No change.)

(b) Anyone seeking certification as an educator must pass [take] examinations required by the Texas Education Code (TEC), §21.048, and the State Board for Educator Certification.

(c) Anyone seeking a standard certificate as an educator based on completion of an approved educator preparation program may take the appropriate certification examinations required by subsection (b) of this section at such time as the entity delivering the certification program determines the individual's readiness to take the examinations, or upon successful completion of the program, whichever comes first. [Entities delivering educator preparation programs shall determine the readiness of their candidates to take the appropriate certification examinations required by subsection (b) of this section.]

(d)-(i) (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 May 21, 2001.

TRD-200102816

Pamela B. Tackett

Executive Director

State Board for Educator Certification

Earliest possible date of adoption: July 1, 2001

For further information, please call: (512) 469-3011



## TITLE 22. EXAMINING BOARDS

### PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

#### CHAPTER 511. CERTIFICATION AS A CPA SUBCHAPTER D. CPA EXAMINATION

##### 22 TAC §511.70

*(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 State Board of Public Accountancy or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas State Board of Public Accountancy (Board) proposes the repeal of §511.70 concerning Processing Suspected Irregularities Involving Candidates for the Uniform CPA Examination.

The proposed repeal of §511.70 will allow the Board to write a new, more responsive rule on this topic.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeal will be zero because the repeal of this rule does not require anyone to do anything.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal will be zero because the repeal of this rule does not require anyone to do anything.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeal will be zero because the repeal of this rule does not require anyone to do anything.

Mr. Treacy has determined that for the first five-year period the repeal is in effect the public benefits expected as a result of adoption of the proposed repeal will be that another rule that is clearer and better written will be enacted.

The probable economic cost to persons required to comply with the repeal will be zero because the repeal of this rule does not require anyone to do anything.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

The Board requests comments on the substance and effect of the proposed repeal from any interested person. Comments must be received at the Board no later than noon on Thursday June 21, 2001. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because the repeal of this rule does not require anyone to do anything.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small business; if the repeal is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute

under which the repeal is to be adopted; and if the repeal is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the repeal under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The repeal is proposed under the Public Accountancy Act, Texas Civil Statutes, Article 41a-1, 6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act. No other article, statute or code is affected by this proposed repeal.

*§511.70. Processing Suspected Irregularities Involving Candidates for the Uniform CPA Examination.*

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 May 18, 2001.

TRD-200102799

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: July 1, 2001

For further information, please call: (512) 305-7848



## 22 TAC §511.70

The Texas State Board of Public Accountancy (Board) proposes new §511.70 concerning Grounds for Disciplinary Action of Candidates.

The new §511.70 will allow the Board to combine former §511.70 and §511.101 and to re-write these rules to allow the Board to take action against CPA candidates who display specific behavior at the CPA examination as well as misrepresent information on official Board applications.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rule will be zero because the Board is already taking action against candidates for prohibited activities.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rule will be zero because the Board is already taking action against candidates for prohibited activities and the rule has no application to local government.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the rule will be zero because the Board is already taking action against candidates for prohibited activities.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be a clearly written rule regarding prohibited examination related conduct.

The probable economic cost to persons required to comply with the new rule will be zero because the Board is already taking action against candidates for prohibited activities.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than noon on Thursday June 21, 2001. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the Board is already taking action against candidates for prohibited activities.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small business; if the new rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the new rule is to be adopted; and if the new rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the new rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§511.70. Grounds for Disciplinary Action of Candidates.

(a) The board may discipline a candidate for any grounds specified in Section 901.503 of the Public Accountancy Act. Such grounds include but are not limited to the conduct described in subsections (b) - (d) of this rule.

(b) The board may discipline a candidate for making a false, fraudulent or materially misleading statement or a material omission on, or in connection with, any application for evaluation, examination or to become a certified public accountant of this state. The withdrawal of any application shall not deprive the board of its authority to take action against the applicant.

(c) The board may discipline any candidate for failing to comply with written guidelines of conduct to be adhered to by candidates during the examination or oral guidance by representatives of the board at any examination location.

(d) The board may discipline any candidate for cheating, subverting, attempting to subvert, aiding, abetting or conspiring to cheat on the CPA Examination at any location within the state where the examination is given, or where a Texas candidate is taking the CPA Examination at a location outside of the state. The voluntary departure or expulsion from an examination shall not deprive the board of its authority to take action against the applicant.

(e) Cheating, subverting, attempting to subvert, aiding, abetting or conspiring to cheat on the CPA Examination includes, but is not limited to, engaging in, solicitation, or procuring any of the following:

(1) any communication between one or more examinees and any person, other than a proctor or exam administrator while the examination is in progress.

(2) any communication between one or more examinees and any person at any time concerning the content of the examination including, but not limited to, any exam question or answer, unless the examination has been publicly released by the preparer of the examination except for communication with a proctor or exam administrator while the examination is in progress.

(3) taking by another of all or any part of the examination for the examination candidate.

(4) possession or use at any time during the examination or while the examinee is in the examination site of any device, material, or document that is not expressly authorized for use by examinees during the examination including but not limited to, notes, crib sheets, books, and electronic devices.

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 May 18, 2001.

TRD-200102797

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: July 1, 2001

For further information, please call: (512) 305-7848



## SUBCHAPTER E. EXAMINATION INVESTIGATION AND BOARD ACTION

### 22 TAC §511.101

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

The Texas State Board of Public Accountancy (Board) proposes the repeal of §511.101 concerning Action Relating to Violations of Rules Governing Conduct During the Examination.

The proposed repeal of §511.101 will allow the Board to write a new, more responsive rule on this topic.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeal will be zero because the repeal of this rule does not require anyone to do anything.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal will be zero because the repeal of this rule does not require anyone to do anything.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeal will be zero because the repeal of this rule does not require anyone to do anything.

Mr. Treacy has determined that for the first five-year period the repeal is in effect the public benefits expected as a result of adoption of the proposed repeal will be that another rule that is clearer and better written will be enacted.

The probable economic cost to persons required to comply with the repeal will be zero because the repeal of this rule does not require anyone to do anything.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

The Board requests comments on the substance and effect of the proposed repeal from any interested person. Comments must be received at the Board no later than noon on Thursday June 21, 2001. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because the repeal of this rule does not require anyone to do anything.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small business; if the repeal is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the repeal is to be adopted; and if the repeal is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the repeal under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The repeal is proposed under the Public Accountancy Act, Texas Civil Statutes, Article 41a-1, 6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act. No other article, statute or code is affected by this proposed repeal.

§511.101. *Action Relating to Violations of Rules Governing Conduct During the Examination.*

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 May 18, 2001.

TRD-200102798

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: July 1, 2001

For further information, please call: (512) 305-7848



## CHAPTER 521. FEE SCHEDULE

### 22 TAC §521.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §521.2 concerning Examination Fees.

The amendment to §521.2 will increase the Uniform CPA Examination fees for one, two and four subjects.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the Board is already collecting Uniform CPA examination fees, because this is only an increase in fees and because the amendment does not require the state to do or not do anything that is already being done.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the Board is already collecting Uniform CPA examination fees, because this is only an increase in fees and because the amendment does not require the state to do or not do anything that is already being done and does not require anything of local government.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the rule will be zero because the Board is already collecting Uniform CPA examination fees, because this is only an increase in fees and because the amendment does not require the state to do or not do anything that is already being done.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that the increased examination fees will be collected by the Board from the applicants rather than being paid by the Board or state.

The probable economic cost to persons required to comply with the amendment will be zero because the Board is already collecting Uniform CPA examination fees, because this is only an increase in fees and because the amendment does not require the state to do or not do anything that is already being done.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on Thursday June 21, 2001. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the Board is already collecting Uniform CPA examination fees, because this is only an increase in fees and because the amendment does not require the state to do or not do anything that is already being done.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of

compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§521.2. *Examination Fees.*

(a) The following fees shall be effective for the Uniform CPA Examination.

(b) The fee for the initial examination conducted pursuant to the Act shall be \$214.00 [~~\$180.00~~]. The fee for any examination shall be apportioned as follows:

- (1) eligible for one subject -- \$68.50 [~~\$60.00~~];
- (2) eligible for two subjects -- \$107.00 [~~\$90.00~~]; and
- (3) eligible for four subjects -- \$214.00 [~~\$180.00~~].

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 May 18, 2001.

TRD-200102796

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: July 1, 2001

For further information, please call: (512) 305-7848



## PART 31. TEXAS STATE BOARD OF EXAMINERS OF DIETITIANS

### CHAPTER 711. DIETITIANS

#### 22 TAC §711.22

The Texas State Board of Examiners of Dietitians (board) proposes new §711.22 relating to the qualifications of licensed dietitians providing diabetes self-management training.

The proposed new section results from Senate Bill 982 enacted by the 76th Texas Legislature, 1999, input from the Texas Dietetic Association, and comments from licensed dietitians. The bill language applies to insurance policies issued after January 1, 2001.

Ms. Donna Flippin, Executive Secretary, has determined that for each year of the first five years the new section as proposed is in effect, there will be no fiscal implications for state or local governments as a result of enforcement or implementations.

Ms. Flippin has also 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 as proposed will be to assure the appropriate regulation of dietitians providing diabetes self-management training.

These are no costs to microbusinesses or small businesses because no new requirements are proposed upon licensed dietitians that would result in a business expense. There are no anticipated economic costs to persons who are required to comply with this section as proposed. There is no anticipated impact on local employment.

Written comments on the new section may be submitted in writing to Donna Flippin, Executive Secretary, Texas State Board of Examiners of Dietitians, 1100 West 49th Street, Austin, Texas 78756-3183, phone: (512) 834-6601. Comments will be accepted for 30 days after publication of this notice in the *Texas Register*.

The new section is proposed under Texas Occupations Code, §§701.151 and 701.152 that provide the board with the authority to make and enforce rules reasonably required in the exercise of its general powers and jurisdiction. The new section is also proposed under the Texas Insurance Code, Article 21.53G, §4(b)(2)(C) and (b)(4). These portions of the Insurance Code authorize the licensed dietitian's licensing agency (the board) to determine the recent didactic and experiential preparation in diabetes clinical and educational issues required to participate in a multidisciplinary team or to provide the nutritional counseling component.

The new section affects the Texas Occupations Code, Chapter 701.

§711.22. Qualifications of Licensed Dietitians to Provide Diabetes Self-Management Training.

(a) Purpose. This section implements Insurance Code, Article 21.53G, §4.

(b) Diabetes self-management training. Diabetes self-management training covers the following training:

(1) training provided to a qualified insured after the initial diagnosis of diabetes in the care and management of that condition, including nutrition counseling and proper use of diabetes equipment and supplies;

(2) additional training authorized on the diagnosis of a physician or other health care practitioner of a significant change in the qualified insured's symptoms or condition that requires changes in the qualified insured's self-management regimen; and

(3) periodic or episodic continuing education training when prescribed by an appropriate health care practitioner as warranted by the development of new techniques and treatments for diabetes.

(c) Providing diabetes self-management training as a member of a multi-disciplinary team.

(1) Prior to beginning to provide diabetes self-management training as a member of a multi-disciplinary team under Insurance Code, Article 21.53G, §4(b)(2), a licensed dietitian must complete at least six hours of continuing education in diabetes-specific or diabetes-related topics within the previous two years.

(2) Thereafter, to remain qualified to continue to provide such services, a licensed dietitian shall complete at least six hours of continuing education annually in diabetes-specific or diabetes-related topics.

(3) A licensed dietitian who is not a Certified Diabetes Educator and who is providing diabetes self-management training as a member of a multi-disciplinary team under Insurance Code, Article

21.53G, §4(b)(2), shall confine his or her professional services to nutrition education and/or counseling, lifestyle modifications, the application of self-management skills, reinforcing diabetes self-management training, and other acts within the scope of his or her professional education and training which are conducted under the supervision of the coordinator of the multi-disciplinary team.

(d) Providing the nutrition component of diabetes self-management training.

(1) Prior to beginning to provide the nutrition component of diabetes self-management training under Insurance Code, Article 21.53G, §4(b)(4), a licensed dietitian must complete at least six hours of continuing education in diabetes-specific or diabetes-related topics within the previous two years.

(2) Thereafter, to remain qualified to continue to provide such services, a licensed dietitian shall show proof to the Texas State Board of Examiners of Dietitians (board) of completion of at least six hours of continuing education annually in diabetes-specific or diabetes-related topics.

(e) Continuing education. The continuing education completed under this section shall meet the requirements described in §711.17 of this title (relating to Continuing Education Requirements). The continuing education completed under this section may be part of the credits required for annual renewal of a license.

(f) Submission of continuing education to the board. Upon written request by the board, the licensed dietitian shall submit to the board proof of completion of the continuing education completed under this section. The licensed dietitian shall submit the proof of completion in a manner and a timeframe acceptable to the board.

(g) Provisional Licensed Dietitians. A provisional licensed dietitian shall not provide diabetes self-management training under these rules.

(h) Certified Diabetes Educator. This section does not apply to a licensed dietitian who is a diabetes educator certified by the National Certification Board for Diabetes Educators.

(i) Non-application of rules. This section does not pertain to or restrict a licensed dietitians who does not qualify under this section from providing the nutrition component of diabetes self-management training within the scope of the license issued by the board, to a person:

(1) who is not a qualified insured as defined in the Insurance Code, Article 21.53G;

(2) who does not intend to seek payment for or reimbursement for diabetes self-management training; or

(3) without the written order of a licensed physician or other healthcare practitioner.

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 May 18, 2001.

TRD-200102810

Patricia Mayers Krug

Chairperson

Texas State Board of Examiners of Dietitians

Earliest possible date of adoption: July 1, 2001

For further information, please call: (512) 458-7236





## TITLE 25. HEALTH SERVICES

### PART 1. TEXAS DEPARTMENT OF HEALTH

#### CHAPTER 157. EMERGENCY MEDICAL CARE

##### SUBCHAPTER C. EMERGENCY MEDICAL SERVICES TRAINING AND COURSE APPROVAL

###### 25 TAC §§157.33, 157.34, 157.38

The Texas Department of Health (department) proposes amendments to §157.33 and §157.38 and new §157.34 concerning minimum standards and requirements for recertification of emergency medical services (EMS) personnel. Specifically, these amendments and new section cover new options for the recertification process. An amendment to §157.33 removes the recertification requirements out of the section and places the requirements in the new §157.34, which describes five different options for an EMS certificant to recertify. An amendment to §157.38 reflects the new requirements contained in the continuing education (CE) option of the proposed new rule. In accordance with Health and Safety Code, Chapter 773, 76th Legislature, 1999, the department is required to adopt rules concerning minimum requirements for recertification of EMS personnel.

Kathryn C. Perkins, Bureau Chief, has determined that for the first five years the proposed sections are in effect there will be no fiscal impact on local governments. The cost to the state government to implement §157.34 of this title (relating to Recertification) will be approximately \$5,000 in the first year of implementation and \$1,000 each year afterward. There will be no fiscal impact on the state government to implement the amendments to §157.33 (relating to Certification) and §157.38 (relating to Continuing Education) of this title.

Kathryn C. Perkins has also determined that for the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be increased standards for the recertification of EMS personnel. The benefit anticipated for the EMS community is that the options offered for recertification will confront the obstacles of location and availability of resources, without compromising standards set to ensure the safety of the public. There will be no new fees assessed; therefore, it was determined that there will be no adverse economic effect on small businesses or micro-businesses or persons who are required to comply with these sections. There will be no adverse impact on local employment.

Comments on the proposal may be submitted to Kathryn Perkins, Bureau Chief of Emergency Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756-3182, (512) 834-6700. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The amendments and new section are proposed under the Health and Safety Code, Chapter 773, which provides the department with the authority to adopt rules concerning the standards and requirements for recertification of emergency medical services (EMS) personnel; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The amendments and new section affect Health and Safety Code, Chapter 773.

###### §157.33. Certification.

(a)-(d) (No change.)

(e) Retesting.

(1) (No change.)

(2) A candidate who does not pass a retest may request a second retest after:

(A) submitting documentation that verifies completion of a department-approved formal refresher course;

(B)-(C) (No change.)

(3) (No change.)

(f)-(i) (No change.)

~~[(j) Recertification.]~~

~~[(1) A certificant shall meet the following requirements for recertification: The certificant shall:]~~

~~[(A) complete the continuing education (CE) requirements for recertification as required in this title (relating to Continuing Education) prior to the expiration of the certificate and prior to meeting the requirement in subparagraph (D) of this paragraph;]~~

~~[(B) submit to the department an application for recertification and the nonrefundable fee as set out in subsection (a)(4) of this section; and]~~

~~[(C) complete the department's CE evaluation which shall be an attempt to measure the individual's knowledge necessary for the adequate provision of emergency care for current level of certification. The department has final authority for scheduling all written CE evaluation sessions.]~~

~~[(2) After verification by the department of the information submitted by the certificant, a certificant who meets requirements of this subsection will be recertified for four years commencing on the day following the expiration date of the most recent certificate. A new certificate and wallet-sized certificate signed by department officials shall be issued.]~~

~~[(3) The results of the CE evaluation along with information relevant to interpretation of the scores will be issued to the recertifying candidate, associated medical directors, providers, first responder organizations, and/or employers.]~~

~~[(4) One re-evaluation may be taken. A fee of \$25 shall accompany the request for a re-evaluation. The re-evaluation results will be issued as in paragraph (3) of this subsection.]~~

~~[(5) In conjunction with the certificant's two-year interim CE reporting cycle, the certificant may elect to complete the CE evaluation or the certificant's medical directors, providers, first responder organizations and/or employers may mandate that the certificant complete the CE evaluation and, if applicable, one re-evaluation. The first CE evaluation shall be completed within 180 days after the deadline date of the interim two-year reporting cycle. The re-evaluation may be completed after the 180-day period. The CE evaluation results will be issued as described in paragraph (3) of this subsection.]~~

~~[(6) To take a two-year interim CE evaluation, the certificant shall submit an application, and a nonrefundable fee as set out in subsection (a)(4) of this section. A fee of \$25 shall accompany the request for a re-evaluation.]~~

~~[(k) Reentry or late recertification.]~~

~~{(1) Reentry is the process for regaining EMS certification;}~~

~~{(A) after the certificate has been surrendered;}~~

~~{(B) during a period of inactive status;}~~

~~{(C) when an application for renewal is postmarked after the expiration of the most recent certificate; or}~~

~~{(D) when all requirements for recertification are not met prior to the end of the latest certification period.}~~

~~{(2) Late recertification.}~~

~~{(A) The candidate shall be considered as non-certified and may not function in the capacity of an EMS certificant or represent that he is EMS certified until recertification is issued.}~~

~~{(B) A candidate whose certificate has been expired for 90 days or less may renew the certificate by submitting an application and paying to the department a nonrefundable renewal fee that is equal to 1 1/2 times the normally required application renewal fee for that level as listed in subsection (a)(4) of this section.}~~

~~{(C) A candidate whose certificate has been expired for more than 90 days but less than one year may renew the certificate by submitting an application and paying to the department a nonrefundable renewal fee that is equal to two times the normally required application renewal fee as listed in subsection (a)(4) of this section. A candidate shall submit documentation that verifies completion of a formal refresher course.}~~

~~{(D) A candidate shall pass the department's written exam.}~~

~~{(E) A candidate whose certificate has been expired for one year or more may not renew the certificate. The candidate may become certified by complying with the requirements of subsection (a) of this section including the successful completion of another initial course.}~~

~~{(F)} A candidate who was certified in this state, moved to another state, and is currently certified or licensed and has been in practice in the other state for the two years preceding the date of application may become certified without reexamination. The candidate must pay to the department a nonrefundable fee that is equal to two times the normally required renewal fee for certification as listed in subsection (a)(4) of this section.~~

~~{(H)} Inactive status. A certified EMT, EMT-I, or EMT-P may make application to the department for inactive status at any time during or after the certification period so long as the certification can be verified by department.~~

(1) The request for inactive status shall be accompanied by a nonrefundable fee of \$25 in addition to the regular nonrefundable application fee.

(2) The initial inactive status period shall remain in effect until the end of the current certification period for those candidates who are currently certified and may be renewable every four years thereafter by submitting an application and the appropriate nonrefundable fee as in subsection (a)(4) of this section.

(3) The initial inactive status period shall remain in effect for four years from the date of issuance for those candidates not currently certified.

(4) While on inactive status, a person shall not practice other than to act as a bystander rendering first aid or cardiopulmonary resuscitation (CPR) or the use of an Automated External Defibrillator

in the capacity of a lay person. Practicing in any other capacity for compensation or as a volunteer shall be cause for denial of reentry and decertification.

(l) ~~{(m)}~~ Reciprocity. A person currently certified by the National Registry or in another state may be certified by submitting an application and a nonrefundable fee of \$100.

(1) After evaluation of the application and verification of the certification by the department, the candidate will be certified for one year.

(2) Prior to the expiration of the one-year certification, the certificant shall:

(A) submit a completed personnel certification application and a nonrefundable fee as in subsection (a)(4) of this section;

~~{(B) complete 25 percent of the CE requirement for the appropriate level as indicated in this title or complete a refresher course at the appropriate level; and}~~

~~{(C)} pass the department's written examination.~~

~~{(3) A candidate who fails the written examination may retest one time after:}~~

~~{(A) submitting an application to retest; and}~~

~~{(B) paying a nonrefundable fee of \$25.}~~

~~{(4) The retest shall be completed no later than the end of the one-year certification period.}~~

(3) ~~{(5)}~~ After verification by the department of the information submitted, a candidate who meets the requirements of this section shall be certified for four years beginning on the date of issuance of the certificate.

~~{(6) A candidate who does not complete the requirements for certification before the expiration date of the one-year certificate or who fails a retest shall meet the requirements of subsection (a) of this section including the successful completion of another initial course as applicable to achieve certification.}~~

(m) ~~{(n)}~~ Equivalency.

(1) A candidate for certification who completed EMS training outside the United States or its possessions, or a candidate who is certified or licensed in another healthcare discipline shall:

(A) be at least 18 years of age;

(B) submit a copy of the curriculum completed by the candidate for review by a regionally accredited post secondary institution approved by the department to sponsor an EMS education program;

(C) document correction of any deficiencies identified during review of the curriculum by submitting evidence of remedial training from a department approved EMS education program;

(D) submit an application and appropriate nonrefundable fee listed in subsection (a) of this section to the department; and

(E) pass the department's initial written examination.

(2) Evaluations of curricula conducted by post secondary educational institutions under this subsection shall be consistent with the institution's established policies and procedures for awarding credit by transfer or advanced placement.

(n) ~~{(o)}~~ Military personnel. A person certified by the department who is deployed in support of military, security, or other action by the United Nations Security Council, a national emergency declared by

the president of the United States, or a declaration of war by the United States Congress is eligible for recertification under timely recertification requirements, from the person's date of demobilization until one calendar year after the date of demobilization but will not be certified during that period.

§157.34. Recertification.

(a) Recertification.

(1) Not later than the 30th day before the date a person's certificate is scheduled to expire, the department may send to the person a notice of expiration at the address shown in the current records of the department.

(2) If a certificant has not received a notice of expiration from the bureau 30 days prior to the expiration, it is the duty of the certificant to notify the bureau and to request an application for recertification or download an application from the Internet. Failure to apply for recertification shall result in expiration of the certificate.

(3) To maintain certification status without a lapse, a completed application for recertification shall be submitted to the department prior to the expiration date of the current certificate, but no earlier than 1 year prior to the expiration date. When submitting an application, applicants should consider the department's processing time as described in §157.3 of this title (relating to Processing of EMS Provider Licenses and Applications for EMS Personnel Certification and License).

(4) The certificant shall submit an application and the following non-refundable fees as applicable:

(A) \$50 for Emergency Care Attendant (ECA) or Emergency Medical Technician (EMT);

(B) \$75 for EMT-Intermediate (EMT-I) or EMT-Paramedic (EMT-P); and

(C) EMS volunteer - no fee. However, if such an individual receives compensation during the certification period, the exemption ceases and the individual shall pay a prorated fee to the department based on the number of years remaining in the certification period when employment begins. The non-refundable fee for ECA or EMT certification shall be \$12.50 per each year remaining in the certification. The non-refundable fee for EMT-I or EMT-P shall be \$18.75 per each year remaining in the certification. Any portion of a year will count as a full year.

(5) An application for a level of certification lower than the applicant's current level may be submitted with the applicable fee as described in paragraph (4) of this subsection if the applicant meets the requirements for the level of certification requested as described.

(6) A certificate is not transferable.

(b) Recertification Options. Upon submission of a completed application for recertification, the applicant shall commit to, and recertify through, only one of the options described in paragraphs (1)-(5) of this subsection.

(1) Option 1 - Written Examination Recertification Process.

(A) The applicant shall pass the state's written examination for recertification, which is designed to measure ongoing competencies and current EMS practices for the applicant's level of certification.

(B) If the applicant fails the examination for recertification, the applicant may attempt two retests of the examination after:

(i) submitting a retest application for each attempt at any eligible level; and

(ii) submitting a non-refundable retest fee of \$25 for each attempt.

(C) An applicant may recertify by taking an initial recertification examination for a lower level of certification for each subsequent attempt.

(D) An applicant who attempts and fails the recertification examination may not gain recertification by any other option.

(E) An applicant who does not pass the recertification examination:

(i) shall successfully complete a Formal Recertification Course as described in paragraph (4)(A) and (B) of this subsection; and

(ii) shall submit a course completion certificate of the Formal recertification course, reflecting that the course was completed after the 2nd retest failure; and

(iii) shall pass the state written recertifying examination in accordance with the provisions in subparagraphs (A)-(D) of this paragraph.

(F) The certification status of an applicant who does not successfully complete the examination recertification process as described in subparagraphs (A)-(E) of this paragraph shall expire on the date of the current certificate. The applicant will have until 90 days after expiration date of the current certificate to successfully complete the examination recertification process. If applicant does not successfully complete recertification process within 90 days following expiration, applicant shall meet requirements of late recertification described in subsection (f)(4) of this section. Successful completion of the late recertification process shall be accomplished within one year of expiration as described in subsection (f)(6) of this section.

(2) Option 2 - Continuing Education Recertification Process. The certificant shall attest to accrual of department approved EMS continuing education as specified in §157.38 of this title (relating to Continuing Education).

(3) Option 3 - National Registry Recertification Process. The applicant shall attest to current National Registry certification at the time of applying for recertification.

(4) Option 4 - Formal Course Recertification Process. The applicant shall attest to successful completion of a department approved recertification course.

(A) The recertification course, as prescribed by the Education and Training Manual, shall be a formal, classroom-presented, live participation, training course as approved by the department and conducted within the four year certification period. Course completion date shall be within one year prior to the expiration date of current certification.

(B) The minimum contact hours required for recertification courses are:  
Figure: 25 TAC §157.34(b)(4)(B)

(5) Option 5 - CCMP Recertification Process. An applicant affiliated with an EMS provider that has a department-approved Comprehensive Clinical Management Program (CCMP) may be recertified if:

(A) the applicant is currently credentialed in the provider's CCMP;

(B) the applicant has been enrolled in the provider's CCMP for at least six continuous months; and

(C) the applicant submits to the department a statement, signed by the medical director, of participation in the provider's CCMP.

(c) After verification by the department of the information submitted by the applicant, that the information is true, correct and complete with regard to the applicant meeting recertification requirements by the certification expiration date, the department shall recertify the applicant for four years, commencing on the day following the expiration date of the most recent certificate.

(d) Return to active status.

(1) To regain active status, an applicant holding inactive certification shall complete the following requirements. All requirements shall be completed within one year of the application.

(A) The applicant shall successfully complete a department approved recertification course as described in subsection (b)(4) of this section;

(B) The applicant shall submit an application and the non-refundable fees applicable, as described in subsection (a)(4) of this section, before expiration of the inactive certification period;

(C) The applicant shall successfully complete the examination recertification process, as described in subsection (b)(1)(A)-(F) of this section.

(2) A candidate whose inactive certification expires shall comply with late recertification as described in subsection (f)(1)-(6) of this section.

(e) Renewal of inactive status. To renew inactive status, an applicant holding inactive certification shall submit an application and the non-refundable fee applicable, as described in §157.33(l)(1) of this title, before expiration of the inactive certification period.

(f) Late recertification.

(1) A candidate whose certificate has been expired for 90 days or less may renew the certificate by submitting an application and paying to the department a non-refundable renewal fee that is equal to 1-1/2 times the normally required application renewal fee for that level as listed in subsection (a)(4) of this section. Applicant shall meet one of the recertification options described in subsection (b)(1)-(5) of this section.

(2) The candidate whose certification has expired shall be considered as non-certified and may not function in the capacity of an EMS certificant or represent that the candidate is EMS certified until recertification is issued.

(3) An individual who has not met the requirements for recertification prior to his expiration date shall be considered late.

(4) A candidate whose certificate has been expired for more than 90 days but less than one year may renew the certificate by submitting an application and paying to the department a non-refundable renewal fee that is equal to two times the normally required application renewal fee as listed in subsection (a)(4) of this section. An applicant shall submit documentation that verifies completion of a formal Recertification course, which reflects completion date to be within one year prior to application. An applicant shall pass the department's written exam for recertification as described in subsection (b)(1)(A)-(F) of this section.

(5) The applicant shall be recertified for a period of four years beginning on the date of issuance.

(6) A candidate whose certificate has been expired for one year or more may not renew the certificate. The candidate may become certified by complying with the requirements of §157.33(a) of this title.

(7) A candidate who was certified in this state, moved to another state, and is currently certified or licensed and has been in practice in the other state for the two years preceding the date of application may become certified without reexamination. The candidate may gain recertification by:

(A) submitting to the department a non-refundable fee that is equal to two times the normally required renewal fee for certification as listed in subsection (a)(4) of this section, and

(B) attesting to regular practice of emergency medical care in the other state for the two years preceding the date of application.

#### §157.38. Continuing Education.

(a) Purpose. The purpose of this section is to establish the minimum continuing education (CE) requirements necessary for emergency medical services (EMS) personnel electing to maintain certification through the CE recertification process. These requirements are intended to keep the certificant knowledgeable of current techniques and practice, maintain the quality of emergency medical services provided to the public, and encourage improvement in the skill and competence of EMS personnel.

(b) General. CE is a recertification option provided by provisions of §157.34 [Hour requirements. CE is a requirement of §157.45] of this title (relating to Recertification). A contact hour shall consist of 50 consecutive minutes of attendance and participation in an approved CE experience. Credit units [hours] for CE activities will only be awarded for certification period [the two-year time period] in which they are completed; and if participating in a graded activity, only if the individual receives a grade of "C" or better, or "Pass" in a "Pass/Fail" grading system.

{(1) Emergency care attendants (ECA) shall be required to document 20 contact hours of CE every two years, with a total of 40 contact hours within the four-year certification period.}

{(2) Emergency medical technicians (EMT) shall be required to document 40 contact hours of CE every two years, with a total of 80 contact hours within the four-year certification period.}

{(3) EMT-intermediates (EMT-I) shall be required to document 60 contact hours of CE every two years, with a total of 120 contact hours within the four-year certification period.}

{(4) EMT-paramedics (EMT-P) shall be required to document 80 contact hours of CE every two years, with a total of 160 contact hours within the four-year certification period.}

(c) Content requirements. Candidates at each certification level shall, at a minimum, accrue department-approved CE in the following content areas.  
Figure: 25 TAC §157.38(c)

{(e) Content requirements. Candidates at each certification level shall at a minimum accrue hours in department-approved CE in the following content areas.}  
{Figure: 25 TAC §157.38(e)}

(d) (No change.)

(e) Types of CE programs and additional specific criteria necessary for consideration of CE approval.

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

{(5) Formal refresher courses. A refresher course shall.}

~~{(A) be provided by a department-approved EMS initial training program;}~~

~~{(B) meet the CE course approval criteria as in subsection (d) of this section;}~~

~~{(C) meet at least the minimum content area hour requirements for the applicable certification level as in subsection (e) of this section; and}~~

~~{(D) offer skills proficiency verification.}~~

(5) ~~[(6)]~~ Independent study. Independent study such as CE articles in professional journals, ongoing serial productions or interactive computer programs shall:

(A) be pre-approved by the department;

(B) be developed by a professional group such as an educational institution, corporation, professional association or other approved provider of continuing education;

(C) involve the learner by requiring an active and appropriate response to the educational materials presented;

(D) provide a test as in subsection (d)(10) of this section; and

(E) provide a record of completion which complies with subsection (f) of this section concerning records indicating completion of the program.

(6) ~~[(7)]~~ Authorship.

(A) A candidate may receive CE credit for development and publication of a manuscript in a periodical.

(B) The number of CE credit hours awarded for each article shall be determined by the department.

(C) CE credit will be awarded in the appropriate content areas as related to the manuscript.

(D) Credit for publication will be awarded only once per two-year CE time period and the candidate must, upon audit, submit a letter from the publisher indicating acceptance or a copy of the published work.

(7) ~~[(8)]~~ Academic courses.

(A) Upon review by the department, a candidate may receive CE credit for academic courses within the specified content areas for each level of certification.

(B) Completion of academic course work shall be credited on the basis of up to 15 CE contact hours for each semester hour successfully completed, within appropriate content areas. Less than 15 hours may be awarded if the academic course content is only partially applicable to content areas.

(C) When approved, the candidate shall receive notification from the department of acceptance of academic hours and amount of CE credit awarded.

(8) ~~[(9)]~~ Instruction in approved initial training and continuing education courses. EMS personnel instructing in an approved initial training course or in an approved CE program may apply the contact hours of actual teaching to the appropriate content areas during the two-year CE period.

(9) ~~[(10)]~~ CE by optional examination.

(A) Candidates may receive CE credit for passing the National Registry of Emergency Medical Technicians written and practical examination for their current level of EMS personnel certification.

(B) Passing the examination shall be credited on the basis of 20 contact hours for EMT level, 30 contact hours for EMT-I level, and 40 contact hours for EMT-P level. CE credit for passing the National Registry examination shall be an option only once during the four-year certification period.

(f)-(i) (No change.)

(j) Audit.

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

(3) Falsification of CE documentation shall be cause for probation, suspension, or decertification as in §157.36 ~~[\$157.51]~~ of this title (relating to Criteria for Denial and Disciplinary Actions for EMS Personnel and Voluntary Surrender of a Certificate or License ~~[Emergency Suspension, Suspension, Probation, and Decertification of an EMS Certificate]~~); §157.16 ~~[\$157.19]~~ of this title (relating to Emergency Suspension, Suspension, Probation, Revocation of a License ~~[and Administrative Penalty]~~); §157.43 of this title (relating to Course Coordinator Certification); §157.44 of this title (relating to EMS Instructor Certification); and/or §157.32 of this title (relating to Emergency Medical Services Education Program and Course Approval) ~~[and §157.64 of this title (relating to Criteria for Suspension, Probation, and Decertification of Course Coordinator, Program Instructor, and/or Examiner Certification)]~~.

(4)-(5) (No change.)

(k) Failure to complete required CE.

(1) A certificant who has failed to complete the requirements by the expiration date of the certification period ~~[for the initial two-year CE time period]~~ will be granted a 90-day extension period to complete and submit the required CE. ~~[Failure to complete and submit the CE requirements within that time frame shall be cause for emergency suspension until CE requirements are met.]~~

(2) A certificant who has failed to complete and submit all the CE requirements prior to the expiration of their certification may apply for late recertification in accordance with §157.34 ~~[\$157. 45(d)]~~ of this title (relating to Recertification).

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 May 21, 2001.

TRD-200102833

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: July 1, 2001

For further information, please call: (512) 458-7236



## CHAPTER 169. ZOONOSIS CONTROL

### SUBCHAPTER E. DOG AND CAT

### STERILIZATION

#### 25 TAC §169.102

The Texas Department of Health (department) proposes new §169.102, concerning the establishment of guidelines for the distribution of money credited to the Animal Friendly account. Specifically, the new section will create the Texas Department of Health Animal Friendly Grants and define eligibility for grants;

requirements for grants; procedures for grant announcements; procedures for grant applications; the review process; selection criteria; project approval; and continuation funding.

Jane C. Mahlow, DVM, MS, Director of the Zoonosis Control Division, has determined that for each year of the first five years, because the section only prescribes the standards for grant eligibility, there will be no additional fiscal implications for state and local government as a result of enforcing or administering the section.

Dr. Mahlow has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of this will be the distribution of funding to provide low-cost surgical sterilization of dogs and cats, thereby reducing the public health threat due to stray animals. The proposed changes do not involve major adaptation from current practice; therefore, there is no anticipated additional cost to small businesses or microbusinesses nor to persons who may be required to comply with the sections as proposed. There is no anticipated effect on local employment.

Comments on the proposal may be submitted to Jane C. Mahlow, DVM, MS, Texas Department of Health, Zoonosis Control Division, 1100 West 49th Street, Austin, Texas, 78756, fax (512) 458-7454, jane.mahlow@tdh.state.tx.us. Comments will be accepted for 30 days after publication in the *Texas Register*.

The new section is proposed under the Texas Health and Safety Code, Chapter 828, "Dog and Cat Sterilization," §828.014, which provides the Texas Board of Health (board) with the authority to make grants to eligible organizations for the purpose of providing low-cost dog and cat sterilization to the general public; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The new section affects Texas Health and Safety Code, §828.014.

§169.102. Texas Department of Health Animal Friendly Grants.

(a) Purpose.

(1) As authorized by the Texas Health and Safety Code, §828.014, relating to the Animal Friendly Fund, the department shall institute and administer grants under this subchapter.

(2) The grants shall be known as a part of the "Texas Department of Health Animal Friendly Grants."

(3) This subchapter governs the administration of the grants, the submission and review of grant applications, and the award of the grants.

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

(1) Closing date--Date specified in the request for proposals as the date on which applications must be received or postmarked.

(2) Commissioner--Commissioner of Health or his or her designee.

(3) Department--Texas Department of Health.

(4) Local non-profit veterinary medical association--An organization set up by and comprised of several volunteer veterinarians in their immediate region for the purpose of presenting continuing education, planning group activities, or discussing issues common to their professional field.

(5) Nonprofit organization--A private, nonprofit, tax-exempt corporation, association or organization under Internal Revenue Code of 1986, §501(c)(3) (26 United States Code §501(c)(3)).

(6) Owner--A person which feeds, shelters, harbors, has possession or control, or has the responsibility to control an animal.

(c) Philosophy.

(1) The intent of the grants is to increase the sterilization of dogs and cats owned by the general public at minimal or no cost.

(2) Grant funds will not be used to:

(A) augment a releasing agency's adoption sterilization program;

(B) fund agencies from which members of the Animal Friendly Advisory Committee serve in an official capacity as a volunteer or employee; or

(C) fund programs that do not operate within the State of Texas.

(3) One grant per grant period will be awarded per agency for the sterilization of dogs and/or cats.

(4) Efforts will be made to distribute funds to all areas of the state.

(d) Sources and Allocation of Funds.

(1) Funds for the grants shall be provided in accordance with the Health and Safety Code, §828.014, relating to the Animal Friendly account.

(2) All grants shall be awarded competitively according to the provisions of this subchapter.

(3) Grants shall be made only to the extent that funds are available in the Animal Friendly fund.

(4) The department shall have the authority and discretion to:

(A) determine the purpose(s) of the grants pursuant to law and this subchapter;

(B) approve or deny grant applications;

(C) determine the number, size and duration of grants;

(D) modify or terminate grants.

(5) The department shall not be liable, nor shall grant funds be used, for any costs incurred by applicants in the development, preparation, submission, or review of applications.

(e) Eligibility for Grants. Eligible applicants include:

(1) a releasing agency;

(2) an organization that is qualified as a charitable organization under the Internal Revenue Code, §501(c)(3), that has animal welfare or sterilizing animals owned by the general public at minimal or no cost as its primary purpose; or

(3) a local nonprofit veterinary medical association that has an established program for sterilizing animals owned by the general public at minimal or no cost.

(f) Requirements for Grants.

(1) The department shall specify reasonable requirements for grant applications.

(2) Applicants for grants shall submit as a part of their application a plan of how they intend to provide sterilization services and their target population.

(3) Grant recipients shall make semi-annual reports to the department in a form and at a time determined by the department.

(g) Procedures for Grant Announcements.

(1) Before applications are requested, the department shall publish one or more notices of grant availability in the Texas Register. These notices shall also be distributed throughout the state through mail and electronic means. The notices will include details about the grants, instructions for obtaining a request for proposals, and the names of persons to contact in the department for further information.

(2) The department shall maintain a list of persons to be notified of requests for proposals. Any person wanting to be placed on the list should contact: Animal Friendly Grants, Zoonosis Control Division, 1100 West 49th Street, Austin, Texas 78756.

(3) The department shall develop and publish one or more requests for proposals, which shall contain details concerning, but not limited to, the following:

(A) the nature and purpose(s) of the grants;

(B) the total amount of funds available for the grants under each part;

(C) the maximum and minimum dollar amounts that will be awarded for individual grants and for individual grantees;

(D) the information and format required for grant applications;

(E) information about the criteria used to judge grant applications; and

(F) the closing date.

(h) Procedures for Grant Applications.

(1) The department may specify any reasonable requirements for grant applications, including, but not limited to, length, format, authentication, and supporting documentation.

(2) Applications that are incomplete or substantially inconsistent with the requirements of this subchapter may be rejected without further consideration at the discretion of the department.

(3) Applications received after the closing date will not be considered, unless the closing date is extended by the department.

(4) Applicants will be given a minimum of 60 calendar days to file applications after a request for proposals is published. Applications must be received by the department on or before the closing date specified in the request for proposal.

(i) Competitive Review Process.

(1) Each application shall be reviewed by the Animal Friendly Advisory Committee for completeness, relevance to the published request for proposals, adherence to department policies, general quality, technical merit, and budget appropriateness.

(2) The committee's review process shall be completed within 45 days after the closing date.

(j) Selection Criteria.

(1) No grant shall be approved unless, in the opinion of the department:

(A) the application contains an explanation as to why provision of low-cost sterilization for pets will help minimize pet-over-population in their community;

(B) the application includes a workable plan to provide sterilization of dogs and cats for the general public at low or no cost;

(C) the application includes a method to report the number, species, and sex of animals sterilized;

(D) the applicant specifies how the general public will be made aware of the availability of low-cost surgery;

(E) the applicant has a written non-discrimination policy in place to ensure that no person is discriminated against on the grounds of race, color, religion, sex, national origin, age, or disability.

(2) A grant application will be given funding preference, in a manner determined by the department and announced in the request for proposal, to the extent that it:

(A) targets low-income pets owners, describing how the applicant defines, ascertains, and verifies that the person is financially challenged;

(B) documents the intent and ability of the applicant to communicate and collaborate with the local health departments, animal control agencies, animal welfare agencies, veterinary organizations and human services organizations;

(C) demonstrates a low cost for surgery on a per animal basis, thereby maximizing the number of animals which can be sterilized;

(D) is a new, qualified program that does not duplicate existing low-cost sterilization efforts in a given community; and

(E) contains such other information or criteria that the department may specify and include in the request for proposals.

(k) Project Approval. Grant recipients shall execute a contract with the department. The contract shall detail items such as budget, reporting requirements, general provisions for department grant contracts, and any other specifics that might apply to the award.

(l) Continuation Funding.

(1) Grant recipients may be eligible for continuation funding. The department will consider the grant recipient's accomplishments, progress toward stated goals and objectives, award of past grants, and development of alternative funding. Applications shall be submitted in accordance with this subchapter.

(2) The department will award continuation grants after a review of applications in accordance with the provisions of this subchapter.

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

Filed with the Office of the Secretary of State, on May 18, 2001.

TRD-200102814

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: July 1, 2001

For further information, please call: (512) 458-7236



## PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

### CHAPTER 409. MEDICAID PROGRAMS SUBCHAPTER L. MENTAL RETARDATION LOCAL AUTHORITY (MRLA) PILOT PROGRAM

#### 25 TAC §§409.505, 409.523, 409.525

The Texas Department of Mental Health and Mental Retardation (department) proposes amendments to §409.505, concerning eligibility criteria, §409.523 concerning maintenance of MRLA program waiting list, and §409.525, concerning process for referral and enrollment of individuals, of Chapter 409, Subchapter L, concerning mental retardation local authority (MRLA) program.

The amendments to §409.505, concerning eligibility criteria, correspond to proposed revisions in Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) Program rules that combine the criteria for level-of-care (LOC) I, V, and VI under a single LOC designation, LOC I, while retaining the current LOC VIII designation. The proposed amendments also update references to the proposed new sections of Chapter 419, Subchapter E, concerning ICF/MR Program rules, which are expected to be adopted in June by the Texas Mental Health and Mental Retardation Board. A reference to the proposed new ICF/MR Program rules also is updated by an amendment to §409.525, concerning process for referral and enrollment of individuals.

The amendments to §409.523, concerning maintenance of MRLA program waiting list, changes the length of time an applicant or the applicant's legally authorized representative (LAR) has to respond to an MRA's notification that a program opening is available to the applicant. The current rule permits 60 calendar days; the proposed amendments shorten the time to 20 working days. In addition, the proposed amendments would allow the MRA to remove an applicant's name from the waiting list if the applicant or the LAR does not respond to the MRA's attempts to contact the applicant or LAR during its annual update of its waiting list. The proposed amendments add provisions allowing an applicant's name to be re-instated to the waiting list following a department review of the circumstances under which the name was removed.

Bill Campbell, deputy commissioner, Finance and Administration, has determined that for each year of the first five years the proposed amendments are in effect, the enforcement or administering of the amendments does not have foreseeable implications relating to costs or revenues of state or local government.

Ernest McKenney, director, Medicaid Administration, has determined that for each year of the first five-year period the amendments are in effect, the public benefit expected is the consistency between the waiver program eligibility criteria related to ICF/MR LOC designations and that contained in the ICF/MR Program rules. In addition, applicants for waiver program services will have more timely access to those services. It is not anticipated that the proposed amendments will have an adverse economic effect on small businesses or micro-businesses because these changes do not impose any measurable cost to program providers. It is not anticipated that there will be an economic cost to persons required to comply with the amendments. It is not anticipated that the amendments will affect a local economy.

A hearing to accept oral and written testimony from members of the public concerning the proposal has been scheduled for 1:30 p.m., Wednesday, June 13, 2001, in the department's Central Office Auditorium in Building 2 at 909 West 45th Street, in Austin, Texas. Persons requiring an interpreter for the deaf or hearing impaired should contact the department's Central Office operator at least 72 hours prior to the hearing at TDD (512) 206-5330. Persons requiring other accommodations for a disability should notify Tera Jones, at least 72 hours prior to the hearing at (512) 206-5854 or at the TDY phone number of Texas Relay, 1-800-735-2988.

Comments concerning this proposal must be submitted in writing to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, by mail to P.O. Box 12668, Austin, Texas 78711, or by fax to (512) 206-4750, within 30 days of publication of this notice.

The amendments are proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the MRLA Program.

The proposed amendments affect Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c).

#### §409.505. Eligibility Criteria.

(a) To be determined eligible by TDMHMR for MRLA program services, an applicant and individuals enrolled in MRLA program must:

(1) (No change.)

(2) be enrolled in the HCS or HCS-O program immediately prior to enrollment in the MRLA program or meet the:

(A) ICF/MR I[~~;~~ ~~V;~~ ~~or~~ ~~VI~~] level-of-care criteria as determined by TDMHMR in accordance with §419.237 of this title (relating to Level of Care) [Chapter 406, Subchapter E of this title (relating to Eligibility and Review)] and documented on a current MR/RC Assessment; or

(B) ICF/MR I[~~;~~ ~~V;~~ ~~VI~~] or VIII level-of-care criteria as determined by TDMHMR in accordance with §419.237 of this title (relating to Level of Care) [Chapter 406, Subchapter E of this title (relating to Eligibility and Review)] and be part of the targeted population eligible for the HCS-O program in accordance with Chapter 419, Subchapter P of this title (relating to Home and Community-based Services - OBRA (HCS-O)); and

(3) (No change.)

(4) have an IPC with an annual cost of services which does not exceed 125% of the annual ICF/MR reimbursement rate paid to a small ICF/MR, as defined in 1 TAC §355.456 (relating to Rate Setting Methodology), for the individual's level of need as it would be assigned



under §419.240 of this title (relating to Level of Need) [~~§406.204(b) of this title (relating to LOC Determination and LON Assignment)~~] or 125% of the estimated annualized per capita cost for ICF/MR services, whichever is greater; and

(5) (No change.)

(b)-(f) (No change.)

§409.523. *Maintenance of MRLA Program Waiting List.*

The local MRA will maintain an up-to-date waiting list of individuals living in and waiting to receive MRLA Program services in the MRA's local service area.

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

(3) The MRA must remove an individual's name from the waiting list only when it is documented that:

(A)-(E) (No change.)

(F) the individual or the individual's LAR has not responded to the MRA's notification of a program vacancy within 20 working [60 calendar] days of the date of the MRA's notification;

(G) the applicant or the applicant's LAR chooses participation in the ICF/MR Program instead of in the MRLA Program when offered this choice in accordance with §419.164(a) of this title (relating to Process for Enrollment of applicants) [øf];

(H) the applicant or the applicant's LAR refuses MRLA services; or

(I) the applicant or the applicant's LAR has not responded to the MRA's attempts to contact the applicant or LAR during its annual update of the waiting list.

(4) If an applicant's name is removed from a waiting list in accordance with paragraph (3) of this subsection, the applicant, the applicant's LAR, or the MRA may request the department to review the circumstances under which the applicant's name was removed from the MRA's waiting list. At its discretion, the department may direct the MRA to reinstate the applicant's name to the waiting list using the previously assigned date.

(5) [(4)]At the written request of an individual or the LAR of an individual who moves to the local service area of a different MRA, the original MRA will transfer the individual's name and date of request for MRLA Program services to the MRA in the local service area where the individual has moved. The MRA receiving the information will add the individual's name to its list using the date of the request for MRLA Program services provided by the transferring MRA.

§409.525. *Process for Referral and Enrollment of Individuals.*

(a) An individual or an individual's LAR on behalf of the individual who seeks MRLA Program services must submit a written request to the MRA serving the area where the individual lives.

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

(4) The MRA compiles and maintains information necessary to process the individual's or LAR's request for enrollment in the MRLA Program.

(A) (No change.)

(B) The MRA will complete a MR/RC Assessment if necessary.

(i) (No change.)

(ii) The MRA will verify that the individual has been diagnosed by a licensed physician as having a related condition as defined in §419.203 [§406.202] of this title (relating to Definitions); and

(iii) (No change.)

(C) (No change.)

(5) (No change.)

(b)-(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 May 14, 2001.

TRD-200102705

Andrew Hardin

Chair, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Earliest possible date of adoption: July 1, 2001

For further information, please call: (512) 206-5232



CHAPTER 419. MEDICAID STATE  
OPERATING AGENCY RESPONSIBILITIES  
SUBCHAPTER D. HOME AND COMMUNITY  
- BASED SERVICES (HCS) PROGRAM

**25 TAC §§419.155, 419.159, 419.164, 419.165**

The Texas Department of Mental Health and Mental Retardation (department) proposes amendments to §419.155, concerning eligibility criteria, §419.159, concerning level of care (LOC) determination, §419.164, concerning process for enrollment of applicants, §419.165, concerning maintenance of HCS Program waiting list, of Chapter 419, Subchapter D, concerning home and community-based services (HCS) program.

The amendments to §419.155, concerning eligibility criteria, correspond to proposed revisions in Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) Program rules that combine the criteria for level-of-care (LOC) I, V, and VI under a single LOC designation, LOC I, while retaining the current LOC VIII designation. The proposed amendments also update references to the proposed new sections of Chapter 419, Subchapter E, concerning ICF/MR Program rules, which are expected to be adopted in June by the Texas Mental Health and Mental Retardation Board. References to the proposed new ICF/MR Program rules also are updated by amendments to §419.159, concerning level of care (LOC) determination, and §419.164, concerning process for enrollment of applicants. In addition, §419.164 is amended to update a reference to a recently adopted department rule, Chapter 415, Subchapter D, concerning diagnostic eligibility for services and supports - mental retardation priority population and related conditions.

The amendments to §419.165, concerning maintenance of HCS Program waiting list, changes the length of time an applicant or the applicant's legally authorized representative (LAR) has to respond to an MRA's notification that a program opening is available to the applicant. The current rule permits 60 calendar days; the proposed amendments shorten the time to 20 working days. In addition, the proposed amendments would allow the MRA to remove an applicant's name from the waiting list if the applicant or the LAR does not respond to the MRA's attempts to contact the applicant or LAR during its annual update of its waiting list. The proposed amendments add provisions allowing an

applicant's name to be re-instated to the waiting list following a department review of the circumstances under which the name was removed.

Bill Campbell, deputy commissioner, Finance and Administration, has determined that for each year of the first five years the proposed amendments are in effect, the enforcement or administering of the amendments does not have foreseeable implications relating to costs or revenues of state or local government.

Ernest McKenney, director, Medicaid Administration, has determined that for each year of the first five-year period the amendments are in effect, the public benefit expected is the consistency between the waiver program eligibility criteria related to ICF/MR LOC designations and that contained in the ICF/MR Program rules. In addition, applicants for waiver program services will have more timely access to those services. It is not anticipated that the proposed amendments will have an adverse economic effect on small businesses or micro-businesses because these changes do not impose any measurable cost to program providers. It is not anticipated that there will be an economic cost to persons required to comply with the amendments. It is not anticipated that the amendments will affect a local economy.

A hearing to accept oral and written testimony from members of the public concerning the proposal has been scheduled for 1:30 p.m., Wednesday, June 13, 2001, in the department's Central Office Auditorium in Building 2 at 909 West 45th Street, in Austin, Texas. Persons requiring an interpreter for the deaf or hearing impaired should contact the department's Central Office operator at least 72 hours prior to the hearing at TDD (512) 206-5330. Persons requiring other accommodations for a disability should notify Tera Jones, at least 72 hours prior to the hearing at (512) 206-5854 or at the TDY phone number of Texas Relay, 1-800-735-2988.

Comments concerning this proposal must be submitted in writing to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, by mail to P.O. Box 12668, Austin, Texas 78711, or by fax to (512) 206-4750, within 30 days of publication of this notice.

The amendments are proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the HCS Program.

The proposed amendments affect Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c).

*§419.155. Eligibility Criteria.*

(a) An applicant or individual is eligible for HCS program services if he or she:

- (1) (No change.)

(2) meets the ICF/MR I, ~~V~~, or ~~VI~~ ICF/MR level of care criteria (LOC) as determined by the department according to §419.159 of this title (relating to Level of Care (LOC) Determination);

(3) has had a determination of mental retardation performed in accordance with state law (Texas Health and Safety Code, Chapter 593, Admission and Commitment to Mental Retardation Services, Subchapter A) or has been diagnosed by a licensed physician as having a related condition as defined in §419.203 [~~§406.202~~] of this title (relating to Definitions) prior to enrollment in the HCS Program; and

(4) has an approved IPC for which the IPC cost does not exceed 125% of the annual ICF/MR reimbursement rate paid to a small ICF/MR, as defined in 1 TAC §355.456 (relating to Rate Setting Methodology) for the individual's level of need as it would be assigned under §419.240 of this title (relating to Level of Need) [~~§406.204(b) of this title (relating to LOC Determination and LON Assignment)~~] or 125% of the estimated annualized per capita cost for ICF/MR services, whichever is greater.

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

*§419.159. Level of Care (LOC) Determination.*

(a) (No change.)

(b) A LOC determination will be made by the department in accordance with §419.237 of this title (relating to Level of Care) [~~Chapter 406, Subchapter E of this title (relating to Eligibility and Review)~~].

(c)-(e) (No change.)

*§419.164. Process for Enrollment of Applicants.*

(a) An applicant or the applicant's LAR on behalf of the applicant must submit a written request for HCS Program services to the MRA serving the area where the applicant wishes to receive services.

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

(4) The MRA compiles and maintains information necessary to process the applicant's request, or LAR's request on behalf of the applicant, for enrollment in the HCS Program.

(A) (No change.)

(B) The MRA must complete an MR/RC Assessment if a LOC determination is necessary, in accordance with §419.159 and §419.161 of this title (relating to Level of Care (LOC) Determination and Level of Need Assignment, respectively).

(i) The MRA must perform or endorse a determination that the applicant has mental retardation in accordance with Chapter 415, Subchapter D of this title (relating to Diagnostic Eligibility for Services and Supports - Mental Retardation Priority Population and Related Conditions) [~~Chapter 405, Subchapter D of this title (relating to Determination of Mental Retardation and Appropriateness for Admission to Mental Retardation Services)~~]; or

(ii) The MRA must verify that the applicant has been diagnosed by a licensed physician as having a related condition as defined in §419.203 [~~§406.202~~] of this title (relating to Definitions); and

(iii) (No change.)

(C) (No change.)

(5) (No change.)

(b)-(g) (No change.)

*§419.165. Maintenance of HCS Program Waiting List.*

The local MRA must maintain an up-to-date waiting list of applicants living in and waiting to receive HCS Program services in the MRA's local service area.

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

(3) The MRA must remove an applicant's name from the waiting list only if it is documented that:

(A)-(E) (No change.)

(F) the applicant or the applicant's LAR has not responded to the MRA's notification of a program vacancy within 20 working [sixty calendar] days of the date of the MRA's notification;

(G) the applicant or the applicant's LAR chooses participation in the ICF/MR Program instead of in the HCS Program when offered this choice in accordance with §419.164(a) of this title (relating to Process for Enrollment of applicants) [ø];

(H) the applicant or the applicant's LAR refuses HCS services; or

(I) the applicant or the applicant's LAR has not responded to the MRA's attempts to contact the applicant or LAR during its annual update of the waiting list.

(4) If an applicant's name is removed from a waiting list in accordance with paragraph (3) of this subsection, the applicant, the applicant's LAR, or the MRA may request the department to review the circumstances under which the applicant's name was removed from the MRA's waiting list. At its discretion, the department may direct the MRA to reinstate the applicant's name to the waiting list using the previously assigned date.

(5) [ (4)]At the written request of an applicant or the LAR of an applicant who moves to the local service area of a different MRA, the original MRA must provide the applicant's name and date of request for HCS Program services to the MRA in the local service area where the applicant has moved. The MRA receiving the information must add the applicant's name to its waiting list using the date of the request for HCS Program services provided by the transferring MRA.

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 May 14, 2001.

TRD-200102706

Andrew Hardin

Chair, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Earliest possible date of adoption: July 1, 2001

For further information, please call: (512) 206-5232



## SUBCHAPTER P. HOME AND COMMUNITY - BASED SERVICES - OBRA (HCS-O) PROGRAM 25 TAC §419.655, §419.659

The Texas Department of Mental Health and Mental Retardation (department) proposes amendments to §419.655, concerning eligibility criteria, and §419.659, concerning level of care (LOC) determination, of Chapter 419, Subchapter P, concerning home and community-based services - OBRA (HCS-O) program.

The amendments to §419.655, concerning eligibility criteria, correspond to proposed revisions in Intermediate Care Facilities for

Persons with Mental Retardation (ICF/MR) Program rules that combine the criteria for level-of-care (LOC) I, V, and VI under a single LOC designation, LOC I, while retaining the current LOC VIII designation. The amendments to §419.159, concerning level of care (LOC) determination, update references to the proposed new sections of Chapter 419, Subchapter E, concerning ICF/MR Program rules, which are expected to be adopted in June by the Texas Mental Health and Mental Retardation Board.

Bill Campbell, deputy commissioner, Finance and Administration, has determined that for each year of the first five years the proposed amendments are in effect, the enforcement or administering of the amendments does not have foreseeable implications relating to costs or revenues of state or local government.

Ernest McKenney, director, Medicaid Administration, has determined that for each year of the first five-year period the amendments are in effect, the public benefit expected is the consistency between the waiver program eligibility criteria related to ICF/MR LOC designations and that contained in the ICF/MR Program rules. It is not anticipated that the proposed amendments will have an adverse economic effect on small businesses or micro-businesses because these changes do not impose any measurable cost to program providers. It is not anticipated that there will be an economic cost to persons required to comply with the amendments. It is not anticipated that the amendments will affect a local economy.

A hearing to accept oral and written testimony from members of the public concerning the proposal has been scheduled for 1:30 p.m., Wednesday, June 13, 2001, in the department's Central Office Auditorium in Building 2 at 909 West 45th Street, in Austin, Texas. Persons requiring an interpreter for the deaf or hearing impaired should contact the department's Central Office operator at least 72 hours prior to the hearing at TDD (512) 206-5330. Persons requiring other accommodations for a disability should notify Tera Jones, at least 72 hours prior to the hearing at (512) 206-5854 or at the TDY phone number of Texas Relay, 1-800-735-2988.

Comments concerning this proposal must be submitted in writing to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, by mail to P.O. Box 12668, Austin, Texas 78711, or by fax to (512) 206-4750, within 30 days of publication of this notice.

The amendments are proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the HCS-O Program.

The proposed amendments affect Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c).

§419.655. *Eligibility Criteria.*

(a) An applicant or individual is eligible for HCS-O program services if he or she:

(1) (No change.)

(2) meets the ICF/MR I[~~7, V, VI,~~] or VIII [~~ICF/MR~~] level of care criteria (LOC) as determined by the department in accordance with §419.659 of this title (relating to Level of Care Determination);

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

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

§419.659. *Level of Care (LOC) Determination.*

(a) (No change.)

(b) A LOC determination will be made by the department in accordance with §419.237 of this title (relating to Level of Care) [~~Chapter 406, Subchapter E of this title (relating to Eligibility and Review)~~].

(c)-(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 May 14, 2001.

TRD-200102704

Andrew Hardin

Chair, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Earliest possible date of adoption: July 1, 2001

For further information, please call: (512) 206-5232



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 10. TEXAS WATER DEVELOPMENT BOARD

#### CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

##### SUBCHAPTER A. GENERAL PROVISIONS

##### DIVISION 3. FORMAL ACTION BY THE BOARD

###### 31 TAC §363.33

The Texas Water Development Board (board) proposes amendment to 31 TAC §363.33, concerning the Interest Rates for Loans and Purchase of Board's Interest in State Participation Projects. The changes are proposed to set the interest rates for revenue bonds when revenue bonds constitute the consideration for the purchase of the board's interest in a state participation project by an political subdivision.

Section 363.33(b) of the board rules sets lending rates for loans from the Texas Water Development Funds, the EDAP Account, and for funds provided by the board under the State Participation Account. However, the rules do not contemplate the establishment of a lending rate for a revenue bond exchanged by a political subdivision for the purchase of a state facility.

The proposed amendment to §363.33(b) establishes a new lending rate schedule for revenue bonds accepted by the board in

connection with the sale of state facilities. The determinative factor in setting this lending rate is the existence of outstanding board debt in connection with the board's purchase of its interest in a state participation project. If no board debt was incurred in the board's initial purchase of its interest in a facility, the interest rate is set at the prevailing lending rate for funds from the State Participation Account. If board debt was incurred in the board's initial purchase of its interest in a facility, the proposed interest rate is based on the rate in effect at the time the board provided the funds through the issuance of bonds to participate in the project. This lending rate structure maximizes the ability of the board to match incoming revenues with outstanding debt service while promoting flexibility in the method by which political subdivisions can buy back the interest in a state facility.

Ms. Pam Gulley, Director of Accounting and Finance, has determined that for the first five-year period these sections are in effect there will not be fiscal implications on state and local government as a result of enforcement and administration of the sections.

Ms. Gulley has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated will be to provide flexibility to the board and to political subdivisions to structure the purchase of the board's interest in state participation projects where revenue bonds are used as the form of payment.

Ms. Gulley has determined there will be no economic costs to small businesses or individuals required to comply with the sections as proposed.

Comments on the proposed amendments will be accepted for 30 days following publication and may be submitted to Srin Surapanani, Staff Attorney, (512) 475-3065, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, or by fax at (512) 463-5580.

The amendments are proposed under the authority of the Texas Water Code, §6.101 and §15.737.

The statutory provisions affected by the proposed amendments are Texas Water Code, Chapter 16, Subchapter F and Texas Water Code, Chapter 17, Subchapter E.

§363.33. *Interest Rates for Loans and Purchase of Board's Interest in State Participation Projects.*

(a) (No change.)

(b) Lending rate scale. After each bond sale, or as necessary to meet changing market conditions, the board will set the lending rate scale for loans and state participation projects based upon cost of funds to the board, risk factors of managing the board loan portfolio, and market rate scales. To calculate the cost of funds, the board will add new bond proceeds to those remaining bond funds that are not currently assigned to schedule loan closings, weighting the funds by dollars and true interest costs of each source. The board will establish separate lending rate scales for tax-exempt and taxable projects from each of the following:

(1) loans from the Texas Water Development Fund and Texas Water Development Fund II;

(2) purchase of the board's interest in state participation projects from the State Participation Account; ~~and~~

(3) loans from the Economically Distressed Area Program Account; and

(4) if revenue bonds constitute the consideration for the purchase of the board's interest in a state participation project by a political subdivision, the revenue bonds shall bear interest at either:

(A) the prevailing state participation lending rate, as set in subsection (b)(2) of this section; or

(B) if there is outstanding board indebtedness related to the purchase of its state participation interest, then at the rate then in effect at the time the board provided funds, through the issuance of bonds, to participate in the project.

(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 May 16, 2001.

TRD-200102755

Suzanne Schwartz

General Counsel

Texas Water Development Board

Earliest possible date of adoption: July 18, 2001

For further information, please call: (512) 463-7981



### 31 TAC §363.34

The Texas Water Development Board (the board) proposes new 31 TAC §363.34, Financial Guarantees for Political Subdivision Bonds and Required Reserves. Chapter 363 governs the administration of the Water Assistance Fund and the Development Funds I and II. The new section is proposed to describe the minimum criteria that financial guarantors must meet in order to provide insurance for municipal bond debt payments owed to the board.

The Board currently holds approximately \$1,500,000,000 in political subdivision bonds which are insured. Additionally, the Board holds approximately \$99,700,000 in political subdivision bonds which have provided surety policies in place of cash reserve funds. These financial guarantees are expressed through policies of insurance which are written by major national insurance companies. The presence of these financial guaranty policies in the Board's portfolio serves to enhance the Board's credit ratings, which result in interest savings to the Board and its applicants. The proposed criteria for financial guarantors ensures that the financial guarantors have AAA rating from national rating agencies. The criteria is considered essential to safeguard the stability of the board's portfolio of municipal bonds.

Pam Gulley, Director of Accounting and Finance, has determined that for the first five-year period the section is in effect there will be no fiscal implications on state and local government as a result of enforcement and administration of the section.

Ms. Gulley has also determined that for the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to safeguard the board's loan portfolio through the requirement that all companies serving as guarantor's of bonded debt held by the board meet proven standards of financial stability. Ms. Gulley has determined there will be no economic costs to small businesses or individuals required to comply with the section as proposed.

Comments on the proposed new section will be accepted for 30 days following publication and may be submitted to Randy Galbreath, Director, Audit and Funds Management Division, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, by e-mail to randy.galbreath@twdb.state.tx.us or by fax at (512) 475-2998.

The new section is proposed under the authority of the Texas Water Code, §6.101, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

The statutory provisions affected by the new section are Texas Water Code, §6.012(a)(2) and §6.101.

#### §363.34. Financial Guarantees for Political Subdivision Bonds and Required Reserves.

(a) Financial Guarantees. The board will consider accepting surety bonds in lieu of required cash reserve deposits and insurance policies for political subdivision bonds. At the time of loan commitment and at loan closing, only those financial guarantors that have been approved by the board or its Finance Committee are authorized to underwrite financial guarantee policies on political subdivision bonds approved by the board.

(b) Criteria for Authorized List. The board will maintain a list of authorized financial guarantors. In order to be considered for placement on the list, a guarantor must meet the following minimum criteria:

(1) the financial guarantor must be a nationally recognized provider of municipal bond insurance and must have a triple--A insurer financial strength rating with Standard & Poor's, Moody's Investors Service, Inc. and Fitch, Inc.; and

(2) the financial guarantor must have a triple--A insurer financial enhancement rating with Standard & Poor's.

(c) Review of Policies. The executive administrator shall review all policies of insurance submitted by authorized financial guarantors and may reject any policy of insurance or surety bond which does not protect the interests of the board's financial program.

(d) Removal from Authorized List. The executive administrator may remove a financial guarantor from the authorized list at any time that a change in status would cause the financial guarantor to fail to meet the minimum criteria.

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 May 17, 2001.

TRD-200102769

Suzanne Schwartz

General Counsel

Texas Water Development Board

Proposed date of adoption: July 18, 2001

For further information, please call: (512) 463-7981



## CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

### SUBCHAPTER D. BOARD ACTION ON APPLICATIONS

### 31 TAC §371.53

The Texas Water Development Board (the board) proposes new 31 TAC §371.53, Financial Guarantees for Political Subdivision Bonds and Required Reserves. Chapter 371 governs the administration of the Drinking Water State Revolving Fund. The new section is proposed to describe the minimum criteria that financial guarantors must meet in order to provide insurance for municipal bond debt payments owed to the board.

The Board currently holds approximately \$1,500,000,000 in political subdivision bonds which are insured. Additionally, the Board holds approximately \$99,700,000 in political subdivision bonds which have provided surety policies in place of cash reserve funds. These financial guarantees are expressed through policies of insurance which are written by major national insurance companies. The presence of these financial guaranty policies in the Board's portfolio serves to enhance the Board's credit ratings, which result in interest savings to the Board and its applicants. The proposed criteria for financial guarantors ensures that the financial guarantors have AAA rating from national rating agencies. The criteria is considered essential to safeguard the stability of the board's portfolio of municipal bonds.

Ms. Pam Gulley, Director of Accounting and Finance, has determined that for the first five-year period these sections are in effect there will be no fiscal implications on state and local government as a result of enforcement and administration of the sections.

Ms. Gulley has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to safeguard the board's loan portfolio through the requirement that all companies serving as guarantors of bonded debt held by the board meet proven standards of financial stability. Ms. Gulley has determined there will be no economic costs to small businesses or individuals required to comply with the sections as proposed.

Comments on the proposed amendments will be accepted for 30 days following publication and may be submitted to Randy Galbreath, Director, Audit & Funds Management Division, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, by e-mail to randy.galbreath@twdb.state.tx.us or by fax @ (512) 475-2998.

The new section is proposed under the authority of the Texas Water Code, §6.101, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

The statutory provisions affected by the new section are Texas Water Code, §6.012(a)(2) and §6.101.

#### §371.53. Financial Guarantees for Political Subdivision Bonds and Required Reserves.

(a) Financial Guarantees. The board will consider accepting surety bonds in lieu of required cash reserve deposits and insurance policies for political subdivision bonds. At the time of loan commitment and at loan closing, only those financial guarantors that have been approved by the board or its Finance Committee are authorized to underwrite financial guarantee policies on political subdivision bonds approved by the board.

(b) Criteria for Authorized List. The board will maintain a list of authorized financial guarantors. In order to be considered for placement on the list, a guarantor must meet the following minimum criteria:

(1) the financial guarantor must be a nationally recognized provider of municipal bond insurance and must have a triple-A insurer financial strength rating with Standard & Poor's, Moody's Investors Service, Inc. and Fitch, Inc.; and

(2) the financial guarantor must have a triple-A insurer financial enhancement rating with Standard & Poor's.

(c) Review of Policies. The executive administrator shall review all policies of insurance submitted by authorized financial guarantors and may reject any policy of insurance or surety bond which does not protect the interests of the board's financial program.

(d) Removal from Authorized List. The executive administrator may remove a financial guarantor from the authorized list at any time that a change in status would cause the financial guarantor to fail to meet the minimum criteria.

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 May 17, 2001.

TRD-200102768

Suzanne Schwartz

General Counsel

Texas Water Development Board

Proposed date of adoption: July 18, 2001

For further information, please call: (512) 463-7981



## CHAPTER 375. CLEAN WATER STATE REVOLVING FUND SUBCHAPTER A. GENERAL PROVISIONS DIVISION 4. BOARD ACTION ON APPLICATIONS

### 31 TAC §375.53

The Texas Water Development Board (the board) proposes new 31 TAC §375.53, Financial Guarantees for Political Subdivision Bonds and Required Reserves. Chapter 375 governs the administration of the Clean Water State Revolving Fund. The new section is proposed to describe the minimum criteria that financial guarantors must meet in order to provide insurance for municipal bond debt payments owed to the board.

The Board currently holds approximately \$1,500,000,000 in political subdivision bonds which are insured. Additionally, the Board holds approximately \$99,700,000 in political subdivision bonds which have provided surety policies in place of cash reserve funds. These financial guarantees are expressed through policies of insurance which are written by major national insurance companies. The presence of these financial guaranty policies in the Board's portfolio serves to enhance the Board's credit ratings, which result in interest savings to the Board and its applicants. The proposed criteria for financial guarantors ensures that the financial guarantors have AAA rating from national rating agencies. The criteria is considered essential to safeguard the stability of the board's portfolio of municipal bonds.

Pam Gulley, Director of Accounting and Finance, has determined that for the first five-year period the section is in effect there will be no fiscal implications on state and local government as a result of enforcement and administration of the section.

Ms. Gulley has also determined that for the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to safeguard the board's loan portfolio through the requirement that all companies serving as guarantor's of bonded debt held by the board meet proven standards of financial stability. Ms. Gulley has determined there will be no economic costs to small businesses or individuals required to comply with the section as proposed.

Comments on the proposed new section will be accepted for 30 days following publication and may be submitted to Randy Galbreath, Director, Audit and Funds Management Division, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, by e-mail to randy.galbreath@twdb.state.tx.us or by fax at (512) 475-2998.

The new section is proposed under the authority of the Texas Water Code, §6.101, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

The statutory provisions affected by the new section are Texas Water Code, §6.012(a)(2) and §6.101.

§375.53. Financial Guarantees for Political Subdivision Bonds and Required Reserves.

(a) Financial Guarantees. The board will consider accepting surety bonds in lieu of required cash reserve deposits and insurance policies for political subdivision bonds. At the time of loan commitment and at loan closing, only those financial guarantors that have been approved by the board or its Finance Committee are authorized to underwrite financial guarantee policies on political subdivision bonds approved by the board.

(b) Criteria for Authorized List. The board will maintain a list of authorized financial guarantors. In order to be considered for placement on the list, a guarantor must meet the following minimum criteria:

(1) the financial guarantor must be a nationally recognized provider of municipal bond insurance and must have a triple--A insurer financial strength rating with Standard & Poor's, Moody's Investors Service, Inc. and Fitch, Inc.; and

(2) the financial guarantor must have a triple--A insurer financial enhancement rating with Standard & Poor's.

(c) Review of Policies. The executive administrator shall review all policies of insurance submitted by authorized financial guarantors and may reject any policy of insurance or surety bond which does not protect the interests of the board's financial program.

(d) Removal from Authorized List. The executive administrator may remove a financial guarantor from the authorized list at any time that a change in status would cause the financial guarantor to fail to meet the minimum criteria.

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 May 17, 2001.  
TRD-200102767

Suzanne Schwartz  
General Counsel  
Texas Water Development Board  
Proposed date of adoption: July 18, 2001  
For further information, please call: (512) 463-7981

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**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

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

**CHAPTER 3. TEXAS WORKS**  
**SUBCHAPTER OO. ELECTRONIC BENEFIT TRANSFER (EBT) RETAILER REQUIREMENTS**  
**40 TAC §3.5006**

The Texas Department of Human Services (DHS) proposes an amendment to §3.5006, concerning off-line (manual) transactions, in its Electronic Benefit Transfer (EBT) Retailer Requirements chapter. The purpose of the amendment is to comply with a federal interpretation and the implementation of the new multi-vendor EBT system.

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

Mr. Bost also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of adoption of the proposed rules will be to simplify participating retailer requirements. There will be no adverse economic effect on large, small, or micro businesses, because the proposal makes acceptance of manual vouchers for food stamps an option for retailers. Previously, accepting manual vouchers for food stamps was a requirement for retailers. The proposal also extends the EBT retailer management vendor's processing time frame for manual vouchers. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Jim Rammage at (512) 231-5764 in DHS's Lone Star Technology Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-129, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

The amendment is proposed under the Human Resources Code, Title 2, Chapter 31, which authorizes the department to administer financial assistance programs.

The amendment implements the Human Resources Code, §31.001- 31.325.

§3.5006. *Off-Line (Manual) Transactions.*

(a) (No change.)

(b) Manual vouchers with preliminary telephone verification. The following procedures apply when a retailer uses manual vouchers with preliminary telephone verification:

(1) A retailer ~~may, at his option, [must]~~ process off-line (manual) Food Stamp program redemptions and ~~[accounts when he is able to contact the EBT call center by telephone. A retailer may, at his option, process off-line (manual)]~~ Temporary Assistance for Needy Families (TANF) program cash-back redemptions when he is able to contact the EBT call center by telephone.

(2) (No change.)

(c) Manual voucher submission and processing. This subsection applies to manual vouchers with delayed telephone verification and preliminary telephone verification.

(1) The manual voucher must be: ~~[The following information must be entered properly and legibly on the manual voucher form:]~~

(A) completed properly and legibly; ~~[full names of the client and the sales clerk;]~~

(B) signed by the client; ~~[client's primary account number (PAN) (this is the embossed number on the client's EBT debit card);]~~

(C) initialed by the sales clerk; and ~~[total purchase amount;]~~

(D) authorized by telephone and bear the telephone authorization number. ~~[date of purchase; and]~~

~~[(E) telephone authorization number.]~~

(2) (No change.)

(3) The retailer management EBT contractor must process submitted manual vouchers within three ~~[two]~~ banking business days of receipt.

(4) (No change.)

(d) (No change.)

(e) Liability for off-line transactions. Liability is assessed as follows:

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

(3) A retailer is not required to process off-line (manual) transactions ~~[except when he is able to contact the EBT call center by telephone for authorization]~~. If authorization cannot be obtained before or at the time of purchase, a retailer assumes the risk of insufficient benefits being available in the client's account.

(4) (No change.)

(f) (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 May 18, 2001.

TRD-200102789

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: July 1, 2001

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

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## PART 6. TEXAS COMMISSION FOR THE DEAF AND HARD OF HEARING

### CHAPTER 183. BOARD FOR EVALUATION OF INTERPRETERS AND INTERPRETER CERTIFICATION

#### SUBCHAPTER B. PASSING SCORES

##### 40 TAC §183.117

The Texas Commission for the Deaf and Hard of Hearing (TCDHH) is proposing an amendment to §183.117, concerning Passing Scores. This amendment has two purposes: (1) to change the procedure for reporting test results to individuals who take the Level I performance test, and (2) to remove the interactive sections from the Level III performance test and to rearrange the information in this section.

David W. Myers, Executive Director, 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.

Mr. Myers has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of this amendment will be streamlining the evaluation process and more efficient reporting of test results to interpreter candidates and provide a comprehensive illustration of the passing scores required for receiving certification. There will be no effect on small businesses. There is no anticipated economic hardship to persons required to comply with the section as proposed.

Comments on this proposed amendment may be submitted to Angela Bryant, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas 78711-2904.

This amendment is proposed under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

No other statute, code or article is affected by this proposed amendment.

##### *§183.117. Passing Scores.*

The following table show passing scores for the commission examinations.

Figure 1: 40 TAC §183.117

Figure 2: 40 TAC §183.117 (No change.)

Figure 3: 40 TAC §183.117 (No change.)

Figure 4: 40 TAC §183.117 (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 May 15, 2001.

TRD-200102720

David Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

Earliest possible date of adoption: July 1, 2001

For further information, please call: (512) 407-3250



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# WITHDRAWN RULES

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An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

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## TITLE 19. EDUCATION

### PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

#### CHAPTER 227. PROVISIONS FOR EDUCATOR PREPARATION STUDENTS

##### SUBCHAPTER A. ADMISSION TO AN EDUCATOR PREPARATION PROGRAM

###### 19 TAC §§227.1, 227.10, 227.20

The State Board for Educator Certification has withdrawn from consideration proposed repeals to §§227.1, 227.10, 227.20 which appeared in the January 19, 2001 issue of the *Texas Register* (26 TexReg 736).

Filed with the Office of the Secretary of State on May 21, 2001

TRD-200102817

Pamela B. Tackett

Executive Director

State Board for Educator Certification

Effective date: May 21, 2001

For further information, please call: (512) 469-3011



#### CHAPTER 228. REQUIREMENTS FOR EDUCATOR PREPARATION PROGRAMS

###### 19 TAC §§228.1, 228.2, 228.10, 228.30

The State Board for Educator Certification has withdrawn from consideration proposed amendments and new to §§228.1, 228.2, 228.10, 228.30 which appeared in the January 19, 2001 issue of the *Texas Register* (26 TexReg 737).

Filed with the Office of the Secretary of State on May 21, 2001

TRD-200102818

Pamela B. Tackett

Executive Director

State Board for Educator Certification

Effective date: May 21, 2001

For further information, please call: (512) 469-3011



###### 19 TAC §§228.2, 228.20, 228.40, 228.60

The State Board for Educator Certification has withdrawn from consideration proposed repeals to §§228.2, 228.20, 228.40, 228.60 which appeared in the January 19, 2001 issue of the *Texas Register* (26 TexReg 736).

Filed with the Office of the Secretary of State on May 21, 2001

TRD-200102819

Pamela B. Tackett

Executive Director

State Board for Educator Certification

Effective date: May 21, 2001

For further information, please call: (512) 469-3011



#### CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

##### SUBCHAPTER A. ASSESSMENT OF EDUCATORS

###### 19 TAC §230.5

The State Board for Educator Certification has withdrawn from consideration the amendment to §230.5, concerning Assessment of Educators, which appeared in the January 19, 2001, issue of the *Texas Register* (26 TexReg 740).

Filed with the Office of the Secretary of State on May 21, 2001

TRD-200102820

Pamela B. Tackett

Executive Director

State Board for Educator Certification

Effective date: May 21, 2001

For further information, please call: (512) 469-3011



##### SUBCHAPTER M. CERTIFICATION OF EDUCATORS IN GENERAL

###### 19 TAC §230.413

The State Board for Educator Certification has withdrawn from consideration the amendment to §230.413, concerning Certification of Educators in General, which appeared in the January 19, 2001, issue of the *Texas Register* (26 TexReg 741).

Filed with the Office of the Secretary of State on May 21, 2001

TRD-200102821

Pamela B. Tackett

Executive Director

State Board for Educator Certification

Effective date: May 21, 2001

For further information, please call: (512) 469-3011



## SUBCHAPTER O. TEXAS EDUCATOR CERTIFICATES BASED ON CERTIFICATION AND COLLEGE CREDENTIALS FROM OTHER STATES OR TERRITORIES OF THE UNITED STATES

### 19 TAC §§230.461 - 230.463

The State Board for Educator Certification has withdrawn from consideration the amendments to §§230.461-230.463, concerning Texas Educator Certificates Based on Certification and College Credentials From Other States or Territories of the United States, which appeared in the January 19, 2001, issue of the *Texas Register* (26 TexReg 741).

Filed with the Office of the Secretary of State on May 21, 2001

TRD-200102822

Pamela B. Tackett

Executive Director

State Board for Educator Certification

Effective date: May 21, 2001

For further information, please call: (512) 469-3011



## SUBCHAPTER Q. PERMITS

### 19 TAC §§230.501 - 230.507

The State Board for Educator Certification has withdrawn from consideration the amendments to §§230.501-230.507, concerning Permits, which appeared in the January 19, 2001, issue of the *Texas Register* (26 TexReg 742).

Filed with the Office of the Secretary of State on May 21, 2001

TRD-200102823

Pamela B. Tackett

Executive Director

State Board for Educator Certification

Effective date: May 21, 2001

For further information, please call: (512) 469-3011



### 19 TAC §§230.509 - 230.511

The State Board for Educator Certification has withdrawn from consideration the repeal to §§230.509 - 230.511, concerning Permits, which appeared in the January 19, 2001, issue of the *Texas Register* (26 TexReg 749).

Filed with the Office of the Secretary of State on May 21, 2001.

TRD-200102824

Pamela B. Tackett

Executive Director

State Board for Educator Certification

Effective date: May 21, 2001

For further information, please call: (512) 469-3011



## SUBCHAPTER U. ASSIGNMENT OF PUBLIC SCHOOL PERSONNEL

### 19 TAC §230.601

The State Board for Educator Certification has withdrawn from consideration the amendment to §230.601, concerning Assignment of Public School Personnel, which appeared in the February 9, 2001, issue of the *Texas Register* (26 TexReg 1229).

Filed with the Office of the Secretary of State on May 21, 2001.

TRD-200102825

Pamela B. Tackett

Executive Director

State Board for Educator Certification

Effective date: May 21, 2001

For further information, please call: (512) 469-3011



## CHAPTER 233. TRANSITIONAL PERMITS SUBCHAPTER A. TRANSITIONAL PERMITS FOR CLASSROOM TEACHERS

### 19 TAC §§233.1 - 233.10

The State Board for Educator Certification has withdrawn from consideration new §§233.1-233.10, concerning Transitional Permits for Classroom Teachers, which appeared in the January 19, 2001, issue of the *Texas Register* (26 TexReg 750).

Filed with the Office of the Secretary of State on May 21, 2001

TRD-200102826

Pamela B. Tackett

Executive Director

State Board for Educator Certification

Effective date: May 21, 2001

For further information, please call: (512) 469-3011



## SUBCHAPTER B. TRANSITIONAL PERMITS FOR EDUCATORS CERTIFIED OUTSIDE TEXAS

### 19 TAC §233.21

The State Board for Educator Certification has withdrawn from consideration new §233.21, concerning Transitional Permits for Educators Certified Outside Texas, which appeared in the January 19, 2001, issue of the *Texas Register* (26 TexReg 753).

Filed with the Office of the Secretary of State on May 21, 2001

TRD-200102827

Pamela B. Tackett  
Executive Director  
State Board for Educator Certification  
Effective date: May 21, 2001  
For further information, please call: (512) 469-3011



## CHAPTER 245. CERTIFICATION OF EDUCATORS FROM OTHER COUNTRIES

### 19 TAC §245.5, §245.10

The State Board for Educator Certification has withdrawn from consideration amendments to §245.5, §245.10, concerning Certification of Educators From Other Countries, which appeared in the January 19, 2001, issue of the *Texas Register* (26 TexReg 754).

Filed with the Office of the Secretary of State on May 21, 2001  
TRD-200102828  
Pamela B. Tackett  
Executive Director  
State Board for Educator Certification  
Effective date: May 21, 2001  
For further information, please call: (512) 469-3011



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 9. TITLE INSURANCE

##### SUBCHAPTER A. BASIC MANUAL OF RULES, RATES, AND FORMS FOR THE WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS

### 28 TAC §9.2

The Texas Department of Insurance has withdrawn from consideration proposed new to §9.2 which appeared in the November 17, 2000 issue of the *Texas Register* (25 TexReg 11375).

Filed with the Office of the Secretary of State on May 17, 2001  
TRD-200102771  
Lynda Nesenholtz  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Effective date: May 17, 2001  
For further information, please call: (512) 463-6327



# ADOPTED RULES

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An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

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## TITLE 19. EDUCATION

### PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

#### CHAPTER 241. PRINCIPAL CERTIFICATE

The State Board for Educator Certification adopts amendments to 19 Texas Administrative Code Chapter 241, §§241.5, 241.10, 241.20, 241.25, 241.30, and 241.40, relating to the Standard Principal Certificate, without changes to the text of the proposed rules as published in the March 30, 2001, issue of the *Texas Register* (26 TexReg 2473). The Board adopts amendments to 19 Texas Administrative Code Chapter 241, §241.15, relating to the Standard Principal Certificate, without changes to the text of the proposed rule as published in the April 20, 2001, issue of the *Texas Register* (26 TexReg 2921).

The following is a summary of the factual basis for the rules as adopted that demonstrates a rational connection between the factual basis for the rules and the rules as adopted:

The adopted amendments to Chapter 241 are designed to eliminate unnecessary barriers to candidates seeking the Standard Principal Certificate while ensuring they continue to meet the quality standards set by the Board.

The adopted amendments to §241.5 remove unnecessarily prescriptive requirements for admission to a principal preparation program, such as a set grade point average on prior university-level coursework or performance on a nationally normed assessment. The amendments to §241.5 and §241.10 will now allow preparation entities the full authority to set admission criteria, assessments and benchmarks, and coursework and other training for candidates for the Principal Certificate. Amended §241.5 and §241.10 will make Chapter 241 consistent with the Board's rules generally governing educator preparation programs located in Chapters 227 and 228.

Deleting the requirement in §241.15 and §241.20 for employment on a Conditional Certificate before receiving the standard certificate will allow candidates to proceed to full certification more expeditiously without unduly compromising their preparation. The rule formerly required a candidate to complete a preparation program, then serve an internship on a Conditional Certificate as either a principal or assistant principal before the candidate could receive the Standard Principal Certificate. The Board was presented with satisfactory evidence that serving on the Conditional Certificate had no foundation as a predictor or guarantor of performance as a fully certified principal. Consequently,

the Conditional Certificate was never issued, though it remained in rule.

The amendments adopted for §241.20 and §241.25 will allow candidates to complete all preparation requirements and then be recommended directly for the Standard Principal Certificate. In lieu of the Conditional Certificate, the amendments to §241.20 offer guidance for school districts in establishing induction programs to help newly certified principals succeed during their initial employment as such in Texas.

Amended §241.25 retains the teaching-experience requirement formerly located in §241.20 because the evidence assessed by the Board indicated that having prior teaching experience helps administrators deal more effectively with personnel and curriculum issues than not having it.

Section 241.30, relating to requirements to renew the Standard Principal Certificate, is rearranged for clarity by juxtaposing the guidance for holders of the Standard Certificate and holders of certificates issued prior to September 1, 1999. Renumbered Subsection (e) of §241.30 is amended to clarify which holders of a previously issued Texas Principal certificate are required to complete assessments under §241.35.

Section 241.40, relating to implementation dates, deletes the reference to the eliminated Conditional Certificate and its associated induction period in former §241.20, replacing it with a reference to the amended requirements for issuance of the Standard Principal Certificate. New Subsection (d) is added to §241.40 to specify when the requirements found in new §241.20 for districts' mentoring and support of first-time principals must begin.

Because no party submissions or proposals were received, an explanation of the agency's reasons for disagreement is not required.

No comments were received in response to the notice of proposed rules as published in the above-referenced issue of the *Texas Register*.

#### **19 TAC §§241.5, 241.10, 241.20, 241.25, 241.30, 241.40**

The amendments relating to the Standard Principal Certificate are adopted under the authority of the following sections of the Texas Education Code: §21.040(4), which requires the Board to appoint for each class of educator certificate an advisory committee composed of members of that class to recommend standards for that class to the Board; §21.041(b)(2)-(4), which requires the Board to specify the classes of certificates to be issued, specify the period of validity for each class of educator certificate, and

specify requirements for the issuance and renewal of an educator certificate; §21.046, which specify the minimum qualifications for certification as a principal; and §21.054, which requires the Board to establish a process for identifying continuing education courses and programs that fulfill continuing education requirements, including an individual assessment of a principal's knowledge, skills, and proficiencies.

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 May 21, 2001.

TRD-200102829

Pamela B. Tackett

Executive Director

State Board for Educator Certification

Effective date: June 10, 2001

Proposal publication date: March 30, 2001

For further information, please call: (512) 469-3011



### 19 TAC §241.15

The amendments relating to the Standard Principal Certificate are adopted under the authority of the following sections of the Texas Education Code: §21.040(4), which requires the Board to appoint for each class of educator certificate an advisory committee composed of members of that class to recommend standards for that class to the Board; §21.041(b)(2)-(4), which requires the Board to specify the classes of certificates to be issued, specify the period of validity for each class of educator certificate, and specify requirements for the issuance and renewal of an educator certificate; §21.046, which specify the minimum qualifications for certification as a principal; and §21.054, which requires the Board to establish a process for identifying continuing education courses and programs that fulfill continuing education requirements, including an individual assessment of a principal's knowledge, skills, and proficiencies.

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

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Pamela B. Tackett

Executive Director

State Board for Educator Certification

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For further information, please call: (512) 469-3011



## CHAPTER 250. AGENCY ADMINISTRATION

### SUBCHAPTER D. NEGOTIATION AND MEDIATION PROCEDURES RELATING TO CERTAIN CONTRACT DISPUTES

#### 19 TAC §§250.40 - 250.49

State Board for Educator Certification adopts new 19 Texas Administrative Code Chapter 250, Subchapter D, §§ 250.40-250.49, relating to the resolution of certain contract claims involving the State Board for Educator Certification, without changes to the text of the proposed rules as published in the April 6, 2001, issue of the *Texas Register* (26 TexReg 2616).

The following is a summary of the factual basis for the rules as adopted that demonstrates a rational connection between the factual basis for the rules and the rules as adopted:

The proposed rules, along with Chapter 2260 of the Government Code, would establish for SBEC the following five-stage resolution process for the efficient and fair resolution of breach of contract claims and counterclaims:

1. Notice of claim or counterclaim delivered by one contracting party to the other. (SBEC proposed rule.)
2. Negotiation of dispute just between SBEC and the contractor. (SBEC proposed rule.)
3. Mediation facilitated by neutral third party of any unresolved issues following negotiation. (SBEC proposed rule.)
4. Administrative Hearing before the State Office of Administrative Hearings (SOAH) of issues left unresolved following negotiation and mediation. (Referral to SOAH: SBEC proposed rule. Conduct of hearing: Statutory provisions and SOAH procedural rules.)
5. Administrative decision by SOAH as to whether SBEC shall pay a pending claim for damages of less than \$250,000. SOAH's decision would not be appealable or otherwise subject to judicial review. (Statutory provisions.)

OR

Report and recommendation to the Legislature by SOAH that a pending claim against SBEC for damages of over \$250,000 either (1) should be paid; or (2) payment and permission to sue the State should be denied. (Statutory provisions.)

Because no party submissions or proposals were received, an explanation of the agency's reasons for disagreement is not required.

No comments were received in response to the notice of proposed rules as published in the above-referenced issue of the *Texas Register*.

Passed in 1999 by the 76th Legislature, Chapter 2260 of the Government Code governs the resolution of certain contract claims against the State of Texas. Section 2260.052(c) of that act requires SBEC to adopt rules for settling breach of contract claims against the agency. The Office of the Attorney General and the State Office of Administrative Hearings have jointly developed model rules to guide agencies, which may modify them in conformity with statute. SBEC's proposal modifies the model rules by allowing the parties by agreement to apply the rules to contract claims brought by SBEC against a contractor, rather than just to claims brought against the agency by a contractor.

The new rules are adopted under the authority of Chapter 2260 of the Government Code, which governs the resolution of certain contract claims against the State of Texas. Section 2260.052(c) of that act requires SBEC to adopt rules for settling breach of contract claims against the agency. The rules are also adopted under §21.041(b)(1) of the Education Code, which



requires SBEC to propose rules that provide for the general administration of the agency.

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

Filed with the Office of the Secretary of State on May 21, 2001.

TRD-200102831

Pamela B. Tackett

Executive Director

State Board for Educator Certification

Effective date: June 10, 2001

Proposal publication date: April 6, 2001

For further information, please call: (512) 469-3011



## TITLE 22. EXAMINING BOARDS

### PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

#### CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

##### SUBCHAPTER B. PROFESSIONAL STANDARDS

###### 22 TAC §501.62

The Texas State Board of Public Accountancy adopts an amendment to §501.62, concerning Other Professional Standards without changes to the proposed text as published in the April 6, 2001, issue of the *Texas Register* (26 TexReg 2621).

The amendment allows the Board to add standards for tax services to the Board's list of professional standards it expects licensees to satisfy.

The amendment will function by having all consumers and licensees know that there are professional standards in the tax area that licensees should be satisfying.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

Filed with the Office of the Secretary of State on May 18, 2001.

TRD-200102792

William Treacy

Executive Director

Texas State Board of Public Accountancy

Effective date: June 7, 2001

Proposal publication date: April 6, 2001

For further information, please call: (512) 305-7848



## CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

### SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION STANDARDS

#### 22 TAC §523.32

The Texas State Board of Public Accountancy adopts the repeal of Section 523.32 concerning Ethics Course without changes to the proposed text as published in the April 6, 2001 issue of the *Texas Register* (26 TexReg 2622).

The repeal allows the Board to remove a rule that needs to be rewritten from the beginning.

The repeal will function by removing an old rule that needs to be rewritten and removed from the Board's rules.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

Filed with the Office of the Secretary of State on May 18, 2001.

TRD-200102795

William Treacy

Executive Director

Texas State Board of Public Accountancy

Effective date: June 7, 2001

Proposal publication date: April 6, 2001

For further information, please call: (512) 305-7848



#### 22 TAC §523.32

The Texas State Board of Public Accountancy adopts new rule §523.32, concerning Board Rules and Ethics Course without changes to the proposed text as published in the April 6, 2001, issue of the *Texas Register* (26 TexReg 2623).

The new rule allows the Board to inform licensees and license applicants that the Board expects them to complete a Continuing Professional Education course on the Board's Rules and states the exceptions.

The new rule will function by having a rule that is clearer, better written and that contains fewer subject areas than the former Board Rule.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

Filed with the Office of the Secretary of State on May 18, 2001.

TRD-200102793  
William Treacy  
Executive Director  
Texas State Board of Public Accountancy  
Effective date: June 7, 2001  
Proposal publication date: April 6, 2001  
For further information, please call: (512) 305-7848



## 22 TAC §523.33

The Texas State Board of Public Accountancy adopts new rule §523.33 concerning Course Content and Board Approval without changes to the proposed text as published in the April 6, 2001 issue of the *Texas Register* (26 TexReg 2624).

The rule allows the Board to have a new rule that informs course providers what the Board expects this course to contain.

The new rule will function by having a rule that is clearer, better written and that contains fewer subject areas than the former Board rule.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

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William Treacy  
Executive Director  
Texas State Board of Public Accountancy  
Effective date: June 7, 2001  
Proposal publication date: April 6, 2001  
For further information, please call: (512) 305-7848



## PART 33. TEXAS STATE BOARD OF EXAMINERS OF PERFUSIONISTS

### CHAPTER 761. PERFUSIONISTS

The Texas State Board of Examiners of Perfusionists (the board), by majority vote of the board on March 21, 2001, enters this order finally adopting amendments §§761.1 - 761.9, repeal of §§761.10 - 761.20, and new §§761.10 - 761.19 concerning the practice of perfusion. Sections 761.10, 761.13, and 761.17 are adopted with changes to the proposed text as published in the January 26, 2001, issue of the *Texas Register* (26 TexReg 876). Sections 761.1 - 761.9, 761.11 - 761.12, 761.14 - 761.16, and 761.18 - 761.19 are published without changes, and therefore will not be republished.

The amendments cover definitions, the board's organization and administration, professional and ethical conduct, educational requirements for licensure, examination procedures for perfusionists, procedures and criteria for exemptions, application procedures, determination of eligibility and provisional licensed perfusionist. The new sections cover licensing after examination, procedures for changes of name or address, license renewal, minimum continuing education requirements, licensing of persons with criminal backgrounds to be a perfusionist and provisional licensed perfusionist, violations, complaints, and subsequent board actions, formal hearings, informal dispositions, default orders, and suspension for failure to pay child support. The repeal covers the grandfather period, licensing after examination, procedures for change of name or address, license renewal, minimum continuing education requirements, licensing of persons with criminal backgrounds to be a perfusionist and provisional licensed perfusionist, violations, complaints and subsequent board actions, formal hearings, informal dispositions, default orders, and suspension of license for failure to pay child support.

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 Procedure Act). Sections 761.1-761.20 have been reviewed and the board has determined that reasons for adopting the sections continue to exist; however, revisions are being made to the rules.

The board published a Notice of Intention to Review for §§761.1-761.20 in the *Texas Register* on September 17, 1999, (24 TexReg 7775). No comments were received as a result of the publication of the notice.

These sections delete language no longer needed; update existing rules to reflect changes in the profession; add one new fee and increase two existing fees; amend rules according to changes pursuant to the codification of the Licensed Perfusionist Act in the new Texas Occupations Code, Chapter 603; clarify, reorganize and simplify the rules and make typographical corrections.

No comments were received on the proposed rules during the comment period.

The following changes were made due to staff comments.

Concerning §761.10(c)(4)(A), the word "license" was changed to "licensee" at the end of the sentence to correct the reference in regards to the place of employment of the licensee.

Concerning §761.13(b)(3)(A)(iii), a comma was added after "national" to be consistent.

Concerning §761.17(k), the word "Occupation" was changed to "Occupations" to reflect the correct legal cite.

### 22 TAC §§761.1 - 761.19

The amendments and new rules are adopted under Texas Occupations Code, Chapter 603, which provides the Texas State Board of Examiners of Perfusionists with the authority to adopt rules concerning the regulation of Perfusionists.

§761.10. *Licensing After Examination.*

- (a) Issuance of licenses.

(1) Upon request the board shall send each applicant who has been approved and who has passed the examinations, if applicable, a form to complete and return with the upgrade fee, if applicable.

(2) Upon receiving an applicant's form and fee, the board shall issue a license certificate and license identification card containing a license number.

(b) Replacement. The board shall replace a lost, damaged, or destroyed license certificate or identification card upon a written request from the licensee and payment of the license replacement fee. Requests shall include a statement detailing the loss or destruction of the licensee's original license or identification card or be accompanied by the damaged certificate or card.

(c) License certificates.

(1) The board shall prepare and provide to each licensee a license certificate and identification card which contains the licensee's name, license number, and expiration date.

(2) Official license certificates shall be signed by the executive secretary. Official identification cards shall be signed by the executive secretary and the licensee.

(3) Any certificate or identification card issued by the board shall remain the property of the board and must be surrendered to the board on demand.

(4) The license certificate must be displayed in an appropriate and public manner as follows:

(A) The license certificate shall be displayed in the primary office or place of employment of the licensee.

(B) In the absence of a primary office or place of employment, or when the licensee is employed at multiple locations, the licensee shall carry a current identification card.

(d) Upgrading a provisional license.

(1) The provisional licensed perfusionist shall submit to the board a photocopy of the examination results from the American Board of Cardiovascular Perfusion and a written request to upgrade.

(2) The provisional licensed perfusionist who successfully completes the licensing examination shall surrender to the board the provisional license certificate and provisional license identification card, and submit the license fee for upgrade of provisional licensed perfusionist to licensed perfusionist.

(3) If the provisional licensed perfusionist is not eligible for upgrade, the executive secretary shall notify the provisional licensed perfusionist in writing of the reasons for denial and the additional documentation needed to meet the minimum requirements for licensure as a licensed perfusionist.

#### *§761.13. Minimum Continuing Education Requirements.*

(a) Completion of continuing education (CE) requirements with current certification by the American Board of Cardiovascular Perfusion (ABCP) or its successor agency. Completion of continuing education requirements shall be documented by demonstrating current certification by the ABCP annual license renewal.

(b) Completion of CE requirements without current certification by the ABCP. Licensed perfusionists without current certification by the ABCP at the time of license renewal must meet the following criteria.

(1) Document a minimum of 45 continuing education credit (CEUs) in a three-year period by submitting the professional activity report on the approved form every third year. A minimum of

15 hours of CEU must be earned in Category I. The activity period covered in the professional activity report is from the date of licensure to the third licensure renewal date and every subsequent third license renewal date.

(2) Document a minimum of 40 clinical perfusions in a one-year period by submitting the clinical activity report on the approved form upon annual license renewal. The first clinical activity report from a newly licensed perfusionist is due on the second license renewal date.

(3) One CEU or contact hour activity is defined as 50 minutes spent in an organized, structured or unstructured learning experience. Categories of CEU activities are:

(A) Category I - Perfusion Meetings and Other Perfusion Related Activity - Perfusion meetings are those programs and seminars in which a minimum of 75% of the contact hours consist of perfusion related material. Only those meetings approved by the ABCP will qualify for Category I hours. Examples:

(i) International, national regional, and state perfusion meetings.

(ii) Publication of perfusion related book chapter or paper in a professional journal.

(iii) Presentation at an international, national, regional or state perfusion journal.

(B) Category II - Non-Accredited Perfusion Meetings and Other Medical Meetings- This category includes international, national, regional, and state meetings that have not been approved by the ABCP, local perfusion meetings and all other medically related meetings. Examples:

(i) International, National, Regional, and State, perfusion meetings that have not been accredited by the ABCP.

(ii) Local perfusion meetings (do not require ABCP accreditation). Any perfusion meeting NOT EQUALLY ACCESSIBLE to the general CCP community, this includes manufacturer-specific and company-sponsored educational activities.

(iii) International, National, Regional, or Local medically-related meetings.

(C) Category III- Individual Education and Other Self-Study Activities Credit in this category is acquired on an hour for hour basis of the time spent in these non-accredited or non-supervised activities. Examples:

(i) Reading or viewing medical journals, audio-visual, or other educational material.

(ii) Participation in electronic forums.

(iii) Participation in a Journal Club.

(iv) Participation in degree-oriented, professional-related course work.

(v) Presentation of perfusion topic at a non-perfusion meeting

(D) A minimum of 40 clinical perfusions per year are required of every licensed perfusionist.

(E) 40 cases are required each year as the Primary Perfusionist for Cardiopulmonary bypass, ECMO, VAD, Isolated Limb Perfusion, or VENO-VENO bypass. For each ECMO or VAD case, one case credit will be awarded for initiated and/or managing an eight-hour shift.

(4) Documentation of activities. Licensed perfusionists are responsible for providing documentation of their professional activities. This documentation must be submitted along with the professional activity report. Credit will not be granted for activities that are not documented. The suitable documentation is outlined as follows:

(A) Category I - Perfusion meetings - Approved perfusion meetings held before June 30, 1998, may be documented by copies of registration receipts or official meeting name tags. For approved perfusion meetings held after June 30, 1998, an official document from the meeting sponsor documenting attendance and the number of hours received must be provided.

(i) Perfusion Publications must have complete reference of book or article (authors, title, journal and date/volume of journal).

(ii) Perfusion Presentations must have copy of program agenda.

(B) Category II - International, national, regional, and state perfusion meetings not accredited by the ABCP, local perfusion meetings and all other medical meetings - must provide an official document stating CEUs awarded and copy of the meeting program.

(C) Category III - All self-study activities will require an official record of completion or written summary of the activity.

(c) Exceptions. Any deviation from the continuing education requirements will be reviewed on a case-by-case basis by the Board. A request for special consideration shall be submitted in writing a minimum of 60 days prior to expiration of the license.

*§761.17. Informal Settlement Conference.*

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

(b) If the executive secretary or a member of the complaints committee of the board determines that the public interest might be served by attempting to resolve a complaint or contested case by an agreed order in lieu of a formal hearing, the provisions of this section shall apply. A licensee or applicant may request an informal settlement conference; however, the decision to hold a conference shall be made by the executive secretary or the complaints committee.

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

(d) The executive secretary shall decide upon the time, date, and place of the settlement conference and provide written notice to the licensee or applicant of the same. Notice shall be provided no less than ten days prior to the date of the conference by certified mail, return receipt requested to the last known address of the licensee or applicant or by personal delivery. The 10 days shall begin on the date of mailing or personal delivery. The licensee or applicant may waive the 10 day notice requirement.

(1) The notice shall inform the licensee or applicant of the following:

- (A) the nature of the alleged violation;
- (B) that the licensee may be represented by legal counsel;
- (C) that the licensee or applicant may offer the testimony of witnesses and present other evidence as may be appropriate;
- (D) that the licensee's or applicant's attendance and participation is voluntary;

(E) that the complainant may be present; and

(F) that the settlement conference shall be canceled if the licensee or applicant notifies the executive secretary that he or she or his or her legal counsel will not attend.

(2) A copy of the board's rules concerning informal disposition shall be enclosed with the notice of the settlement conference.

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

(f) A member of the complaints committee may be present at a settlement conference.

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

(h) The licensee, the licensee's attorney, and board staff may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(i) The board's legal counsel will be requested to attend each settlement conference. The complaints committee member or executive secretary may call upon the board attorney at any time for assistance in the settlement conference.

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

(k) Access to the board's investigative file may be prohibited or limited in accordance with the APA, Texas Government Code, Chapter 552, and the Texas Occupations Code, Chapter 603.

(l) At the discretion of the executive secretary or the committee members, a tape recording may be made of none or all of the settlement conference.

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

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

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

(p) If the licensee or applicant rejects the proposed settlement, the matter shall be referred to the executive secretary for appropriate action.

(q) If the licensee or applicant signs and accepts the recommendations, the agreed order shall be submitted to the entire board for its approval. Placement of the agreed order on the board agenda shall constitute only a recommendation for approval by the board.

(r) The identity of the licensee or applicant shall not be made available to the board until after the board has reviewed and accepted the agreed order unless the licensee or applicant chooses to attend the board meeting. The licensee or applicant shall be notified of the date, time, and place of the board meeting at which the proposed agreed order will be considered. Attendance by the licensee or applicant is voluntary.

(s) Upon an affirmative majority vote, the board shall enter an agreed order approving the accepted settlement recommendations. The board may not change the terms of a proposed order but may only approve or disapprove an agreed order unless the licensee or applicant is present at the board meeting and agrees to other terms proposed by the board.

(t) If the board does not approve a proposed agreed order, the licensee or applicant and the complainant shall be so informed. The matter shall be referred to the executive secretary for other appropriate action.

(u) A licensee's opportunity for an informal conference under this section shall satisfy the requirement of the Texas Government Code, §2001.054(c).

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

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

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 May 21, 2001.

TRD-200102834

Debra Sue Douglas

Chairman

Texas State Board of Examiners of Perfusionists

Effective date: June 10, 2001

Proposal publication date: January 26, 2001

For further information, please call: (512) 458-7236



## 22 TAC §§761.10 - 761.20

The repeals are adopted under Texas Occupations Code, Chapter 603, which provides the Texas State Board of Examiners of Perfusionists with the authority to adopt rules concerning the regulation of Perfusionists.

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 May 21, 2001.

TRD-200102835

Debra Sue Douglas

Chairman

Texas State Board of Examiners of Perfusionists

Effective date: June 10, 2001

Proposal publication date: January 26, 2001

For further information, please call: (512) 458-7236



## TITLE 25. HEALTH SERVICES

### PART 1. TEXAS DEPARTMENT OF HEALTH

#### CHAPTER 13. HEALTH PLANNING AND RESOURCE DEVELOPMENT

##### SUBCHAPTER C. DESIGNATION OF SITES SERVING MEDICALLY UNDERSERVED POPULATIONS

###### 25 TAC §§13.31 - 13.34

The Texas Department of Health (department) adopts amendments to §§13.31-13.34 regarding the designation of sites serving medically underserved populations. The sections are adopted without changes to the proposed text as published in the March 9, 2001, issue of the *Texas Register* (26 TexReg 1975), and therefore the sections will not be republished.

In accordance with the requirements of the Government Code, §2001.039 and the General Appropriations Act, 76th Legislature, Article IX, §9-10.13, the department has determined that reasons for adopting the sections continue to exist in that rules on this subject are needed; however the sections need revision as described in this preamble.

The department published a Notice of Intention to Review in the *Texas Register* on February 12, 1999 (24 TexReg 1001). No comments were received based on that notice.

Specifically, the Occupations Code, §157.052 requires the department to designate two types of sites serving medically underserved populations: (1) a site located in an area in which the department determines there is an insufficient number of physicians providing services to eligible clients of federal, state, or locally funded health care programs, and (2) a site that the department determines serves a disproportionate number of clients eligible to participate in federal, state, or locally funded health care programs.

The amended sections include purpose and scope, definitions, criteria for designating sites serving medically underserved populations, and application process. Amended §13.31 updates obsolete legal citations and corrects a reference. Amended §13.32 updates obsolete language regarding state funded health care programs and removes an obsolete legal citation. Amended §13.33 revises language to correspond with the definition of "eligible client population" as defined in §13.32. Amended §13.34

clarifies the information required in the application process and updates the mailing information for applications.

No comments were received concerning the proposed rules during the comment period.

The sections are adopted under the Occupations Code, §157.052 which authorizes the Board of Health (board) to adopt rules relating to the designation of sites serving medically underserved populations; and the Health and Safety Code, §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the Commissioner of Health.

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

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TRD-200102839

Susan K. Steeg

General Counsel

Texas Department of Health

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Proposal publication date: March 9, 2001

For further information, please call: (512) 458-7236



## SUBCHAPTER D. ADMINISTRATION OF THE RESIDENT PHYSICIAN COMPENSATION PROGRAM

### 25 TAC §§13.41 - 13.44

The Texas Department of Health (department) adopts the repeal of §§13.41-13.44 concerning administration of the resident physician compensation program. The repeal of these sections is adopted without changes to the proposed text as published in the March 9, 2001, issue of the *Texas Register* (26 Tex Reg 1976), and therefore will not be republished.

Specifically, the sections cover purpose and scope; define terms used in the rules; define limits on reimbursement amounts; and describe methods of reimbursement. The repeal of these sections is necessary because the legislature transferred the responsibility for the program to the Texas Higher Education Coordinating Board on September 1, 1995.

In accordance with the requirements of the Government Code, §2001.039 and the General Appropriations Act, 76th Legislature, Article IX, §9-10.13, the sections have been reviewed and the department has determined that reasons for adopting the sections no longer exist.

The department published a Notice of Intention to Review in the *Texas Register* on February 12, 1999 (24 Tex Reg 1001). No comments were received based on that notice.

No comments were received on the proposal during the comment period.

The repeals are adopted under the 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.

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 May 21, 2001.

TRD-200102838

Susan K. Steeg

General Counsel

Texas Department of Health

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For further information, please call: (512) 458-7236



## CHAPTER 129. OPTICIANS' REGISTRY

### 25 TAC §§129.1 - 129.4, 129.8, 129.9, 129.11 - 129.13

The Texas Department of Health (department) adopts amendments to §§129.1 - 129.4, 129.8, 129.9, and 129.11 - 129.13 concerning the voluntary registration and regulation of dispensing opticians. Section 129.9 is adopted with changes to the proposed text as published in the February 2, 2001, issue of the *Texas Register* (26 TexReg 1085). Sections 129.1 - 129.4, 129.8, and 129.11 - 129.13 are adopted without changes, and therefore the sections will not be republished.

The department published a Notice of Intention to Review the sections as required by the Government Code, §2001.039 in the *Texas Register* on May 5, 2000, (25 TexReg 4196). No comments were received in response to the notice.

The Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Each section was reviewed and the department determined that the reasons for adopting the sections continue to exist. The sections were edited to improve draftsmanship and make the rules more accessible, understandable, and usable. Additionally, amendments are necessary to reflect changes in citations created by House Bill 3155, 76th Legislature, 1999, and to implement provisions of House Bill 2085, 76th Legislature, 1999.

Changes made to the proposed text resulted from comments received during the comment period. The details of the changes are described in the summary of comments that follow.

The following comment was received concerning the proposed rules. Following the comment is the department's response and any resulting change(s).

Comment: Concerning §129.9(b), one commenter suggested changing "classroom hours" to "contact hours" because using the term classroom hours does not distinguish between semester credit hours, continuing education units, or contact hours.

Response: The department agrees that the term "contact hours" more accurately describes the requirement and has modified the language.

The comment was received from an individual who was generally in favor of the rules and suggested recommendations for change as discussed in the summary of comment.

The amendments are adopted under Texas Occupations Code, Chapter 352, which provides the Board of Health (board) with the

authority to adopt rules; and Health and Safety Code, §12.001, which provides the board with authority to adopt rules to implement every duty imposed by law on the board, the department and the commissioner of health.

§129.9. *Requirements for Continuing Education.*

(a) Purpose. The purpose of this section is to establish the continuing education requirements a registrant shall meet annually to maintain registration. The requirements are intended to maintain and improve the quality of services provided to the public by registered spectacle dispensing opticians and registered contact lens dispensers. Continuing education credit includes programs beyond the basic preparation which are designed to promote and enrich knowledge, improve skills, and develop attitudes for the enhancement of dispensing opticians, thus improving health care to the public. The Texas Department of Health (department) assumes dispensing opticians will maintain the high standards of the profession in selecting quality educational programs to fulfill the continuing education requirements.

(b) Number of hours required. Proof of having earned five contact hours of continuing education credit in each area for which the registrant is renewing shall be required at the time of renewal for each registration. A contact hour is 50 minutes.

(1) The hours must have been completed within 12 months prior to the date of expiration of the registration.

(2) For a registered spectacle dispensing optician the hours must be offered or approved by the American Board of Opticianry. For a registered contact lens dispenser the hours must be offered or approved by the National Contact Lens Examiners.

(3) If applying for dual registration renewal the applicant must have a total of 10 contact hours of continuing education. Five contact hours must be offered or approved by the American Board of Opticianry and five contact hours must be offered or approved by the National Contact Lens Examiners.

(c) Records. The registrant shall be responsible for maintaining a record of his or her continuing education experiences. The certificates, diplomas, or other documentation verifying earning of the continuing education hours are not to be forwarded to the department at the time of renewal unless the registrant has been selected for audit by the department. Only the completed continuing education report form should accompany the renewal form and fee if the registrant has not been selected for audit.

(d) Audit process.

(1) The department shall select for audit a random sample of registrants for each renewal month. Audit forms shall be sent to the selected registrants at the time the renewal notice is mailed.

(2) All registrants selected for audit will furnish documentation such as official transcripts, certificates, diplomas, receipts, agendas, programs, or an affidavit identifying the continuing education experience satisfactory to the department, to verify proof of having earned the continuing education hours listed on the continuing education report form. The documentation must be provided at the time the renewal form is returned to the department.

(3) Failure to timely furnish this information or knowingly providing false information in the audit process or during the renewal process are grounds for suspension or revocation of the registration.

(e) Accrual carryover. Earned continuing education hours exceeding the minimum requirements in a previous renewal period shall first be applied to the continuing education requirements for the current renewal period. A maximum of five additional clock hours may be accrued during a registration period to be applied to the next consecutive

renewal period. A maximum of 10 additional clock hours may be accrued for dual registrants during a registration period to be applied to the next consecutive renewal period.

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

Filed with the Office of the Secretary of State on May 21, 2001.

TRD-200102840

Susan K. Steeg

General Counsel

Texas Department of Health

Effective date: June 10, 2001

Proposal publication date: February 2, 2001

For further information, please call: (512) 458-7236



## CHAPTER 130. CODE ENFORCEMENT REGISTRY

### 25 TAC §130.2, §130.3

The Texas Department of Health (department) adopts the repeal of §130.19, amendment to §130.2 and new §130.3 concerning the Code Enforcement Officers' Advisory Committee. The sections are adopted without changes to the proposed text as published in the February 2, 2001, issue of the *Texas Register* (26 TexReg 1087), and therefore the sections will not be republished.

The sections cover definitions and the establishment, structure, and composition of a Code Enforcement Officers' Advisory Committee. The rules are necessary to separate the Sanitarian/Code Enforcement Officers' Advisory Committee into the Registered Sanitarian Advisory Committee in Chapter 265 of this title and the Code Enforcement Officers' Advisory Committee in this chapter.

The following comments were received concerning the proposed rules. Following each comment is the department's response and any resulting changes.

Comment: Seven commenters expressed support for the rules as proposed.

Response: No changes were made as a result of the comments.

Six individuals and one professional association, the Texas Environmental Health Association (TEHA), provided comments in favor of the rules as proposed.

The amendment and new section are adopted under the Texas Health and Safety Code, §11.016, which allows the Board of Health (board) to establish advisory committees; and Health and Safety Code, §12.001, which provides the board with authority to adopt rules to implement every duty imposed by law on the board, the department and the commissioner of health.

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 May 21, 2001.

TRD-200102837

Susan K. Steeg  
General Counsel  
Texas Department of Health  
Effective date: June 10, 2001  
Proposal publication date: February 2, 2001  
For further information, please call: (512) 458-7236



## 25 TAC §130.19

The repeal is adopted under the Texas Health and Safety Code, §11.016, which allows the Board of Health (board) to establish advisory committees; and Health and Safety Code, §12.001, which provides the board with authority to adopt rules to implement every duty imposed by law on the board, the department and the commissioner of health.

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

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Susan K. Steeg  
General Counsel  
Texas Department of Health  
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## CHAPTER 265. GENERAL SANITATION SUBCHAPTER J. ADVISORY COMMITTEE

### 25 TAC §265.131

The Texas Department of Health (department) adopts an amendment to §265.131 concerning the Registered Sanitarian Advisory Committee with changes to the proposed text as published in the February 2, 2001 issue of the *Texas Register* (26 TexReg 1094).

The amendment is necessary to separate the Sanitarian/Code Enforcement Officers' Advisory Committee into the Registered Sanitarian Advisory Committee in this chapter and the Code Enforcement Officers' Advisory Committee in Chapter 130 of this title.

The amendment to §265.131 covers the establishment, structure, and composition of a registered sanitarian advisory committee.

The following comments were received concerning the proposed rules. Following each comment is the department's response and any resulting change(s).

**Comment:** Concerning §265.131(f)(1), one commenter requested that the number of registered professional sanitarians on the advisory committee be increased from three to four in order to create a majority of sanitarians.

**Response:** The department disagrees. Ad hoc committees may be created at any time to draw on the experience of additional registrants. No change was made as a result of this comment.

**Comment:** Concerning §265.131(f)(2), three commenters requested that "one professional engineer" be replaced by "one individual who employs, contracts with, or otherwise receives services from registered sanitarians."

**Response:** The department disagrees that this broad language would provide the balance of expertise provided by a professional engineer. The inclusion of a professional engineer was recommended at a stakeholder meeting held November 29, 2000. No change was made as a result of this comment.

**Comment:** Concerning §265.131(f)(2), one commenter requested that "one professional engineer" be replaced by "an industry representative having specific occupational experience related to environmental and public health."

**Response:** The department disagrees that a clear definition of the required qualifications is provided by "specific occupational experience related to environmental or public health". The inclusion of a professional engineer was recommended at a stakeholder meeting held November 29, 2000. No change was made as a result of this comment.

**Comment:** Concerning §265.131(f)(2), One commenter requested that "one professional engineer" be replaced by "one on-site sewage facility professional as defined in Chapter 285 of the Texas Natural Resource Conservation Commission, On-Site Sewage Facilities Rules to include a professional engineer, a designated representative, an Installer I or an Installer II." The commenter stated that one major area of employment for professional sanitarians in Texas involves on-site sewage facilities. The commenter also stated that professional engineers have no direct relationship with professional sanitarians unless they are working under the provision of the on-site sewage facility rules.

**Response:** The department agrees that expertise in on-site sewage facility design, installation and maintenance is valuable and has amended §265.131(f)(2) accordingly to add "or one on-site sewage facility (OSSF) professional" with an additional restriction that the individual not be registered as a sanitarian.

**Comment:** Concerning §265.131(f)(2), two commenters requested that "one professional engineer" be replaced by "one professional engineer or designated representative involved in the design, inspection and maintenance of on-site sewage facilities (OSSF)."

**Response:** The department agrees and has amended §265.131(f)(2) with "or one on-site sewage facility (OSSF) professional who is not and has never been registered as a professional sanitarian in Texas".

**Comment:** Concerning §265.131(f)(3), four commenters requested that the definition of the two consumer positions on the advisory committee be changed from "two consumers, one of which must be a member of an industry or occupation which is regulated by the Texas Department of Health" to "two consumers, one of which must be a member of an industry or occupation which is regulated by a city or county environmental health unit or department or equivalent".

**Response:** The department agrees that the definition of one of the consumer members could be broadened to include an individual from an industry regulated by a city or county health department, and has amended §265.131(f)(2) accordingly. The department does not, however, agree with narrowing the focus to environmental health. New language reads "...either by a city or by a county environmental health unit or department, or".



Comment: Concerning §265.131(f)(3), one commenter requested that the definition of the two consumer positions on the advisory committee be changed from "two consumers, one of which must be a member of an industry or occupation which is regulated by the Texas Department of Health" to "two members of the community regulated by the Texas Department of Health, one of which is associated with the food service industry".

Response: The department does not agree that the definition of consumer should be narrowed to this extent. No change was made as a result of this comment.

Seven individuals and one professional association, the Texas Environmental Health Association (TEHA), provided comments. The comments were neither for nor against the rules in their entirety; however, they raised questions and suggested modified language concerning specific provisions in the rules.

The amendment is adopted under the Texas Health and Safety Code, §11.016, which allows the Board of Health (board) to establish advisory committees; and Health and Safety Code, §12.001, which provides the board with authority to adopt rules to implement every duty imposed by law on the board, the department and the commissioner of health.

*§265.131. Registered Sanitarian Advisory Committee*

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) The name of the committee shall be the Registered Sanitarian Advisory Committee (committee).

(2) The committee is established under the Health and Safety Code, §11.016 which allows the Texas Board of Health (board) to establish advisory committees.

(b) Applicable law. The committee is subject to the Government Code, Chapter 2110, concerning state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the board in the area of rules regarding registered professional sanitarians.

(d) Tasks.

(1) The committee shall advise the board concerning rules relating to registered professional sanitarians.

(2) The committee shall advise the department in establishing regulations regarding the registration of professional sanitarians.

(3) The committee shall carry out any other tasks given to the committee by the board.

(e) Review and duration. By September 1, 2003, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of seven members appointed by the board. The composition of the committee shall include:

(1) three registered sanitarians;

(2) one professional engineer, or one on-site sewage facility (OSSF) professional who is not and has never been registered as a professional sanitarian in Texas;

(3) two consumers, one of which must be a member of an industry or occupation which is regulated either by a city or county

environmental health unit or department or equivalent, or by the Texas Department of Health; and

(4) one person involved in education in the field of public, consumer, or environmental health sciences.

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

(1) Members shall be appointed for staggered terms so that the terms of a substantial equivalent number of members will expire on December 31st of each odd-numbered year.

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term

(h) Officers. The chairman of the board shall appoint a presiding officer and an assistant presiding officer to begin serving on September 1 of each odd-numbered year.

(1) Each officer shall serve until the next regular election of officers.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is appointed to complete the unexpired portion of the term of the office of presiding officer.

(4) If the office of assistant presiding officer becomes vacant, it may be filled temporarily by vote of the committee until a successor is appointed by the chairman of the board.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

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

(i) Meetings. The committee shall meet at least once each year to conduct committee business.

(1) A meeting may be called by agreement of Texas Department of Health (department) staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

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

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

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

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

(k) Staff. Staff support for the committee shall be provided by the department.

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

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

(2) Each member shall have one vote.

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

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

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

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

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

(n) Statement by members.

(1) The board, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

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

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, and anticipated activities of the committee for the next year.

(2) The report shall identify the costs related to the committee's existence, including the cost of department staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the preceding 12 months and shall be filed with the board each September. It shall be signed by the presiding officer and appropriate department staff.

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

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

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

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

This agency hereby certifies that the 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 May 21, 2001.

TRD-200102841

Susan K. Steeg

General Counsel

Texas Department of Health

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For further information, please call: (512) 458-7236

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**TITLE 28. INSURANCE**

**PART 2. TEXAS WORKERS'  
COMPENSATION COMMISSION**

**CHAPTER 126. GENERAL PROVISIONS  
APPLICABLE TO ALL BENEFITS**

**28 TAC §126.8**

The Texas Workers' Compensation Commission (the commission) adopts amendments to §126.8 concerning the Commission-Approved Doctor List without changes to the proposed text published in the (March 9, 2001) issue of the *Texas Register*(26 TexReg 2002). These amendments are adopted to correct and update references to rules and laws that have been recodified.

As required by the Government Code §2001.033(1), the commission's reasoned justification for this rule is set out in this order which includes the preamble, which in turn includes the rule. This preamble contains a summary of the factual basis of the rule, a summary of comments received from interested parties, names of those groups and associations who commented and whether they were for or against adoption of the rule, and the reasons why the commission disagrees with some of the comments and proposals.

In 1993, the rule was proposed to establish criteria, in addition to those criteria specified in Texas Civil Statutes, Article (8308-4.63) for the addition of doctors and for the removal of doctors from the list. This section was required by Texas Civil Statutes, Article 8308-4.63 (now the Texas Labor Code §408.023). The duty to conduct hearings under the Administrative Procedure Act was first located in the commission's Division of Hearings. In 1995, the Texas Legislature moved this duty to the State Office Administrative Hearings effective January 1, 1996. The commission adopted the rules in Chapters 148 and 149 to implement this change. For this reason references to the Chapter 145 rules should be replaced with references to the rules in Chapter 148, relating to Hearings Conducted by the State Office of Administrative Hearings.

Also in 1993, the Texas Legislature incorporated the Texas Workers' Compensation Act into the Texas Labor Code, Title 5, Subtitle A. Reference to Articles 8308-4.63 corresponds now to §408.023 of the Texas Labor Code (relating to Contested Cases: General Rights and Procedures, Opportunity for Hearing and Participation); therefore, these references should be revised accordingly.

The Texas Legislature incorporated the Administrative Procedure and Texas Register Act into the Texas Government Code in 1993 as well. Therefore, the reference to Article 6252-13a (the Administrative Procedure and Texas Register Act) should be changed to §2001.051 of the Texas Government Code (and the reference to Article 8308-2.09 (f), relating to the powers and duties of the Commission corresponds to §402.072 of the Texas Labor Code).

Comments opposing certain portions of §126.8 and a comment seeking clarification were received from the following groups, associations and individuals: William M. Leff, D.C., Eric Scheffey, M. D., East Harris County Orthopedic Associates, P. A., and Bill Elliott, Compliance Manager of ARCMI. Summaries of the comments and commission responses are as follows:

*COMMENT:* Commenter felt that the proposed rule change was hard to understand and suggested that some explanation, not necessarily a part of the rule, should accompany the proposal.

*RESPONSE:* The commission disagrees that the proposed changes are unclear. The preamble to the proposed rule explains that the proposed amendments correct and update references to rules and laws that have been changed since the rule was adopted. Each rule and law that was changed is identified.

*COMMENT:* Commenters disagreed with the reasons in subsection (d)(3), (5), and (6) of the rule for deleting doctors from the list.

*RESPONSE:* These comments are outside of the scope of the rule proposal. No changes to subsection (d) were proposed and no changes to that subsection are being considered at this time.

*COMMENT:* Commenter expressed concern about subsection (b) which states that payment cannot be withheld from doctors in other jurisdictions because they are not on the approved doctor list. Commenter asked if this provision applied to doctors in Mexico with whom a substantial number of claimants seek treatment to avoid providing accurate and current information to the workers compensation carrier.

*RESPONSE:* This comment is outside the scope of the rule proposal. No changes to subsection (b) were proposed and no changes to that subsection are being considered at this time.

The amended rule is adopted under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act, the Texas Labor Code §402.073, relating to the Cooperation with the State Office of Administrative Hearings, the Texas Labor Code §408.023, relating to the List of Approved Doctors, and Chapter 2001 of the Texas Government Code, relating to hearings before the State Office of Administrative Hearings.

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 May 18, 2001.

TRD-200102808

Susan Cory

General Counsel

Texas Workers' Compensation Commission

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Proposal publication date: March 9, 2001

For further information, please call: (512) 804-4287

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**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

**PART 3. TEXAS YOUTH COMMISSION**

**CHAPTER 81. INTERACTION WITH THE  
PUBLIC**

**37 TAC §81.1**

The Texas Youth Commission (TYC) adopts an amendment to §81.1, concerning Public Information Request, with changes to

the proposed text as published in the April 13, 2001 issue of the *Texas Register* (26 TexReg 2810). Changes to the proposed text consist of a minor edit to subsection (f) to capitalize the "C" in confidentiality.

The justification for amending the section is to provide a prompt response to the public on information requests.

The amendment will be consistent with the Public Information Act, regarding requests for public information from the agency.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Government Code Chapter 552, which provides the Texas Youth Commission with the broad rulemaking authority; and Texas Government Code §552, which requires state agencies to adopt rules and procedures consistent with the Public Information Act.

The adopted rule implements the Human Resource Code, §61.034.

*§81.1. Public Information Request.*

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

(b) If not excepted, all information collected, assembled, or maintained in connection with the transaction of official business is public information and shall be available to the public during normal business hours. Forms in which the media containing public information exists includes book, paper, letter, document, printout, photograph, film, tape, microfiche, microfilm, photostat, sound recording, map, and drawing and a voice, data, or video representation held in computer memory.

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

(d) TYC staff shall respond immediately without delay to a request.

(e) If the legal services department determines that the request will require an opinion by the Attorney General as to the releasability of the requested information, the request to the Attorney General must be made within ten business days of the receipt of the request for information. Otherwise, the information is open for inspection.

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

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

This agency hereby certifies that the 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 May 17, 2001.

TRD-200102776

Steve Robinson  
Executive Director  
Texas Youth Commission  
Effective date: July 31, 2001  
Proposal publication date: April 13, 2001  
For further information, please call: (512) 424-6301



## CHAPTER 87. TREATMENT

### SUBCHAPTER A. PROGRAM PLANNING

#### 37 TAC §87.7

The Texas Youth Commission (TYC) adopts an amendment to §87.7, concerning Furloughs, without changes to the proposed text as published in the April 6, 2001 issue of the *Texas Register* (26 TexReg 2644).

The justification for amending the section is defining the conditions under which the youth may be granted to leave a residential facility.

The amendment corrects the number reference of a related rule.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.0761, which provides the Texas Youth Commission with the authority to develop programs that could encourage family involvement.

The adopted rule implements the Human Resource Code, §61.034.

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 May 17, 2001.

TRD-200102775  
Steve Robinson  
Executive Director  
Texas Youth Commission  
Effective date: July 31, 2001  
Proposal publication date: April 6, 2001  
For further information, please call: (512) 424-6301



## CHAPTER 91. PROGRAM SERVICES

### SUBCHAPTER D. HEALTH CARE SERVICES

#### 37 TAC §91.87

The Texas Youth Commission (TYC) adopts an amendment to §91.87, concerning Health Insurance, without changes to the proposed text as published in the April 13, 2001, issue of the *Texas Register* (26 TexReg 2810).

The justification for amending the section is to provide a more efficient means of seeking reimbursement for a youth's medical care.

The amendment will establish procedures for reimbursement of third party payers for medical care. The amendment also establishes guidelines when a court order exists for a parent or

guardian to provide insurance for a youth committed to the Texas Youth Commission.

No comments were received regarding adoption of the amendment.

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

The adopted rule implements the Human Resource Code, §61.034.

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 May 17, 2001.

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Steve Robinson

Executive Director

Texas Youth Commission

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## CHAPTER 95. YOUTH DISCIPLINE SUBCHAPTER A. DISCIPLINARY PRACTICES

### 37 TAC §95.13

The Texas Youth Commission (TYC) adopts an amendment to §95.13, concerning On-Site Disciplinary Consequences, without changes to the proposed text as published in the April 13, 2001, issue of the *Texas Register* (26 TexReg 2811).

The justification for amending the section is allowing work restitution to be used as a viable consequence with the intend to assist youth to develop a sense of equity, pride and responsibility for personal behavior.

The amendment will clarify the definition of work restitution as a disciplinary consequence. Work restitution is defined as a voluntary consequence of misbehavior and not a dollar for dollar relationship between property damage and the labor performed. The purpose is not to recover actual losses or compensate TYC for property damage. The work the youth performs is not to exceed eighty hours of actual work, is to be proportionate to the damage done.

No comments were received regarding adoption of the amendment.

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

The adopted rule implements the Human Resource Code, §61.034.

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

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Executive Director

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### 37 TAC §95.17

The Texas Youth Commission (TYC) adopts an amendment §95.17, concerning Behavior Management Program, without changes to the proposed text as published in the April 13,2001 issue of the *Texas Register* (26 TexReg 2812).

The justification for amending the section is to clarify the definitions of the guidelines for operating the behavior management program within the security unit.

The amendment will facilitate operational procedures and allow for added due process measures for youth.

No comments were received regarding adoption of the amendment.

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

The adopted rule implements the Human Resource Code, §61.034.

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

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Steve Robinson

Executive Director

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## CHAPTER 99. GENERAL PROVISIONS SUBCHAPTER C. MISCELLANEOUS

### 37 TAC §99.90

The Texas Youth Commission (TYC) adopts new §99.90, concerning Vehicle Fleet Management, without changes to the proposed text as published in the April 6, 2001 issue of the *Texas Register*(26 TexReg 2645).

The justification for the new rule is to comply with the legal requirement for purchasing and maintaining a fleet of state vehicles.

The new rule will comply with section 2171.104 of the Government Code which was mandated by the State of Texas General Services Commission (GSC).

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with

the broad rulemaking authority; and Texas Government Code, §2171.104, which requires state agencies to adopt rules or procedures consistent with the State Vehicle Fleet Management Plan.

The adopted rule implements the Human Resource Code, §61.034.

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

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Steve Robinson

Executive Director

Texas Youth Commission

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## PART 11. TEXAS JUVENILE PROBATION COMMISSION

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

#### 37 TAC §343.1

The Texas Juvenile Probation Commission (TJPC) adopts the amendment to §343.1 concerning definitions. This section is adopted without changes to the proposed text as published in the April 13, 2001, issue of the *Texas Register* (26 TexReg 2819) and will not be republished.

TJPC adopts this rule in an effort to alleviate the misinterpretation of the term chronic overcrowding with juvenile probation departments.

No public comment was received.

The amendment is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

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 May 16, 2001.

TRD-200102735

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Effective date: June 5, 2001

Proposal publication date: April 13, 2001

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



#### 37 TAC §343.8

The Texas Juvenile Probation Commission (TJPC) adopts the amendment to §343.8 concerning multiple occupancy sleeping units. This section is adopted without changes to the proposed text as published in the April 13, 2001, issue of the *Texas Register* (26 TexReg 2819) and will not be republished.

TJPC adopts this rule in an effort to reapply standards that were inadvertently removed from the Texas Administrative Code during the last rule adoption relating to §343.8.

No public comment was received.

The amendment is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

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

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## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

#### CHAPTER 95. MEDICATION AIDES-PROGRAM REQUIREMENTS

##### 40 TAC §95.128

The Texas Department of Human Services (DHS) adopts new §95.128 with changes to the proposed text in the March 30, 2001, issue of the *Texas Register* (26 TexReg 2508).

Justification for the new section is to move policy relating to medication aides from DHS's Chapter 97, Licensing Standards for Home and Community Support Services Agencies, to the more appropriate Chapter 95, Medication Aides, where other DHS licensing standards for medication aides reside.

The department received no comments regarding adoption of the new section. However, §95.128(a)(2) was corrected by the moving of the phrase "may use a home health medication aide" from the second sentence to the first sentence.

The new section is adopted under the Health and Safety Code, Chapters 142 and 242, which provides the department with the authority to adopt rules for the licensing and regulation of home and community support services agencies and medication aides.

The new section implements the Health and Safety Code, §§142.001-142.030, Subchapter F, and §§242.151-242.161.

§95.128. *Home Health Medication Aides.*

(a) General.

(1) A person may not administer medication to a client unless the person:

(A) holds a current license under state law which authorizes the licensee to administer medication;

(B) holds a current permit issued under this section and acts under the delegated authority of a registered nurse (RN) licensed by the Board of Nurse Examiners which authorizes the licensee to administer medication;

(C) administers a medication to a client of an agency in accordance with rules of the Board of Nurse Examiners that permit delegation of the administration of medication to a person not holding a permit under this section; or

(D) administers noninjectable medication under circumstances authorized by the memorandum of understanding between the Board of Nurse Examiners and the Texas Department of Human Services (DHS).

(2) An agency providing licensed and certified home health services, licensed home health services, hospice services, or personal assistance services may use a home health medication aide. If there is a direct conflict between the requirements of this chapter and federal regulations, the requirements that are more stringent apply to the licensed and certified home health services agency.

(3) Other exemptions are as follows.

(A) A person may administer medication to a client of an agency without the license or permit as required in paragraph (1) of this subsection if the person is:

(i) a graduate nurse holding a temporary permit issued by the Board of Nurse Examiners;

(ii) a student enrolled in an accredited school of nursing or program for the education of Rns who is administering medications as part of the student's clinical experience;

(iii) a graduate vocational nurse holding a temporary permit issued by the Board of Vocational Nurse Examiners;

(iv) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or

(v) a trainee in a medication aide training program approved by DHS under this chapter who is administering medications as part of the trainee's clinical experience.

(B) Supervision of an exempt person described in subparagraph (A) of this paragraph is as follows.

(i) A person described in:

(I) subparagraph (A)(i) of this paragraph shall be supervised by an RN;

(II) subparagraph (A)(ii) or (iv) of this paragraph shall be supervised by the student's instructor; or

(III) subparagraph (A)(iii) of this paragraph shall be supervised by an RN or licensed vocational nurse.

(ii) Supervision must be on-site.

(C) An exempt person described in this subsection may not be used in a supervisory or charge position.

(b) Required actions.

(1) If home health medication aide services are provided, an agency employs a home health medication aide to provide home health medication aide services, and an RN shall be employed by or under contract with the agency to perform the initial assessment; prepare the client care plan; establish the medication list, medication administration record, and medication aide assignment sheet; and supervise the home health medication aide. The RN must be available to supervise the home health medication aide when services are provided.

(2) The clinical records of a patient using a home health medication aide must include a statement signed by the client or family acknowledging receipt of the list of permitted and prohibited acts of a home health medication aide.

(3) The RN must be knowledgeable regarding the rules of DHS governing home health medication aides and must assure that the home health medication aide is in compliance with the statute.

(4) A permit holder must:

(A) function under the supervision of an RN;

(B) function in accordance with applicable law and this chapter relating to administration of medication and operation of the agency;

(C) comply with DHS rules applicable to personnel used in an agency; and

(D) comply with this section and §97.61 of this title (relating to Home Health Aides) if the person will be used as a home health aide and a home health medication aide.

(5) The RN must make a supervisory visit while the medication aide is in the client's residence in accordance with §97.21(b)(6) of this title (relating to Licensure Requirements and Standards for Agencies Providing Licensed Home Health, Licensed and Certified Home Health or Hospice Services).

(c) Permitted actions. A permit holder is permitted to:

(1) observe and report to the agency's RN and document in the clinical note reactions and side effects to medication shown by a client;

(2) take and record vital signs prior to the administration of medication which could affect or change the vital signs;

(3) administer regularly prescribed medication which the permit holder has been trained to administer only after personally preparing (setting up) the medication to be administered. The medication aide must document the administered medication in the client's clinical note;

(4) administer oxygen per nasal cannula or a non-sealing face mask only in emergency. Immediately after the emergency, the permit holder must verbally notify the supervising RN and appropriately document the action and notification;

(5) apply specifically ordered ophthalmic, otic, nasal, vaginal, topical, and rectal medication unless prohibited by subsection (d)(10) of this section; and

(6) administer medications only from the manufacturer's original container or the original container in which the medication had been dispensed and labeled by the pharmacy with all information mandated by the Texas State Board of Pharmacy.

(d) Prohibited actions. Permit holders must not:

(1) administer a medication by any injectable route;

(2) administer medication used for intermittent positive pressure breathing (IPPB) treatment or any form of medication inhalation treatments;

(3) administer previously ordered pro re nata (PRN) medication unless authorization is obtained from the agency's RN. If authorization is obtained, the permit holder must:

(A) document in the client's clinical notes symptoms indicating the need for medication and the time the symptoms occurred;

(B) document in the client's clinical notes that the agency's RN was contacted, symptoms were described, and permission was granted to administer the medication and the time of contact;

(C) obtain permission to administer the medication each time the symptoms occur in the client; and

(D) insure that the client's clinical record is co-signed by the RN who gave permission within seven calendar days of incorporation of the notes into the clinical record;

(4) administer the initial dose of a medication that has not been previously administered to a client. Whether a medication has been previously administered must be determined by the client's current clinical records;

(5) calculate a client's medication doses for administration except that the permit holder may measure a prescribed amount of a liquid medication to be administered or break a scored tablet for administration to a client provided the RN has calculated the dosage. The client's medication administration record must accurately document how the tablet must be altered prior to administration;

(6) crush medication unless authorization has been given in the original physician's order or obtained from the agency's RN. The authorization to crush the specific medication must be documented on the client's medication administration record;

(7) administer medications or feedings by way of a tube inserted in a cavity of the body except as specified in §97.21(b)(6) of this title;

(8) receive or assume responsibility for reducing to writing a verbal or telephone order from a physician, dentist, or podiatrist;

(9) order a client's medication from a pharmacy;

(10) apply topical medications that involve the treatment of skin that is broken or blistered when a specified aseptic technique is ordered by the attending physician;

(11) administer medications from any container other than the manufacturer's original container or the original container in which the medication had been dispensed and labeled by the pharmacy with all information mandated by the Texas State Board of Pharmacy;

(12) steal, divert, or otherwise misuse medications;

(13) violate any provision of the statute or of this chapter;

(14) fraudulently procure or attempt to procure a permit;

(15) neglect to administer appropriate medications, as prescribed, in a responsible manner; or

(16) administer medications if the person is unable to do so with reasonable skill and safety to clients by reasons of drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material.

(e) Applicant qualifications. Each applicant for a permit issued under the statute must complete a training program. Prior to enrollment in a training program and prior to application for a permit under this section, all persons:

(1) must be able to read, write, speak, and understand English;

(2) must be at least 18 years of age;

(3) must be free of communicable diseases and in suitable physical and emotional health to safely administer medications;

(4) must be a graduate of a high school or have an equivalent diploma or higher degree; and

(5) must have satisfactorily completed a home health aide training and competency evaluation program or a competency evaluation program under Chapter §97.61 (relating Home Health Aides).

(f) Nursing graduates. A person who is a graduate of an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirements for issuance of a permit under this section; if the date of graduation from the nursing school was no earlier than January 1 of the year immediately preceding the year of application for a permit under this section.

(1) The applicant must submit an official application form to DHS. The applicant must meet the requirements of subsection (e)(1)-(4) of this section.

(2) The application must be accompanied by the permit application fee.

(3) The applicant must include an official transcript documenting graduation from an accredited school of nursing.

(4) DHS acknowledges receipt of the application by forwarding to the applicant a copy of this chapter and DHS's open book examination.

(5) The applicant must complete the open book examination and return it within 45 calendar days to DHS.

(6) The applicant must complete DHS's written examination. DHS determines the site of the examination. Any applicant failing to schedule and take the examination within 45 calendar days of the examination notice may have his or her application voided.

(7) An open book or written examination may not be retaken if the applicant fails.

(8) Upon successful completion of the two examinations, DHS evaluates all application documents submitted by the applicant.

(9) DHS notifies the applicant in writing of the examination results.

(g) Nursing students. A person who is attending or has attended an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirements for issuance of a permit under this section if the person:

(1) attended the nursing school no earlier than January 1 of the year immediately preceding the year of application for a permit under this section;

(2) successfully completed courses at the nursing school that cover DHS's curriculum for a home health medication aide training program;

(3) submits a statement that is signed by the nursing school's administrator or other authorized individual and certifies that the person completed the courses specified under paragraph (2) of



this subsection. The administrator is responsible for determining that the courses to which he or she certifies cover DHS's curriculum. The statement must be submitted with the person's application for a permit under this section; and

(4) complies with subsection (f)(1)-(2) and (4)-(9) of this section.

(h) Reciprocity. A person who holds a valid license, registration, certificate, or permit as a home health medication aide issued by another state whose minimum standards or requirements are substantially equivalent to or exceed the requirements of this section in effect at the time of application may request a waiver of the training program requirement.

(1) The graduate must submit an official application form to DHS. The applicant must meet the requirements of subsection (e)(1)-(4) of this section.

(2) The application must be accompanied by the permit application fee.

(3) The application must include a current copy of the rules of the other state governing its licensing and regulation of home health medication aides, a copy of the legal authority (law, act, code, section, or otherwise) for the state's licensing program, and a certified copy of the license or certificate by which the reciprocal permit is requested.

(4) DHS acknowledges receipt of the application by forwarding to the applicant a copy of this chapter and of DHS's open book examination.

(5) DHS may contact the issuing agency to verify the applicant's status with the agency.

(6) The applicant must complete DHS's open book examination and return it within 45 calendar days to DHS.

(7) The applicant must complete DHS's written examination. The site of the examination shall be determined by DHS. Any applicant failing to schedule and take the examination within 45 calendar days of the examination notice may have his or her application voided.

(8) An open book or written examination may not be retaken if the applicant fails.

(9) Upon successful completion of the two examinations, DHS evaluates all application documents submitted by the applicant.

(10) DHS notifies the applicant in writing of the examination results.

(i) Application by trainees. An applicant under subsection (e) of this section must submit to DHS, no later than 30 calendar days after enrollment in a training program, all required information and documentation on official DHS forms.

(1) DHS does not consider an application as officially submitted until the applicant submits the nonrefundable combined permit application and examination fee payable to the Texas Department of Human Services. The fee required by subsection (n) of this section must accompany the application form.

(2) The general statement enrollment form must contain the following application material that is required of all applicants:

(A) specific information regarding personal data, certain misdemeanor and felony convictions, work experience, education, and training;

(B) a statement that all of the requirements in subsection (e) of this section were met prior to the start of the program;

(C) a statement that the applicant understands that the application fee submitted in the permit process is nonrefundable;

(D) a statement that the applicant understands that materials submitted in the application process are not returnable;

(E) a statement that the applicant understands that it is a misdemeanor to falsify any information submitted to DHS; and

(F) the applicant's signature that has been dated and notarized.

(3) The applicant must submit a certified copy or a photocopy that has been notarized as a true and exact copy of an unaltered original of the applicant's high school graduation diploma or transcript or an equivalent GED diploma or higher degree unless the applicant is applying under subsection (f) of this section.

(4) DHS sends a notice listing the additional materials required to an applicant who does not complete the application in a timely manner. An application not completed within 30 calendar days after the date of the notice will be void.

(5) Notice of application acceptance, disapproval, or deficiency must be in accordance with subsection (q) of this section.

(j) Examination. DHS gives a written examination to each applicant at a site determined DHS.

(1) No final examination may be given to an applicant until the applicant has met the requirements of subsections (e) and (i) of this section, and if applicable, subsections (f), (g), or (h) of this section.

(2) The applicant must be tested on the subjects taught in the training program curricula and clinical experience. The examination covers an applicant's knowledge of accurate and safe drug therapy to an agency's clients.

(3) A training program must notify DHS at least four weeks prior to its requested examination date.

(4) DHS determines the passing grade on the examination.

(5) DHS notifies in writing an applicant who fails the examination.

(A) An applicant under subsection (e) of this section may be given a subsequent examination, without additional payment of a fee, upon the applicant's written request to DHS.

(B) A subsequent examination must be completed within 45 calendar days from the date of the failure notification. DHS determines the site of the examination.

(C) Another examination will not be permitted if the student fails the subsequent examination unless the student enrolls and successfully completes another training program.

(6) An applicant who is unable to attend the applicant's scheduled examination due to unforeseen circumstances may be given an examination at another time without payment of an additional fee upon the applicant's written request to DHS. The examination must be completed within 45 calendar days from the date of the originally scheduled examination. DHS determines the site for the rescheduled examination.

(7) An applicant whose application for a permit will be disapproved under subsection (k) of this section is ineligible to take the examination.

(k) Determination of eligibility. DHS receives and approves or disapproves all applications. Notices of application approval, disapproval, or deficiency must be in accordance with subsection (q) of this section.

(1) An application for a permit is disapproved if the person has:

(A) not met the requirements of subsections (e)-(i) of this section, if applicable;

(B) failed to pass the examination prescribed by DHS as set out in subsection (j) of this section;

(C) failed to or refused to properly complete or submit any application form, endorsement, or fee, or deliberately presented false information on any form or document required by DHS;

(D) violated or conspired to violate the statute or any provision of this chapter; or

(E) been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a permit holder as set out in subsection (r) of this section.

(2) If, after review, DHS determines that the application should not be approved, the director gives the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing in accordance with subsection (r) of this section.

(l) Permit renewal. Home health medication aides must comply with the following permit renewal requirements.

(1) When issued, a permit is valid for one year.

(2) A permit holder must renew the permit annually.

(3) The renewal date of a permit is the last day of the current permit.

(4) Each permit holder is responsible for renewing the permit before the expiration date. Failure to receive notification from DHS before the expiration date of the permit does not excuse failure to file for timely renewal.

(5) A permit holder must complete a seven clock-hour continuing education program approved by DHS prior to expiration of the permit in order to renew the permit. Continuing education hours are required for the first renewal.

(6) DHS denies renewal of the permit of a permit holder who is in violation of the statute or this chapter at the time of application for renewal.

(7) Home health medication aide permit renewal procedures are as follows.

(A) At least 30 calendar days before the expiration date of a permit, DHS sends to the permit holder at the address in DHS's records notice of the expiration date of the permit and the amount of the renewal fee due and a renewal form that the permit holder must complete and return with the required renewal fee.

(B) The renewal form must include the preferred mailing address of the permit holder and information on certain misdemeanor and felony convictions. It must be signed by the permit holder.

(C) DHS issues a renewal permit to a permit holder who has met all requirements for renewal.

(D) DHS will not renew a permit if the permit holder does not complete the required seven-hour continuing education requirement. Successful completion is determined by the student's instructor. An individual who does not meet the continuing education

requirement must complete a new program, application, and examination in accordance with the requirements of this section.

(E) DHS will not renew a permit if renewal is prohibited by the Texas Education Code, §57.491, concerning defaults on guaranteed student loans.

(F) If a permit holder fails to timely renew his or her permit because the permit holder is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the permit holder may renew the permit pursuant to this subsection.

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

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

(iii) A copy of the official orders or other official military documentation showing that the permit holder is or was on active military duty serving outside the State of Texas should be filed with DHS along with the renewal form.

(iv) A copy of the power of attorney from the permit holder must be filed with DHS along with the renewal form if the individual having the power of attorney executes any of the documents required in this subsection.

(v) A permit holder renewing under this subsection must pay the applicable renewal fee.

(vi) A permit holder is not authorized to act as a home health medication aide after the expiration of the permit unless and until the permit holder actually renews the permit.

(vii) A permit holder renewing under this subsection is not required to submit any continuing education hours.

(8) A person whose permit has expired for not more than two years may renew the permit by submitting to DHS:

(A) the permit renewal form;

(B) all accrued renewal fees;

(C) proof of having earned, during the expired period, seven hours in an approved continuing education program for each year or part of a year that the permit has been expired; and

(D) proof of having earned, prior to expiration of the permit, seven hours in an approved continuing education program as required in paragraph (5) of this subsection.

(9) A permit that is not renewed during the two years after expiration may not be renewed.

(10) Notices of permit renewal approval, disapproval, or deficiency must be in accordance with subsection (q) of this section (relating to Processing Procedures).

(m) Changes.

(1) Notification of changes shall be reported to DHS within 30 calendar days after a change of address or name.

(2) DHS replaces a lost, damaged, or destroyed permit upon receipt of a completed duplicate permit request form and permit replacement fee.

(n) Fees.

- (1) The schedule of fees is:
- (A) combined permit application and examination fee--\$25;
  - (B) renewal fee--\$15; and
  - (C) permit replacement fee--\$5.00.

(2) All fees are nonrefundable.

(3) An applicant whose personal check for the combined permit application and examination fee is not honored by the financial institution may reinstate the application by remitting to DHS a money order or cashier's check for the amount within 30 calendar days of the date of the applicant's receipt of DHS's notice. An application will be considered incomplete until the fee has been received and cleared through the appropriate financial institution.

(4) A permit holder whose personal check for the renewal fee is not honored by the financial institution must remit to DHS a money order or cashier's check within 30 calendar days of the date of the licensee's receipt of DHS's notice. If proper payment is not received, the permit will not be renewed. If a renewal card has already been issued, it will be void.

(o) Training program requirements.

(1) An educational institution accredited by the Texas Education Agency or Texas Higher Education Coordinating Board that desires to offer a training program must file an application for approval on an official form. Programs sponsored by state agencies for the training and preparation of its own employees are exempt from the accreditation requirement. An approved institution may offer the training program and a continuing education program.

(A) All signatures on official forms and supporting documentation must be originals.

(B) The application includes:

- (i) the anticipated dates of the program;
- (ii) the location(s) of the classroom course(s);
- (iii) the name of the coordinator of the program;
- (iv) a list of instructors and any other person responsible for the conduct of the program. The list must include addresses and telephone numbers for each instructor; and
- (v) an outline of the program content and curriculum if the curriculum covers more than DHS's established curricula.

(C) DHS may conduct an inspection of the classroom site.

(D) Notice of approval or proposed disapproval of the application will be given to the program within 30 calendar days of the receipt of a complete application. If the application is proposed to be disapproved due to noncompliance with the requirements of the statute or of this chapter, the reasons for disapproval must be given in the notice.

(E) An applicant may request a hearing on a proposed disapproval in writing within ten calendar days of receipt of the notice of the proposed disapproval. The hearing must be in accordance with subsection (r) of this section and the Administrative Procedure Act, Texas Government Code, Chapter 2001. If no request is made, the applicant is deemed to have waived the opportunity for a hearing, and the proposed action may be taken.

(2) The program includes, but is not limited to, the following instruction and training:

(A) procedures for preparation and administration of medications;

(B) responsibility, control, accountability, storage, and safeguarding of medications;

(C) use of reference material;

(D) documentation of medications in the client's clinical records, including PRN medications;

(E) minimum licensing standards for agencies covering pharmaceutical service, nursing service, and clinical records;

(F) federal and state certification standards for participation under the Social Security Act, Title XVIII (Medicare), pertaining to pharmaceutical service, nursing service, and clinical records;

(G) lines of authority in the agency, including agency personnel who are immediate supervisors;

(H) responsibilities and liabilities associated with the administration and safeguarding of medications;

(I) allowable and prohibited practices of permit holders in the administration of medication;

(J) drug reactions and side effects of medications commonly administered to home health clients;

(K) instruction on universal precautions; and

(L) the provisions of this chapter.

(3) The program consists of 140 hours: 100 hours of classroom instruction and training, 20 hours of return skills demonstration laboratory, ten hours of clinical experience including clinical observation and skills demonstration under the supervision of a RN in an agency, and ten more hours in the return skills demonstration laboratory in the preceding order. A classroom or laboratory hour constitutes 50 clock-minutes of actual classroom or laboratory time.

(A) Class time will not exceed four hours in a 24-hour period.

(B) The completion date of the program must be a minimum of 60 calendar days and a maximum of 180 calendar days from the starting date of the program.

(C) Each program must follow the curricula established by DHS.

(4) At least seven calendar days prior to the commencement of each program, the coordinator must notify DHS in writing of the starting date, the ending date, the daily hours of the program, and the projected number of students.

(5) A change in any information presented by the program in an approved application including, but not limited to, location, instructorship, and content must be approved by DHS prior to the program's effective date of the change.

(6) The program instructors of the classroom hours must be an RN and registered pharmacist.

(A) The nurse instructor must have a minimum of two years of full-time experience in caring for the elderly, chronically ill, or pediatric clients or been employed full time for a minimum of two years as an RN with a home and community support services agency. An instructor in a school of nursing may request a waiver of the experience requirement.

(B) The pharmacist instructor must have a minimum of one year of experience and be currently employed as a practicing pharmacist.

(7) The coordinator must provide clearly defined and written policies regarding each student's clinical experience to the student, the administrator, and the director of nursing of the agency used for the clinical experience.

(A) The clinical experience must be counted only when the student is observing or involved in functions involving medication administration and under the direct, contact supervision of an RN.

(B) The coordinator is responsible for final evaluation of the student's clinical experience.

(8) Upon successful completion of the program, each program issues to each student a certificate of completion, including the program's name, the student's name, the date of completion, and the signature of the program coordinator.

(9) Each program must inform DHS of the satisfactory completion for each student within 15 calendar days of completion of the course. The official department class roster form must be used and signed by the coordinator.

(p) Continuing education. The continuing education training program is as follows.

(1) The program must consist of at least seven clock hours of classroom instruction.

(2) The instructor must meet the requirements in subsection (o)(6) of this section.

(3) Each program must follow the curricula established by DHS.

(4) Each program must inform DHS of the name of each permit holder who completes the course within 15 calendar days. The official department class roster form must be used and signed by the coordinator.

(q) Processing procedures. DHS complies with the following procedures in processing applications of home health medication aide permits and renewal of permits.

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

(A) letter of acceptance of an application for a home health medication aide permit--14 working days; and

(B) letter of application or renewal deficiency--14 working days.

(2) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial include notification of proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. An application is not considered complete until the required documentation and fee have been submitted by the applicant. The time periods are as follows:

(A) the issuance of an initial permit--90 calendar days;

(B) the letter of denial for a permit--90 calendar days; and

(C) the issuance of a renewal permit--20 calendar days.

(3) In the event an application is not processed in the time period stated in paragraphs (1) and (2) of this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Request for reimbursement is made to the director of the Home Health Medication Aide Permit Program. If the director of the Home Health Medication Aide Permit Program does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(4) Good cause for exceeding the time period is considered to exist if the number of applications for initial home health medication aide permits and renewal permits exceeds by 15% or more the number of applications processed in the same calendar quarter of the preceding year; another public or private entity relied upon by DHS in the application process caused the delay; or any other condition exists giving DHS good cause for exceeding the time period.

(5) If a request for reimbursement under paragraph (3) of this subsection is denied by the director of the Home Health Medication Aide Permit Program, the applicant may appeal to the commissioner of DHS for a timely resolution of any dispute arising from a violation of the time periods. The applicant must give written notice to the commissioner at the address of DHS that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The director of the Home Health Medication Aide Permit Program must submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. The commissioner provides written notice of the commissioner's decision to the applicant and the director of the Home Health Medication Aide Permit Program. An appeal is decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process are made.

(6) The time periods for contested cases related to the denial of initial home health medication aide permits or renewal permits are not included within the time periods stated in this subsection. The time period for conducting a contested case hearing runs from the date DHS receives a written request for a hearing and ends when the decision of DHS is final and appealable. A hearing may be completed within one to four months but may extend for a longer period of time depending on the particular circumstances of the hearing.

(r) Denial, suspension, or revocation.

(1) DHS may deny, suspend, emergency suspend, or revoke a permit or program approval if the permit holder or program fails to comply with any provision of the statute or this chapter.

(2) DHS may also take action under paragraph (1) of this subsection for fraud, misrepresentation, or concealment of material fact on any documents required to be submitted to DHS or required to be maintained or complied by the permit holder or program pursuant to this chapter.

(3) DHS may suspend or revoke an existing permit or program approval or disqualify a person from receiving a permit or program approval because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a home health medication aide or training program. In determining whether a conviction directly relates, DHS must consider the elements set forth in §97.52(c) of this title (relating to Enforcement Action).

(4) If DHS proposes to deny, suspend, or revoke a home health medication aide permit or to rescind a home health medication aide program approval, the director notifies the permit holder or home health medication aide program by certified mail, return receipt requested, of the reasons for the proposed action and offer the permit holder or home health medication aide program an opportunity for a hearing.

(A) The permit holder or home health medication aide program must request a hearing within 15 calendar days of receipt of the notice. Receipt of notice is presumed to occur on the tenth calendar day after the notice is mailed to the last address known to DHS unless another date is reflected on a United States Postal Service return receipt.

(B) The request must be in writing and submitted to the Texas Department of Human Services, Medication Aide Program, Mail Code 979, P.O. Box 149030, Austin, Texas 78714-9030.

(C) If the permit holder or home health medication aide program does not request a hearing, in writing, within 15 calendar days of receipt of the notice, the permit holder or home health medication aide program is deemed to have waived the opportunity for a hearing and the proposed action is taken.

(5) DHS may suspend a permit to be effective immediately when the health and safety of persons are threatened. DHS notifies the permit holder of the emergency action by certified mail, return receipt requested, or personal delivery of the notice and of the effective date of the suspension and the opportunity for the permit holder to request a hearing.

(6) All hearings must be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and DHS's formal hearing procedures in Chapter 79 of this title (relating to Legal Services).

(7) If the permit holder or program fails to appear or be represented at the scheduled hearing, the permit holder or program has waived the right to a hearing and the proposed action is taken.

(8) If DHS suspends a home health medication aide permit, the suspension remains in effect until DHS determines that the reason for suspension no longer exists. DHS investigates prior to making a determination.

(A) During the time of suspension, the suspended permit holder must return his or her permit to DHS.

(B) If a suspension overlaps a renewal date, the suspended permit holder may comply with the renewal procedures in this chapter; however, DHS may not renew the permit until DHS determines that the reason for suspension no longer exists.

(9) If DHS revokes or does not renew a permit, a person may reapply for a permit by complying with the requirements and procedures in this chapter at the time of reapplication.

(A) DHS may refuse to issue a permit if the reason for revocation or nonrenewal continues to exist.

(B) Upon revocation or nonrenewal, a permit holder must return the license or permit to DHS.

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 May 18, 2001.

TRD-200102790

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Effective date: June 15, 2001

Proposal publication date: March 30, 2001

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



# —REVIEW OF AGENCY RULES—

This Section contains notices of state agency rules review as directed by Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

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## Adopted Rule Review

Board of Tax Professional Examiners

### Title 22, Part 27

The Board of Tax Professional Examiners (BTPE) adopts without changes these rules contained in 22 TAC Chapter 623.

§623.1. General Registration.

§623.2. Eligibility To Register.

§623.3. Persons Required To Register.

§623.4. Persons Permitted To Register.

§623.5. Use of Titles.

§623.6. Classification of Registration.

§623.7. Field of Work.

§623.9. Qualifications for Certifications as Registered Texas Assessor/Collector (RTA).

§623.10. Qualifications for Certification as Registered Texas Collector (RTC).

§623.11. Reclassification.

§623.13. Base Date Adjustment in Classification.

§623.15. Adjustment of Time Requirement.

§623.16. Notification Responsibilities of Registrant.

Pursuant to the Board's Rule Review Plan required by and adopted under the Appropriations Act of 1997, House Bill 1, Article IX, §167.

The proposed notice of review was published in the April 9, 1999, issue of the *Texas Register* (24 TexReg 2958).

No comments were received related to the rule review requirement as to whether the reason for adopting the rules continue to exist. The Board finds that the reason for readopting these rules continues to exist.

TRD-200102754

David E. Montoya

Executive Director

Board of Tax Professional Examiners

Filed: May 16, 2001



The Board of Tax Professional Examiners (BTPE) adopts without changes 22 TAC Chapter 630 Effective Dates and Chapter 631 Administrative Procedures. Pursuant to the Board's Rule Review Plan required by and adopted under the Appropriations Act of 1997, House Bill 1, Article IX, §167. The proposed notice of review was published in the July 28, 2000 issue of the *Texas Register*.

No comments were received related to the rule review requirement as to whether the reason for adopting the rules continue to exist. The Board finds that the reason for readopting these rules continues to exist.

TRD-200102763

David E. Montoya

Executive Director

Board of Tax Professional Examiners

Filed: May 17, 2001



# TABLES & GRAPHICS

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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.

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Texas Department of Licensing and Regulation  
 Figure: 16 TAC §68.80(b)

<u>Construction Cost</u>	<u>Review Fee</u>	<u>Late Submittal Fee</u>	<u>Inspection Fee</u>
\$ 50,000 - \$ 200,000	\$ 250	\$ 350	\$ 350
200,001 - 500,000	315	480	375
500,001 - 1,000,000	380	610	400
1,000,001 - 5,000,000	445	740	445
5,000,001 - 10,000,000	575	1,000	575
10,000,001 - 15,000,000	620	1,090	620
15,000,001 - 25,000,000	785	1,420	785
25,000,001 - 50,000,000	955	1,760	955
50,000,001 - 75,000,000	\$1,175	\$2,200	\$1,175
>75,000,000	Contact TDLR for negotiated fee		

- Inspection of State Leases,  
(no construction involved) - \$225 per lease
- Preliminary Review Fee - \$145 each
- Special Inspection Fee - \$215 per hour, two hour minimum
- Variance Application Fee - \$175 each
- Variance Appeal - \$200
- Project Filing Fee - \$100 each
- Project Information Request - \$ 35 each
- Inspection Filing Fee - \$100 each
- Replacement Certificates - \$ 25 each

Figure: 25 TAC §157.34(b)(4)(B)

<b>CONTENT AREAS</b>	<b>ECA</b>	<b>EMT-B</b>	<b>EMT-I</b>	<b>EMT-P</b>
PREPARATORY	3	6	9	12
AIRWAY MGMT / VENTILATION	3	6	9	12
PATIENT ASSESSMENT	2	4	6	8
TRAUMA	3	6	9	12
MEDICAL	9	18	27	36
SPECIAL CONSIDERATIONS	3	6	9	12
CLINICALLY RELATED OPERATIONS	1	2	3	4
TOTAL MINIMUM CONTACT HOURS	24	48	72	96

Figure: 25 TAC, §157.38(c)

CONTENT AREAS	ECA	EMT-B	EMT-I	EMT-P
PREPARATORY	3	6	9	12
AIRWAY MANAGEMENT/VENTILATION	3	6	9	12
PATIENT ASSESSMENT	2	4	6	8
TRAUMA	3	6	9	12
MEDICAL	9	18	27	36
SPECIAL CONSIDERATIONS	3	6	9	12
CLINICALLY RELATED OPERATIONS	1	2	3	4
MINIMUM UNITS IN CONTENT AREAS	24	48	72	96
ADDITIONAL UNITS IN ANY APPROVED CATEGORY	12	24	36	48
TOTAL REQUIRED FOR RECERTIFICATION ELIGIBILITY	36	72	108	144

Figure 1: 40 TAC 183.117

The following table shows passing scores for the commission examinations.

**PASSING SCORES - SIGN LANGUAGE**

	Level I	Level II*	Level III	Level IV	Level V
Written Test	70%	70%	75%	80%	84%
(1) Expressive Interpreting	(A) Passed or Failed	(A) 70%	(A) 75%	(A) & (B) 80% average	(A) & (B) 90% average
(2) Expressive Transliterating	(B) Passed or Failed	(B) 70%	(B) 75%	(C) & (D) 80% average	(C) & (D) 90% average
(3) Interactive Interpreting Expressive Receptive	(C) Passed or Failed (C) Passed or Failed	N/A	N/A	N/A	N/A
(4) Receptive Transliterating Interpreting	(D) 70%	(C) (D)	(C) (D)	(E), (F) & (G) 80% average	(E), (F) & (G) 90% average

\* (To receive a Level II certificate the applicant must pass all the interpreting or transliterating section by a score of 70%.)

# IN ADDITION

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The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

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## **Texas Agriculture Resources Protection Authority**

### Notice of Taking of Public Comment on Pesticide Regulation

In accordance with the Texas Agriculture Code, §76.009(i), and policies adopted by the Agriculture Resources Protection Authority (the Authority), notice is hereby provided that the Authority will take public comment on the status of the state's pesticide regulation efforts at its next regularly scheduled meeting. The meeting will be held on Monday, June 4, 2001, beginning at 10:00 a.m. at the offices of the Texas Department of Agriculture located at 1700 North Congress, Room 911, Austin, Texas. For more information, please contact Donnie Dippel at (512) 463-1093.

TRD-200102862

Dolores Alvarado Hibbs

Deputy General Counsel, Texas Department of Agriculture  
Texas Agriculture Resources Protection Authority

Filed: May 23, 2001

## **Office of Consumer Credit Commissioner**

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in 303.003, 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 05/28/01 - 06/03/01 is 18% for Consumer <sup>1</sup>/Agricultural/Commercial <sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 05/28/01 - 06/03/01 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 06/01/01 - 06/30/01 is 10% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 06/01/01 - 06/30/01 is 10% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-200102848

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: May 22, 2001

## **Texas Council on Workforce and Economic Competitiveness**

### 2001 Texas Senior Employment Services Coordination Plan

The Texas Council on Workforce and Economic Competitiveness (Council) announces the availability of the draft "2001 Texas Senior Employment Services Coordination Plan" (SESCP).

Section 503 of the amended and re-authorized Older Americans Act of 2000 requires that the Governor of each State must complete an annual state plan for Senior Community Service Employment Programs. The Senior Employment Services Coordination Plan is intended to improve coordination among organizations that can be engaged in older worker activities and to enhance employment services for older workers. It should serve as guidance for program operators as they prepare plans for operations in Texas.

A copy of the draft SESCO may be obtained by calling Council offices at (512) 936-8100. A copy of the draft SESCO may also be viewed at the Council offices located at 1100 San Jacinto Street, Suite 100, Austin, Texas.

Comments on the draft SESCO shall be submitted to Ms. Cheryl Fuller, at the Texas Council on Workforce and Economic Competitiveness, P.O. Box 2241, Austin, Texas 78768 or by email to [cfuller@governor.state.tx.us](mailto:cfuller@governor.state.tx.us). Written comments should be received no later than June 30, 2001.

TRD-200102867

Claudia Nadig

Deputy General Counsel for Ethics

Texas Council on Workforce and Economic Competitiveness

Filed: May 23, 2001

## **Court Reporters Certification Board**

## Certification of Court Reporters

Following the examination of applicants on April 20, 2001, the Texas Court Reporters Certification Board certified to the Supreme Court of Texas the following individuals who are qualified in the method indicated to practice shorthand reporting pursuant to Chapter 52 of the Texas Government Code, V.T.C.A.:

MACHINE SHORTHAND: Gina Gruben-Guymon, OK; Gloria Casiano-Corpus Christi, TX; Aisha White-Austin, TX; Sherry Folchert- Ft. Worth, TX; Delmer Simpson-Anthony, NM; Carl Mattox-Houston, TX; Melissa Cook-Dallas, TX; Cara Mcleod-Arlington TX; Ana Torres-Forney, TX; Marcie Powell-Tyler, TX; Rita Frangullie-Alvin, TX; Cresta Lefevre-Daingerfield, TX; Andrea Green-Carrollton, TX; Elaine Cropper-Phoenix, AZ

TRD-200102764

Sheryl Jones

Director of Administration

Court Reporters Certification Board

Filed: May 17, 2001

## Texas Department of Criminal Justice

### Notice to Bidders

The Texas Department of Criminal Justice invites bids for the construction of a Training Facility and Staff Dormitory at Plainview, Texas. The project consists of new construction of 10,500 sq. ft. Training Facility and 11,725 sq. ft. Dormitory Building at the existing Formby Unit, 5000 Hwy 70 East Plainview, Texas 79072. The work includes civil, mechanical, electrical, plumbing, structural, concrete, as further shown in the Contract Documents prepared by: Parkhill, Smith & Cooper, Inc.

The successful bidder will be required to meet the following requirements and submit evidence within five days after receiving notice of intent to award from the Owner:

A. Contractor must have a minimum of five consecutive years of experience as a General Contractor and provide references for at least three projects 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 Bond in the amount of 5.0% 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 \$ 50 (non-refundable) per set, inclusive of mailing/delivery costs, or they may be viewed at various plan rooms. Payment checks for documents should be made payable to the Architect/Engineer : Parkhill, Smith, & Cooper, 4222 85th, Lubbock, Texas 79423, Attn: Bart Tonroy; Phone: 806-473-3606; Fax: 806-473-3500.

A Pre-Bid conference will be held at 10:00 am on June 7, 2001, at the Formby Unit, Plainview Texas, followed by a site-visit. ATTENDANCE IS MANDATORY.

Bids will be publicly opened and read at 2 pm on June 26, 2001, in the Conference Room at the Purchasing and Leases/ Contracts Office located in the (Westhill Mall Complex) 2 Financial Plaza Suite 525, Huntsville, Texas 77340.

The Texas Department of Criminal Justice requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUB's) in at least 26.1% of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-200102855

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Filed: May 23, 2001

### Request for Qualifications

696-FD-1-Q035

The Texas Department of Criminal Justice (TDCJ) announces that it requires Professional Engineering (P.E.) services of qualified facility commissioning firm(s) for new institutional construction and renovation projects, as well as recommissioning for existing facilities, pursuant to the provisions of the Texas Government Code, Title 10, Chapter 2254, Subchapter A, §2254.004. Qualifications of selected firms will be valid for a two-year period starting September 1, 2001, with two one year options. One or more firms will be selected as qualified to perform Commissioning Authority (CxA) services for projects of various sizes throughout the State. CxA services may be required for any mechanical, electrical, plumbing, or electronic project where commissioning processes would be deemed beneficial.

For further information please contact Dana L. Collins, Two Financial Plaza, Suite 525, Huntsville, Texas 77340; Phone: (936) 437-7141; Fax: (936) 437-7009.

Opening date is 4 p.m. on June 14, 2001.

TRD-200102788

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Filed: May 18, 2001

## General Services Commission

### Notice to Bidders for Construction Project 01-003-405

#### NOTICE TO BIDDERS - NTB 01-003-405 - Upgrade to Department of Public Safety - San Antonio

SEALED BIDS WILL BE RECEIVED BY THE GENERAL SERVICES COMMISSION (GSC), FACILITIES CONSTRUCTION & SPACE MANAGEMENT DIVISION (FCSM) FOR CONSTRUCTION OF PROJECT NO. 01-003-405, Upgrade to Department of Public Safety - San Antonio, 6502 S. New Braunfels Ave., San Antonio, Texas. Sealed bids will be received until 3:00 PM on June 20, 2001. HUB Subcontracting Plans are due by 3:00 PM on June 21, 2001. At that time, HUB Subcontracting Plans will be reviewed and, if found to be complete and responsive, the Bid will be opened and read.

The approximate total cost for contract: 01-003-405 - Upgrade to Department of Public Safety - San Antonio is approximately \$400,000.00

**Bid & HUB Subcontracting Plan Receipt Location:** General Services Commission/FCSM will receive bids at the main reception desk at Room 180, Bid Tabulation or, if mailed or shipped, Room 176, Mail Room, Central Services Building, 1711 San Jacinto, Austin, Texas 78701. **If items are to be mailed or shipped, please note on the**

**envelope(s) what it is enclosed, the bid, the HUB plan, or both. Delivery of the bid and the HUB plan at the date and time specified above is the sole responsibility of the bidder.**

**Contractor Qualifications:** Contractors should submit information to FCSM on GSC's Contractor's Qualifications Form, which can be obtained from FCSM by calling (512) 463-8247. It should be submitted as soon as possible, but no later than 5:00 p.m. on June 13, 2001 to document compliance with contractor's qualification requirements for each project. Information is to be used in determining if a contractor is qualified to receive a contract award for the project. A favorable review by FCSM of contractor qualification statements **is required prior to opening bid proposals.**

**Good Faith Effort for use of Historically Underutilized Businesses (HUB): GENERAL SERVICES COMMISSION HAS DETERMINED THAT THE WORK TO BE PERFORMED UNDER THIS CONTRACT INCLUDES SUBCONTRACTING OPPORTUNITIES. THEREFORE, A HUB SUBCONTRACTING PLAN WILL BE REQUIRED. THE COMPLETED HUB SUBCONTRACTING PLAN MUST BE SUBMITTED AS PART OF THE CONTRACTOR'S PROPOSAL, OR THE PROPOSAL WILL BE REJECTED AS NON-RESPONSIVE.** Prime Contractors are required to perform a Good Faith Effort in providing HUB firms with an opportunity to participate in the bid and construction process. General Services Commission's goal for HUB participation in Building Construction projects is 26.1% of the total contract. Mrs. Bettie Simpson, telephone (512) 463-3232, with General Services Commission can assist in this process by providing lists of approved HUB firms and other sources for identifying HUB firms in the area. A listing of HUB firms is available on the web at [www.gsc.state.tx.us](http://www.gsc.state.tx.us) and other web sites, see the Project Manual.

**Bid Documents:** Plans and specifications are available for prime contractors from Joshua Engineering Group, Inc., 2161 N.W. Military Hwy., Suite 103, San Antonio, Texas, Phone - (210) 340-2322, Fax - (210) 340-1268, upon delivery of a refundable deposit of \$100.00 per set. Bid documents will be available for review at the FCSM office, 1711 San Jacinto, Suite 202, Austin, Texas 78701, the architect's office and the Plan Rooms of Associated General Contractors, F. W. Dodge Corporation, the Builder's Exchange of Texas and the Associated Builder's and Contractors in San Antonio. **Pre-Bid Conference:** There will be MANDATORY Pre-Bid Conference on June 13, 2001, 10:00 AM, at the Conference Room of the DPS San Antonio District Office, 6502 South New Braunfels Ave., San Antonio, Texas.

BIDS ARE TO BE MADE IN ACCORDANCE WITH STATE PROCEDURES.

TO BE RUN IN: San Antonio Express-News, 1 TIME: May 20, 2001

TRD-200102786

Cynthia J. Hill

Acting General Counsel

General Services Commission

Filed: May 17, 2001



Notice to Bidders for Construction Project 96-002R-303

**NOTICE TO BIDDERS - NTB 96-002R-303 - Package 5, Sitework, Lighting and Irrigation - Texas Department of Health Public Health Laboratory, Austin**

SEALED BIDS WILL BE RECEIVED BY THE GENERAL SERVICES COMMISSION (GSC), FACILITIES CONSTRUCTION & SPACE MANAGEMENT DIVISION (FCSM) FOR CONSTRUCTION OF PROJECT NO. 96-002R-303, Texas Department of Health

Public Health Laboratory, Package 5, Sitework and Irrigation, 5100 Sunshine Street, Austin, Texas. **Sealed bids will be received until 2 p.m., Tuesday, June 19, 2001. HUB Subcontracting Plans are due by 2 p.m., Friday, June 20, 2001.** At that time, HUB Subcontracting Plans will be reviewed and, if found to be complete and responsive, the Bid will be opened and read.

The approximate cost for contract: 96-002R-303, Texas Department of Health Public Health Laboratory, Package 5, Sitework, Lighting and Irrigation is approximately \$250,000.00.

**Bid & HUB Subcontracting Plan Receipt Location:** General Services Commission/FCSM will receive bids and HUB Subcontracting Plans at Gilbane Building Co. Project Trailer, 5100 Sunshine, Austin, Texas 78756.

**Contractor Qualifications:** Contractors should submit information to FCSM on GSC's Contractor's Qualifications Form, which can be obtained from FCSM by calling (512) 463-3417. This form should be submitted as soon as possible, but no later than 5 p.m. on June 12, 2001 to document compliance with contractor's qualification requirements for each project. Information is to be used in determining if a contractor is qualified to receive a contract award for the project. A favorable review by FCSM of contractor qualification statements is required prior to opening bid proposals.

**Good Faith Effort for use of Historically Underutilized Businesses (HUB): GENERAL SERVICES COMMISSION HAS DETERMINED THAT THE WORK TO BE PERFORMED UNDER THIS CONTRACT INCLUDES SUBCONTRACTING OPPORTUNITIES. THEREFORE, A HUB SUBCONTRACTING PLAN WILL BE REQUIRED. THE COMPLETED HUB SUBCONTRACTING PLAN MUST BE SUBMITTED AS PART OF THE CONTRACTOR'S PROPOSAL, OR THE PROPOSAL WILL BE REJECTED AS NON-RESPONSIVE.** Prime Contractors are required to perform a Good Faith Effort in providing HUB firms with an opportunity to participate in the bid and construction process. General Services Commission's goal for HUB participation in Building Construction projects is 26.1% of the total contract. Mrs. Bettie Simpson, telephone (512) 463-3232, with General Services Commission can assist in this process by providing lists of approved HUB firms and other sources for identifying HUB firms in the area. A listing of HUB firms is available on the web at [www.gsc.state.tx.us](http://www.gsc.state.tx.us) and other web sites, see the Project Manual.

**Bid Documents:** Plans and specifications are available for trade contractors from the Construction Manager, Gilbane Building Co., 5001 Sunshine, Austin, Texas 78756, telephone: (512) 302-9211, fax: (512) 302-9289, upon delivery of a refundable deposit of \$100.00 per set. Bid documents will be available for review at the FCSM office, 1711 San Jacinto, Suite 202, Austin, Texas 78701, the Austin and Houston offices of B2HK and Austin and San Antonio offices of GB&A, the Austin office of Gilbane Building Co. and the Austin Plan Rooms of the Associated Builder's and Contractors, the Associated General Contractors, the Builder's Exchange of Texas and the F. W. Dodge Corporation.

**Pre-Bid Conference:** There will be MANDATORY Pre-Bid Conference on June 5, 2001 at 2 p.m., at the site trailer of Construction Manager, Gilbane Building Co., 5001 Sunshine, Austin, Texas 78756, telephone: (512) 302-9211, fax: (512) 302-9289.

BIDS ARE TO BE MADE IN ACCORDANCE WITH STATE PROCEDURES.

TO BE RUN IN: Austin American-Statesman, Texas Register and Marketplace, 1 TIME: May 18, 2001

TRD-200102784



Cynthia J. Hill  
Acting General Counsel  
General Services Commission  
Filed: May 17, 2001



Notice to Bidders for Construction Project 99-003-405

**NOTICE TO BIDDERS - NTB 99-003-405 - DPS Area Office Building at Eastland**

SEALED BIDS WILL BE RECEIVED BY THE GENERAL SERVICES COMMISSION (GSC), FACILITIES CONSTRUCTION & SPACE MANAGEMENT DIVISION (FCSM) FOR CONSTRUCTION OF PROJECT NO. 99-003-405, DPS Area Office Building at Eastland, on June 21, 2001 at 3:00 PM. HUB Subcontracting Plans are due on June 21, 2001 at 3:00 PM also. At that time, HUB Subcontracting Plans will be reviewed and, if found to be complete and responsive, the Bid will be opened and read.

The approximate total cost for contract: 99-003-405 - DPS Area Office Building at Eastland is approximately \$650,000.

**Bid & HUB Subcontracting Plan Receipt Location:** General Services Commission/FCSM will receive bids at Texas Department of Transportation Meeting Room located on 906 E. Main Street, Eastland or, if mailed or shipped, Texas Department of Public Safety, c/o Sgt. Stan Waters, 1100 W. Main, Eastland, Texas 76448. **If items are to be mailed or shipped, please note on the envelope(s) what it is enclosed, the bid, the HUB plan, or both. Delivery of the bid and the HUB plan at the date and time specified above is the sole responsibility of the bidder.**

**Contractor Qualifications:** Contractors should submit information to FCSM on GSC's Contractor's Qualifications Form, which can be obtained from FCSM by calling (512) 463-3417. This form should be submitted as soon as possible, but no later than 5:00 PM on June 14, 2001, to document compliance with contractor's qualification requirements for each project. Information is to be used in determining if a contractor is qualified to receive a contract award for the project. A favorable review by FCSM of contractor qualification statements is required prior to opening bid proposals.

**Good Faith Effort for use of Historically Underutilized Businesses (HUB): GENERAL SERVICES COMMISSION HAS DETERMINED THAT THE WORK TO BE PERFORMED UNDER THIS CONTRACT INCLUDES SUBCONTRACTING OPPORTUNITIES. THEREFORE, A HUB SUBCONTRACTING PLAN WILL BE REQUIRED. THE COMPLETED HUB SUBCONTRACTING PLAN MUST BE SUBMITTED AS PART OF THE CONTRACTOR'S PROPOSAL, OR THE PROPOSAL WILL BE REJECTED AS NON-RESPONSIVE.** Prime Contractors are required to perform a Good Faith Effort in providing HUB firms with an opportunity to participate in the bid and construction process. General Services Commission's goal for HUB participation in Building Construction projects is 26.1% of the total contract. Mrs. Bettie Simpson, telephone (512) 463-3232, with General Services Commission can assist in this process by providing lists of approved HUB firms and other sources for identifying HUB firms in the area. A listing of HUB firms is available on the web at [www.gsc.state.tx.us](http://www.gsc.state.tx.us) and other web sites, see the Project Manual.

**Bid Documents:** Plans and specifications will be available not later than Wednesday, May 23, 2001 for prime contractors from: **General Services Commission, FCSM: Design & Construction, c/o: Frances P. Brooks, 1711 San Jacinto, Suite 202, Austin, TX 78711, Phone: 512-463-7507** upon delivery of a refundable deposit

of \$100 per set. **If documents are to be picked-up**, bidders shall go to 1711 San Jacinto, Suite 110 to pay their deposit. There, bidders will be issued a receipt to pick-up the documents at Suite 202 of the same building. **If bidders are to mail the deposit to have the documents mailed**, the check shall clearly reference the project name and number. Along with the check, on a separate paper, provide the following information: Company name, address, phone and fax numbers, contact name and shipping company name and account number. Plans and specifications will be shipped at bidder's expense. Bid documents will be available for review at the FCSM office, 1711 San Jacinto, Suite 202, Austin, Texas 78711, the Architect's office, 7920 Ward Parkway, Kansas City, Missouri 64114 and the Plan Rooms of Associated General Contractors and F. W. Dodge Corporation in Abilene, and the Associated Builder's and Contractors in Irving.

**Pre-Bid Conference:** There will be MANDATORY Pre-Bid Conference on June 7, 2001, at 1:00 PM, at the Texas Department of Transportation Meeting Room located on 906 E. Main Street, Eastland.

**BIDS ARE TO BE MADE IN ACCORDANCE WITH STATE PROCEDURES.**

**TO BE RUN IN:** Fort Worth Star Telegram, Abilene Reporter News, 1 TIME: May 21, 2001

TRD-200102785

Cynthia J. Hill  
Acting General Counsel  
General Services Commission  
Filed: May 17, 2001



Notice to Bidders - NTB 98-002-405, DPS McKinney Area Office

**SEALED BIDS WILL BE RECEIVED BY THE GENERAL SERVICES COMMISSION (GSC), FACILITIES CONSTRUCTION & SPACE MANAGEMENT DIVISION (FCSM) FOR CONSTRUCTION OF PROJECT NO. 98-002-405, Department of Public Safety McKinney Area Office, McKinney, Texas. Sealed bids will be received until 2:00 PM, on June 21, 2001. HUB Subcontracting Plans are due by 2:00 PM, on June 22, 2001.** At that time, HUB Subcontracting Plans will be reviewed and, if found to be complete and responsive, the Bid will be opened and read.

The approximate total cost for contract: 98-002-405 - DPS McKinney Area Office is approximately \$750,000.00

**Bid & HUB Subcontracting Plan Receipt Location:** General Services Commission/FCSM will receive bids at the main reception desk at the Texas Department of Public Safety, 350 W. Interstate 30, Garland, Texas 75043.

**Contractor Qualifications:** Contractors should submit information to FCSM on GSC's Contractor's Qualifications Form, which can be obtained from FCSM by calling (512) 463-8247. This form should be submitted as soon as possible, but no later than 5 p.m. on (TBD), 2001 to document compliance with contractor's qualification requirements for each project. Information is to be used in determining if a contractor is qualified to receive a contract award for the project. A favorable review by FCSM of contractor qualification statements is required prior to opening bid proposals.

**Good Faith Effort for use of Historically Underutilized Businesses (HUB): GENERAL SERVICES COMMISSION HAS DETERMINED THAT THE WORK TO BE PERFORMED UNDER THIS CONTRACT INCLUDES SUBCONTRACTING**

**OPPORTUNITIES. THEREFORE, A HUB SUBCONTRACTING PLAN WILL BE REQUIRED. THE COMPLETED HUB SUBCONTRACTING PLAN MUST BE SUBMITTED AS PART OF THE CONTRACTOR'S PROPOSAL, OR THE PROPOSAL WILL BE REJECTED AS NON-RESPONSIVE.** Prime Contractors are required to perform a Good Faith Effort in providing HUB firms with an opportunity to participate in the bid and construction process. General Services Commission's goal for HUB participation in Building Construction projects is 26.1% of the total contract. Mrs. Bettie Simpson, telephone (512) 463-3232, with General Services Commission can assist in this process by providing lists of approved HUB firms and other sources for identifying HUB firms in the area. A listing of HUB firms is available on the web at [www.gsc.state.tx.us](http://www.gsc.state.tx.us) and other web sites, see the Project Manual.

**Bid Documents:** Plans and specifications are available for prime contractors from Vidaud & Associates, Inc., Phone - (972) 934-8888, Fax: (972) 458-2323, upon delivery of a refundable deposit of \$100 per set. Bid documents will be available for review at the FCSM office, 1711 San Jacinto, Suite 202, Austin, Texas 78701, the architect's office and the Plan Rooms of Associated General Contractors, F. W. Dodge Corporation, the Builder's Exchange of Texas and the Associated Builder's and Contractors in Dallas.

**Pre-Bid Conference:** There will be MANDATORY Pre-Bid Conference on June 14, 2001 at 2:00 p.m., at the Texas Department of Public Safety, 350 W. Interstate 30, Garland, Texas 75043.

BIDS ARE TO BE MADE IN ACCORDANCE WITH STATE PROCEDURES.

TO BE RUN IN: Dallas Morning News, Fort Worth Star Telegram, ONE TIME: Monday, May 21, 2001.

TRD-200102815

Cynthia J. Hill

Acting General Counsel

General Services Commission

Filed: May 18, 2001

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**Texas Department of Health**

Licensing Actions for Radioactive Materials

## LICENSING ACTIONS FOR RADIOACTIVE MATERIALS

The Texas Department of Health has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

### NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout TX	City of Ft. Worth Housing Department	L05420	Ft. Worth	00	5/4/01

### AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Andrews	Waste Control Specialists, LLC	L04971	Andrews	14	5/2/01
Austin	Texas Department of Transportation, Const. Div.	L00197	Austin	89	5/14/01
Bay City	Equistar Chemicals, LP	L03938	Bay City	13	5/9/01
Beaumont	X-Ray Inspection, Inc.	L05275	Beaumont	08	4/30/01
Beaumont	St. Elizabeth Hospital	L00269	Beaumont	79	5/3/01
Borger	Phillips Petroleum Company	L02480	Borger	34	5/4/01
Dallas	Columbia Hospital at Medical City Dallas	L01976	Dallas	131	5/2/01
Dallas	Presbyterian Healthcare System	L04288	Dallas	15	5/4/01
Dallas	Baylor College of Dentistry	L00323	Dallas	31	5/4/01
Dallas	Texas Oncology, PA	L04878	Dallas	18	5/15/01
Denison	Texoma Heart Group	L05208	Denison	01	5/1/01
Denton	International Isotopes, Inc.	L05159	Denton	19	4/27/01
Denton	NRX Acquisition Corporation	L05282	Denton	02	5/4/01
Ft. Worth	Ft. Worth Medical Plaza, Inc.	L02171	Ft. Worth	39	5/2/01
Ft. Worth	All Saints Health System	L04105	Ft. Worth	11	5/4/01
Ft. Worth	All Saints Episcopal Hospital	L02212	Ft. Worth	53	5/10/01
Ft. Worth	All Saints Advanced Imaging Center	L05251	Ft. Worth	01	5/10/01
Ft. Worth	Ft. Worth Osteopathic Hospital, Inc.	L00730	Ft. Worth	50	5/7/01
Garland	Garland Community Hospital	L02333	Garland	22	5/4/01
Houston	Antoine G. Younis, MD PA	L05313	Houston	02	5/1/01
Houston	University of Texas MD Anderson Cancer Ctr.	L00466	Houston	75	5/3/01
Houston	Northwest Houston Cardiovascular Imaging	L04253	Houston	11	5/14/01
Houston	Sisters of Charity of the Incarnate Word	L02279	Houston	44	5/15/01
Houston	Houston Northwest Radiotherapy Center	L02416	Houston	23	5/9/01
Irving	Baylor Medical Center at Irving	L02444	Irving	37	5/8/01
Lewisville	URI INC	L03653	Lewisville	08	5/7/01
Lubbock	Covenant Health System	L01547	Lubbock	66	5/2/01
McAllen	Valley Cardiology, PA	L04692	McAllen	10	5/1/01
McAllen	Valley Cardiology, PA	L04692	McAllen	10	5/1/01
McAllen	Columbia Rio Grande Regional Hospital	L03288	McAllen	36	5/3/01
Pasadena	Celanese LTD	L01130	Pasadena	52	5/4/01
San Antonio	William Craig, MD, PA	L05378	San Antonio	01	5/3/01
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	109	5/9/01
Sulphur Springs	Hopkins County Memorial Hospital	L02904	Sulphur Springs	09	5/9/01

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout TX	Fugro South, Inc.	L03875	Austin	13	4/30/01
Throughout TX	American Casedhole Specialist, Inc.	L05291	Corpus Christi	02	5/7/01
Throughout TX	D-Arrow Inspection, Inc.	L03816	Houston	65	4/30/01
Throughout TX	Mandes Inspection & Testing Services, Inc.	L05220	Houston	21	4/30/01
Throughout TX	Mandes Inspection & Testing Services, Inc.	L05220	Houston	22	5/3/01
Throughout TX	Houston Department of Health & Human Svc.	L00149	Houston	65	5/4/01
Throughout TX	H & G Inspection Company, Inc.	L02181	Houston	138	5/15/01
Throughout TX	Non Destructive Inspection Corporation	L02712	Lake Jackson	91	4/30/01
Throughout TX	Conam Inspection	L05010	Pasadena	34	4/30/01
Throughout TX	Technical Welding Laboratory, Inc.	L02187	Pasadena	137	5/4/01
Throughout TX	Midwest Inspection Services	L03120	Perryton	60	5/8/01
Tyler	Trinity Mother Frances Health System	L01670	Tyler	84	5/1/01
Waco	Waco Radiology Clinic, PA	L05324	Waco	01	5/11/01
Webster	CHCA Clear Lake, LP	L01680	Webster	48	5/7/01
Wichita Falls	Clinics of North Texas LLP	L00523	Wichita Falls	36	5/2/01
Wichita Falls	United Regional Health Care System, Inc.	L00350	Wichita Falls	79	5/10/01

LICENSE RENEWAL:

Location	Name	License #	City	Amend-ment #	Date of Action
Colorado City	Mitchell County Hospital	L01643	Colorado City	19	5/9/01
Winnsboro	Texas Health System	L03336	Winnsboro	15	5/14/01

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Caldwell	Burleson Leasecorp, Inc.	L03260	Caldwell	13	5/2/01
Throughout TX	Secor International, Inc.	L05258	Houston	03	5/3/01

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 49<sup>th</sup> Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200102866

Susan K. Steeg  
 General Counsel  
 Texas Department of Health  
 Filed: May 23, 2001

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation to Hill Country Memorial Hospital dba Fredericksburg Imaging Center

Notice is hereby given that the Bureau of Radiation Control (bureau), Texas Department of Health (department), issued a notice of violation and proposal to assess an administrative penalty to Hill Country Memorial Hospital, doing business as Fredericksburg Imaging Center (registrant-M00445) of Fredericksburg. A total penalty of \$20,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code, §289.230.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200102864  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: May 23, 2001

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation to Michael A. Charles, D.D.S., dba Inwood Dental

Notice is hereby given that the Bureau of Radiation Control (bureau), Texas Department of Health (department), issued a notice of violation and proposal to assess an administrative penalty to Michael A. Charles, D.D.S., doing business as Inwood Dental, (registrant-R24085, revoked) of Houston. A total penalty of \$8,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code, §289.226.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200102863  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: May 23, 2001

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Notice of Uranium Byproduct Material License Amendment issued to URI, Inc.

The Texas Department of Health (department) gives notice that it has amended uranium by-product material license L03653 issued to URI, Inc. (mailing address: URI, Inc., 650 South Edmonds Lane, Suite 108, Lewisville, Texas, 75067). Amendment eight changes the mailing address only.

The department's Bureau of Radiation Control, Division of Licensing, Registration and Standards has determined, pursuant to 25 Texas Administrative Code (TAC), Chapter 289, that the licensee has met the standards appropriate to this amendment.

This notice affords the opportunity for a public hearing upon written request by a person affected by the amendment of this license. A written hearing request must be received, from a person affected, within 30 days from the date of publication of this notice in the *Texas Register*. A person affected is defined as a person who demonstrates that the person has suffered or will suffer 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 person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is to be represented by an attorney, the name and address of the attorney also must be stated. Should no request for a public hearing be timely filed, the license amendment will remain in effect.

A public hearing, if requested, shall be conducted in accordance with the provisions of Texas Health and Safety Code, §401.114, the Administrative Procedure Act (Texas Government Code, Chapter 2001), the formal hearing procedures of the department (25 Texas Administrative Code, §1.21. et seq.), and the procedures of the State Office of Administrative Hearings (1 Texas Administrative Code, Chapter 155).

Copies of all relevant material are available for public inspection and copying at the Bureau of Radiation Control, Texas Department of Health, 8407 Wall Street, Austin, Texas. Information relative to the amendment of this specific radioactive material license may be obtained by contacting Chrissie Toungate, Custodian of Records, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189; E-mail: Chrissie.Toungate@tdh.state.tx.us; by calling (512) 834-6688; or by visiting 8407 Wall Street, Austin, Texas.

TRD-200102865  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: May 23, 2001

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**Texas Health and Human Services Commission**

Notice of Public Hearing

The Texas Health and Human Services Commission (HHSC) and the Texas Department of Human Services (DHS) will conduct the following joint public hearings on June 14, 2001, to receive public comments on proposed payment rates for Medicaid and non-Medicaid programs and services operated by DHS:

Programs	Hearing Time
Nursing Facility, Swing-Bed, and Hospice - Nursing Facility	8:30 a.m.
Community Based Alternatives - Home and Community Support Services, Primary Home Care/Family Care, Community Living Assistance and Support Services, and Deaf-Blind Multiple Disabilities Waiver, and Consumer-Managed Personal Assistance Services - Vendor Fiscal Intermediary	10:00 a.m.
Day Activity and Health Services, Residential Care, and Community Based Alternatives - Assisted Living/Residential Care	1:00 p.m.
Consolidated Waiver and Community Care for Aged and Disabled - Adult Foster Care	2:00 p.m.

These payment rates are proposed to be effective September 1, 2001 and September 1, 2002. The joint hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g) and Title 40 TAC §20.105(g), which require public hearings on proposed payment rates. The public hearings will be held in conference room 5501 of the Brown-Heatly Building at 4900 North Lamar, Austin, Texas. Written comments regarding payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Tony Arreola, DHS, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030. Express mail can be sent to Mr. Arreola at DHS, MC W-425, 701 West 51st Street, Austin, Texas 78751-2312. Hand-delivered written comments addressed to Mr. Arreola will be accepted by the receptionist in the lobby of the John H. Winters Human Services Building at 701 West 51st Street, Austin, Texas. Alternatively, written comments may be sent via facsimile to Mr. Arreola at (512) 438-2165. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Tony Arreola, DHS, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, telephone number (512) 438-4817.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Tony Arreola, DHS, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, telephone number (512) 438-4817, by June 8, 2001, so that appropriate arrangements can be made.

TRD-200102869  
Marina Henderson  
Executive Deputy Commissioner  
Texas Health and Human Services Commission  
Filed: May 23, 2001



## Texas Department of Housing and Community Affairs

### Housing Trust Fund Predevelopment Loan Fund Notice of Request for Proposals

The Texas Department of Housing and Community Affairs' (TDHCA) Housing Trust Fund is accepting proposals to administer \$840,000 of predevelopment loan funds to nonprofit, units of local government, and community housing development organizations in the state of Texas, whose purpose or goal is to provide safe, decent and sanitary housing for low, very low, and extremely low income individuals and families, and persons with special needs.

No matching funds will be required either by the administrator(s) or by the actual recipients of the funds. The Housing Trust Fund will select up to two nonprofit organizations to administer these funds to local nonprofit organizations, units of local government and community housing development organizations throughout the state.

Proposals will be selected based on criteria outlined in the proposal package. The award(s) will be made as a grant, and administered under contract with TDHCA. Administrative fees will be available (not included in the \$840,000 available for loans) to the successful candidate(s).

**Proposals must be received at TDHCA by 5:00 p.m. on July 3, 2001.**

Faxed application submissions will not be accepted.

All interested parties are encouraged to participate in this program. For additional information or to request a proposal package, please call the Housing Trust Fund office at (512) 475-1458, or on the Department's web site at

<http://www.tdhca.state.tx.us/htf.htm>. Please direct your proposal to:



Texas Department of Housing and Community Affairs

Housing Trust Fund--Attention: Stacy Higgins

Post Office Box 13941

Austin, Texas 78711-3941

Or by courier to:

507 Sabine, Suite 400

Austin, Texas 78701

TRD-200102879

Daisy A. Stiner

Executive Director

Texas Department of Housing and Community Affairs

Filed: May 23, 2001

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**Texas Department of Human Services**

**Notice of Public Hearing**

The Texas Health and Human Services Commission (HHSC) and the Texas Department of Human Services (DHS) will conduct the following joint public hearings on June 14, 2001, to receive public comments on proposed payment rates for Medicaid and non-Medicaid programs and services operated by DHS:

Programs	Hearing Time
Nursing Facility, Swing-Bed, and Hospice - Nursing Facility	8:30 a.m.
Community Based Alternatives - Home and Community Support Services, Primary Home Care/Family Care, Community Living Assistance and Support Services, and Deaf-Blind Multiple Disabilities Waiver, and Consumer-Managed Personal Assistance Services - Vendor Fiscal Intermediary	10:00 a.m.
Day Activity and Health Services, Residential Care, and Community Based Alternatives - Assisted Living/Residential Care	1:00 p.m.
Consolidated Waiver and Community Care for Aged and Disabled - Adult Foster Care	2:00 p.m.

These payment rates are proposed to be effective September 1, 2001 and September 1, 2002. The joint hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g) and Title 40 TAC §20.105(g), which require public hearings on proposed payment rates. The public hearings will be held in conference room 5501 of the Brown-Heatly Building at 4900 North Lamar, Austin, Texas. Written comments regarding payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Tony Arreola, DHS, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030. Express mail can be sent to Mr. Arreola at DHS, MC W-425, 701 West 51st Street, Austin, Texas 78751-2312. Hand-delivered written comments addressed to Mr. Arreola will be accepted by the receptionist in the lobby of the John H. Winters Human Services Building at 701 West 51st Street, Austin, Texas. Alternatively, written comments may be sent via facsimile to Mr. Arreola at (512) 438-2165. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Tony Arreola, DHS, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, telephone number (512) 438-4817.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Tony Arreola, DHS, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, telephone number (512) 438-4817, by June 8, 2001, so that appropriate arrangements can be made.

TRD-200102868  
Paul Leche  
General Counsel  
Texas Department of Human Services  
Filed: May 23, 2001

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### Public Meeting on Proposed Revision to CBA Client Eligibility Bypass Rule

The Texas Department of Human Services (DHS) will hold a public meeting to receive input on a proposed revision to the Community Based Alternatives (CBA) client eligibility bypass rule. The revised rule will require an individual to be a permanent resident of a nursing facility before the individual can bypass the interest list. The individual must reside in the nursing facility until approved for CBA services.

The meeting will be held on June 8, 2001, from 9:00 a.m. to 12:00 p.m., at the Texas Department of Mental Health/Mental Retardation, Auditorium, 909 West 45th Street, Austin, Texas. Individuals unable to provide input in person may address written comments to the attention of Gerardo Cantu, Texas Department of Human Services, Community Care W-521, P.O. Box 149030, Austin, Texas 78714-9030 until 5:00 p.m. the day of the meeting.

If you have any questions, please contact Gerardo Cantu at (512) 438-3693.

TRD-200102846  
Paul Leche  
General Counsel  
Texas Department of Human Services  
Filed: May 22, 2001

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### Texas Department of Insurance

#### Insurer Services

Application to change the name of AXA NORDSTERN ART INSURANCE CORP. to AXA ART INSURANCE CORPORATION, a foreign fire and casualty company. The home office is in New York, New York.

Application to change the name of NAC REINSURANCE CORPORATION to XL REINSURANCE AMERICA INC., a foreign fire and casualty company. The home office is in Stamford, Connecticut.

Application to change the name of FLORIDA PHYSICIANS INSURANCE COMPANY, INC. to FIRST PROFESSIONALS INSURANCE COMPANY, INC., a foreign fire and casualty company. The home office is in Jacksonville, Florida.

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-200102875  
Judy Woolley  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: May 23, 2001

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### Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by The Glens Falls 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 for their Classic Automobile Program: for all classes by territory, flex %'s from -65.8% to -38.7% for CSL Liability; for all classes and territories, -90% for PIP, -84% for UM/UIM, -80% for Medical Payments, 23.4% for Comp, and -59.5% for Collision; for all territories - under Antique Auto class, -59% for Comp and -77.5% for Collision; under Collectible class, -9% for Comp and -51% for Collision, and under Special Interest class, +46.7% for Comp and -29.8% for Collision. This overall rate change is 2.1%.

Copies of the filing may be obtained by contacting George Russell, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 305-7468.



This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the 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 June 18, 2001.

TRD-200102873  
Judy Woolley  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: May 23, 2001

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**Notice**

The Commissioner of Insurance will hold a public hearing under Docket No. 2487, at 9:30 a.m., June 26, 2001 in Room 100 of the William B. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, to consider public testimony from insurers, consumers, mortgage lenders, and any other interested parties on the current coverage provided in the Texas residential property policies for mold or other fungi losses. This is an information-gathering hearing which is being held for the purpose of soliciting input on the coverage for mold or other fungi that is currently contained in the Texas residential property policy forms. This hearing is intended to provide all interested parties with the opportunity to comment on the extent to which such coverage should be provided. All interested parties, including members of the general public, are invited to attend and provide comments and recommendations.

Currently, the Texas Homeowners Policies (HO-B, HO-C, HO-CT, and HO-CON-C) and the Texas Dwelling Policy (TDP-3) would exclude losses caused by rot, mold, or other fungi as well as losses caused by dampness of atmosphere, extremes of temperature, or contamination. However, these policies and forms HO-BT, HO-CON-B, and TDP-2 include coverage for a loss caused by mold or other fungi provided the loss (for example, water damage) causing the ensuing mold or fungi is a covered cause of loss under the policy. Article 5.35 of the Insurance Code allows for the approval of endorsements to be used with residential property policy forms. An insurer has filed with the Department proposed endorsements that exclude all coverage for mold or other fungi from the Texas residential property policy forms. The Commissioner has not yet acted on this filing. This specific filing is not being considered in this hearing, but the information obtained during the course of this hearing may be considered by the Commissioner in his action on this filing.

This hearing is held pursuant to the Insurance Code Chapter 31 and Article 5.35. Chapter 31 contains the general authority of the Commissioner. Article 5.35 authorizes the Commissioner to adopt or approve policy forms and endorsements for residential property insurance in Texas.

Anyone wishing to speak at this hearing will be required to complete a witness card, which will be available at the hearing site immediately prior to the hearing.

Additional information can be obtained from: Marilyn Hamilton, 333 Guadalupe Street, Texas Department of Insurance, (512) 322-2265

TRD-200102878  
Judy Woolley  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: May 23, 2001

**Notice of Request for Proposals**

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Texas Department of Insurance (TDI) announces its Request for Proposals (RFP) from qualified Respondents for consultant services for a survey of individuals without health insurance. TDI is soliciting responses from qualified consultants to collect data on Texas individuals without health insurance. The data will be used by TDI to develop proposals under the Texas State Planning Grant project for expanding health insurance coverage. This project is funded as part of the federal State Planning Grant program administered by the U.S. Health Resources and Services Administration (HRSA). Although the contract for this RFP will be between the Successful Respondent, if any, and TDI, the cost of the data collection project will be funded entirely with federal funds granted to TDI under the State Planning Grant program. The primary purpose of the data collection proposal is to collect information on "non-poor" Texans who do not have any type of private or public health insurance and whose incomes are at least 200% over the federal poverty level.

The Successful Respondent will be expected to begin performance of the contract on or about July 1, 2001.

Contact: Parties interested in submitting a proposal should contact Regina Durden, Director of Purchasing, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714, (512) 475-1782, or by e-mail at Regina.Durden@tdi.state.tx.us. to obtain a complete copy of the RFP. The RFP is available electronically on TDI's website at www.tdi.state.tx.us and on the Texas Marketplace at www.marketplace.state.tx.us.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP.

Closing Date: Proposals must be received in the Purchasing Division no later than 3:00 p.m. on June 19, 2001. Proposals received after this time and date will not be considered.

TDI reserves the right to accept or reject any or all proposals submitted. TDI is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TDI to pay for any costs incurred prior to the execution of a contract.

TRD-200102809  
Judy Woolley  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: May 18, 2001

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**Texas Lottery Commission**

Instant Game No. 205 "Triple Cash In A Flash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 205 is "TRIPLE CASH IN A FLASH". The play style is a "match three (3) of nine (9) with a tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 205 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 205.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: \$1.00, \$2.00, \$3.00, \$5.00, \$10.00, \$20.00, \$30.00, \$50.00, \$90.00, \$100, \$300, \$900, and \$\$\$.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 of this section Figure 1:16 TAC GAME NO. 205 - 1.2D

Table 1  
Figure 1:16 TAC GAME NO. 205 – 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THREE\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$30.00	THIRTY
\$50.00	FIFTY
\$90.00	NINETY
\$100	ONE HUND
\$300	THR HUND
\$900	NINEHUND
\$\$\$ SYMBOL	TRIPLE

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Table 2 of this section. Figure 2:16 TAC GAME NO. 205 - 1.2E

Table 2

Figure 2:16 TAC GAME NO. 205 – 1.2E

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
THR	\$3.00
FIV	\$5.00
SIX	\$6.00
TEN	\$10.00
FTN	\$15.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$3.00, \$5.00, \$6.00, \$10.00, \$15.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$30.00, \$50.00, \$90.00, \$100, \$150, or \$300.

I. High-Tier Prize - A prize of \$900.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A twenty-two (22) digit number consisting of the three (3) digit game number (205), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 205-0000001-000.

L. Pack - A pack of "TRIPLE CASH IN A FLASH" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five. Tickets 000-004 will be on the top page. Tickets 005-009 will be on the next page and so forth and ticket 245-249 will be on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number through the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery

pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TRIPLE CASH IN A FLASH" Instant Game No. 205 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "TRIPLE CASH IN A FLASH" Instant Game is determined once the latex on the ticket is scratched off to expose nine (9) play symbols. If the player finds three (3) like amounts, the player will win that amount. If the player finds two (2) like amounts and a \$\$\$ symbol, the player triples that amount. No portion of the display printing nor any extraneous matter whatsoever shall be usable or payable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly nine (9) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly nine (9) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the nine (9) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the nine (9) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. No ticket will have four (4) or more like play symbols on a ticket.

C. The Tripler Symbol will never appear on a ticket which contains three (3) like play symbols.

D. No more than one (1) Tripler Symbol on a ticket .

E. No more than one (1) pair of like play symbols will appear on a ticket containing a Tripler Symbol.

F. No more than two (2) pairs of like play symbols will appear on a ticket which does not contain a Tripler Symbol.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "TRIPLE CASH IN A FLASH" Instant Game prize of \$1.00, \$2.00, \$3.00, \$5.00, \$6.00, \$10.00, \$15.00, \$20.00, \$30.00, \$50.00, \$90.00, \$100, \$150, or \$300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$30.00, \$50.00, \$90.00, \$100, \$150, or \$300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "TRIPLE CASH IN A FLASH" Instant Game prize of \$900, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TRIPLE CASH IN A FLASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "TRIPLE CASH IN A FLASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "TRIPLE CASH IN A FLASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,512,000 tickets in the Instant Game No. 205. The approximate number and value of prizes in the game are as follows:

Table 3 of this section Figure 3:16 TAC GAME NO. 205- 4.0

Table 3  
Figure 3:16 TAC GAME NO. 205 – 4.0

Prize Amount	Approximate Number of Prizes *	Approximate Odds are 1 in **
\$1.00	2,174,115	9.43
\$2.00	820,443	25.00
\$3.00	1,066,811	19.23
\$5.00	246,167	83.33
\$6.00	82,093	249.86
\$10.00	40,994	500.37
\$15.00	41,031	499.91
\$20.00	20,486	1,001.27
\$30.00	25,631	800.28
\$50.00	8,557	2,397.10
\$90.00	4,664	4,397.94
\$100	684	29,988.30
\$150	675	30,388.15
\$300	676	30,343.20
\$900	140	146,514.29

\*\*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.

\*The overall odds of winning a prize are 1 in 4.52. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 205 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 205, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200102813  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: May 18, 2001



#### Instant Game No. 246 "Weekly Grand"

##### 1.0 Name and Style of Game.

A. The name of Instant Game No. 246 is "WEEKLY GRAND". This ticket contains three (3) games, indicated as "Game 1"; "Game 2"; and "Game 3", or "Quick \$20". The play style of "Game 1" is a "Your Number Beats Their Number" play style. The play style of "Game 2"

is a Match 3 Like Prize Amounts" play style. The play style of "Game 3", or "Quick \$20", is a "Match 2 Like Symbols" play style.

##### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 246 shall be \$2.00 per ticket.

##### 1.2 Definitions in Instant Game No. 246.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols for "Game 1" are: 1, 2, 3, 4, 5, 6, 7, 8, 9, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$40.00, \$300, and GRAND. The possible Play Symbols for "Game 2" are: \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$40.00, \$100, \$300, and GRAND. The possible game symbols for "Game 3" are: MONEY BAG symbol, GOLD BAR symbol, POT OF GOLD symbol, TOP HAT symbol, CLOVER symbol, and DIAMOND symbol.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 of this section Figure 1:16 TAC GAME NO. 246 - 1.2D

Table 1

Figure 1:16 TAC GAME NO. 246 – 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
GRAND	WEEK
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$40.00	FORTY
\$100	ONE HUND
\$300	THR HUND
[CLOVER]	CLVR
[DIAMOND]	DIAMD
[GOLD BAR]	GOLD
[POT OF GOLD]	POTGLD
[MONEY BAG]	MBAG
[TOP HAT]	TPHAT

E. Retailer Validation Code - Three (3) small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Table 2 of this section. Figure 2:16 TAC GAME NO. 246 - 1.2E



**Table 2**  
**Figure 2:16 TAC GAME NO. 246 – 1.2E**

<b>CODE</b>	<b>PRIZE</b>
<b>TWO</b>	<b>\$2.00</b>
<b>FOR</b>	<b>\$4.00</b>
<b>FIV</b>	<b>\$5.00</b>
<b>TEN</b>	<b>\$10.00</b>
<b>TWN</b>	<b>\$20.00</b>

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$40.00, or \$300.

I. High-Tier Prize - A prize of \$1,000 or GRAND.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A thirteen (13) digit number consisting of the three (3) digit game number (246), a seven (7) digit pack number and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 246-0000001-000.

L. Pack - A pack of "WEEKLY GRAND" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 000 and 001 will be on the first page; tickets 002 and 003 will be on the next page and so forth with tickets 248-249 on the last page.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WEEKLY GRAND" Instant Game No. 246 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in "Game 1" of the "WEEKLY GRAND" Instant Game is determined once the latex on the ticket is scratched off to expose the "Your Number", "Their Number", and "Prize" Play Symbols on the front of the ticket. The player wins "Prize" amount if a Play Symbol shown under "YOUR NUMBER" is greater than the Play Symbol appearing under "THEIR NUMBER" in each of the two (2) rows. The player wins \$1,000 per week for 20 (twenty) years if a Play Symbol shown under "YOUR NUMBER" is greater than the Play Symbol appearing under "THEIR NUMBER" in either row and the Play Symbol "GRAND" appears in the "Prize" spot for that row. In "Game 2", the player wins the prize amount that appears three (3) times on the play area. If the Play Symbol "GRAND" appears three times on the play area of "Game 2", the player wins \$1,000 per week for 20 years. In "Game 3", the player wins \$20 instantly if there are two (2) out of three (3) matching Play Symbols under "QUICK \$20". No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly six (6) Play Symbols must appear under the latex overprint on "Game 1", exactly six (6) Play Symbols must appear under the latex overprint on "Game 2", and exactly three (3) Play Symbols must appear under "Game 3".
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink;
5. The ticket shall be intact;



6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly six (6) Play Symbols and exactly six Play Symbol Captions under "Game 1", exactly six (6) Play Symbols and exactly six (6) Play Symbol Captions under "Game 2", and exactly three (3) Play Symbols and exactly three (3) Play Symbol Captions under "Game 3" on the front of the ticket under the latex overprint on the front portion of the ticket, exactly one (1) Serial Number, exactly one (1) Retailer Validation Code, and exactly one (1) Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the six (6) Play Symbols appearing under "Game 1", each of the six Play Symbols appearing under "Game 2", and each of the three (3) Play Symbols appearing under "Game 3" must be exactly one of those described in Section 1.2.C of these Game Procedures, and each of the Play Symbol Captions to those Play Symbols must be exactly one of those described in Section 1.2.D of these Game Procedures;

17. Each of the six (6) Play appearing under "Game 1", each of the six (6) Play Symbols appearing under "Game 2", and each of the three (3) Play Symbols appearing under "Game 3" on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Validation Numbers must be printed in the Validation font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received or recorded by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the

Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. There will be no three (3) or more like non-winning prize symbols on a ticket.

C. Non-winning PRIZE SYMBOLS will not match a winning prize symbol on a ticket.

D. The GRAND symbol may only be used in "Game 1" and "Game 2".

E. In "Game 1", there will be no ties between YOURS and THEIRS in a row.

F. There will be no duplicate games on a ticket in "Game 1".

G. No duplicate non-winning prize symbols in "Game 1".

H. In "Game 2", no more than four (4) or more of a kind will appear.

I. In "Game 3", all symbols will be used an approximately even number of times on winning and non-winning tickets.

J. There will never be three (3) like symbols in "Game 3".

## 2.3 Procedure for Claiming Prizes.

A. To claim a "WEEKLY GRAND" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, or \$300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. When claiming a "WEEKLY GRAND" Instant Game prize of GRAND, the claimant must choose one of four (4) payment options for receiving their prize:

1. Weekly via wire transfer to the claimant/winner's account. This will be similar to the current "WEEKLY GRAND" (Game 173) payment process. With this plan, a payment of \$1,000.00 less Federal withholding will be made once a week for twenty years. After the initial payment, installment payments will be made every Wednesday.

2. Monthly via wire transfer to the claimant/winner's account. If the claim is made during the month, the claimant/winner will still receive the entire month's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of \$4,337.00 less Federal withholding will be made the month of the claim. Each additional month, a payment of \$4,333.00 less Federal withholding will be made once a month for 20 years. After the initial payment, installment payments will be made on the first business day of each month.

3. Monthly via wire transfer to the claimant/winner's account. If the claim is made during the quarter, the claimant/winner will still receive

the entire quarter's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of \$13,000.00 less Federal withholding will be made each quarter (four times a year) for 20 years. After the initial payment, installment payments will be made on the first business day of the first month of every quarter (January, April, July, October).

4. Annually via wire transfer to the claimant/winner's account. These payments will be made in a manner similar to how jackpot payments are currently handled. With this plan, a payment of \$52,000.00 less Federal withholding will be made once a year during the anniversary month of the claim for 20 years. After the initial payment, installment payments will be made on the first business day of the anniversary month.

C. As an alternative method of claiming a "WEEKLY GRAND" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, or \$300, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "WEEKLY GRAND" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$1,000 per week for 20 years from the "WEEKLY GRAND" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 25,590,000 tickets in the Instant Game No. 246. The approximate number and value of prizes in the game are as follows:

Table 3 of this section Figure 3:16 TAC GAME NO. 246- 4.0

Table 3  
Figure 3:16 TAC GAME NO. 246 – 4.0

<b>Prize Amount</b>	<b>Approximate Number of Winners*</b>	<b>Approximate Odds are 1 in **</b>
\$2.00	2,661,436	1:9.62
\$4.00	2,098,342	1:12.20
\$5.00	102,360	1:250.00
\$10.00	358,258	1:71.43
\$20.00	230,311	1:111.11
\$40.00	153,520	1:166.69
\$300	9,274	1:2,759.33
<b>GRAND</b>	<b>3</b>	<b>1:8,530,000.00</b>

\*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.56. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 246 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 246, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and reference in 16 TZC, Chapter 401, and all final decisions of the Executive Director.

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Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: May 18, 2001



Instant Game No. 247 "9s In A Line"

1.0 Name and Style of Game.

A. The name of Instant Game No. 247 is "9s IN A LINE". The play style is a "tic-tac-toe" play style.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 247 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 247.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 2, 3, 4, 5, 6, 7, 8, 9, \$1.00, \$2.00, \$3.00, \$9.00, \$19.00, \$49.00, \$99, \$199, and \$900.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 of this section Figure 1:16 TAC GAME NO. 247 - 1.2D

Table 1  
 Figure 1:16 TAC GAME NO. 247 – 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
2	(position)2(ticket number)
3	(position)3(ticket number)
4	(position)4(ticket number)
5	(position)5(ticket number)
6	(position)6(ticket number)
7	(position)7(ticket number)
8	(position)8(ticket number)
9	(position)9(ticket number)
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THREE\$
\$9.00	NINE\$
\$19.00	NINTN
\$49.00	FRYNIN
\$99.00	NTYNIN
\$199	ONNYNN
\$900	NINHUN

Table 2 of this section. Figure 2:16 TAC GAME NO. 247 - 1.2E

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Table 2  
 Figure 2:16 TAC GAME NO. 247 – 1.2E

<b>CODE</b>	<b>PRIZE</b>
ONE	\$1.00
TWO	\$2.00
THR	\$3.00
NIN	\$9.00
NNT	\$19.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$3.00, \$9.00, or \$19.00.

H. Mid-Tier Prize - A prize of \$49.00, \$99.00, or \$199.

I. High-Tier Prize - A prize of \$900.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A thirteen (13) digit number consisting of the three (3) digit game number (247), a seven (7) digit pack number and a three (3) digit ticket number. Ticket numbers start with 000 and end with 074 within each pack. The format will be : 247-0000001-000.

L. Pack - A pack of "9s IN A LINE" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 000 - 004 will be on the top page and tickets 005 - 009 will be on the next page and so forth with tickets 245 - 249 on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number through the shrink-wrap

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "9s IN A LINE" Instant Game No. 247 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "9s IN A LINE" Instant Game is determined once the latex on the ticket is scratched off to expose 10 (ten) play symbols. If a player finds three (3) 9s in any one row, column, or diagonal, the player wins the prize in the Prize Box. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

## 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 10 (ten) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 10 (ten) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 10 (ten) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the 10 (ten) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No ticket will contain three (3) or more of a kind other than the 9 (nine) symbol.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "9s IN A LINE" Instant Game prize of \$1.00, \$2.00, \$3.00, \$9.00, \$19.00, \$49.00, \$99.00, or \$199, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$49.00, \$99.00 or \$199 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "9s IN A LINE" Instant Game prize of \$900, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "9s IN A LINE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "9s IN A LINE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "9s IN A LINE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

#### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 30,514,500 tickets in the Instant Game No. 247. The approximate number and value of prizes in the game are as follows:

Table 3 of this section Figure 3:16 TAC GAME NO. 247- 4.0

**Table 3**  
**Figure 3:16 TAC GAME NO. 247 – 4.0**

<b>Prize Amount</b>	<b>Approximate Number of Winners*</b>	<b>Approximate Odds are 1 in **</b>
\$1.00	3,051,464	1:10.00
\$2.00	2,074,979	1:14.71
\$3.00	976,443	1:31.25
\$9.00	244,123	1:125.00
\$19.00	122,058	1:250.00
\$49.00	36,276	1:841.18
\$99.00	8,478	1:3,599.26
\$199.00	4,078	1:7,482.71
\$900	254	1:120,135.83

\*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.68. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 247 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 247, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

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Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: May 18, 2001

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**Texas Department of Mental Health and Mental Retardation**

**Notice of Medicaid State Plan Amendment**

The Health and Human Services Commission plans to submit a Medicaid state plan amendment with an effective date of September 1, 2001, to revise the state-operated ICF/MR rate setting methodology. The rate

setting methodology will be revised from prospective rates based on each facility's historical cost pattern with adjustments for inflation to interim rates that are uniform statewide by class with annual settlement. The class of a facility is based on the facility size. The amendment does not significantly impact the rate.

The estimated fiscal impact of an increase in Federal dollars over the next five Federal Fiscal Years are as follows:

FFY 2002--1,462,348

FFY 2003--4,071,845

FFY 2004--4,336,974

FFY 2005--4,954,005

FFY 2006--4,954,005

Copies of the state plan amendment (Transmittal No. 01-04, Amendment No. 589) will be available for review after September 30, 2001 by writing the Medicaid Office, Health and Human Services Commission at P.O. Box 13247, Austin, Texas 78711.

TRD-200102880

Andrew Hardin

Chairman

Texas Department of Mental Health and Mental Retardation

Filed: May 23, 2001



#### Notice of Medicaid State Plan Amendment

The Health and Human Services Commission (HHSC) plans to submit a Medicaid state plan amendment with an effective date of October 1, 2001, to revise the Rehabilitative Services reimbursement methodology. The reimbursement methodology will be revised from a uniform, prospective rate that is determined at least annually to a uniform, statewide, interim rate with a cost-related year-end settlement. The interim rate is determined prospectively and at least annually. An interim rate is set for each service type.

The estimated fiscal impact of a increases/(decreases) in Federal dollars over the next five Federal Fiscal Years are as follows:

FFY 2002--(2,484,511)

FFY 2003--(1,063,690)

FFY 2004--(496,082)

FFY 2005--(146,837)

FFY 2006--603,546

Copies of the state plan amendment (Transmittal No. 01-03, Amendment No. 588) will be available for review after October 31, 2001 by writing the Medicaid Office, Health and Human Services Commission at P.O. Box 13247, Austin, Texas 78711.

TRD-200102881

Andrew Hardin

Chairman

Texas Department of Mental Health and Mental Retardation

Filed: May 23, 2001



#### Public Hearing on Proposed Amendments to IC/MR Program and Rehabilitation Services Rules

The Texas Department of Mental Health and Mental Retardation (department) has scheduled a hearing to accept oral and written testimony

from members of the public concerning amendments to §355.451, concerning definitions and general reimbursement information; §355.456, concerning rate setting methodology; and §355.781, concerning rehabilitative services reimbursement methodology.

The amendments were published in the May 18, 2001, issue of the *Texas Register* (26 TexReg 3580 and 3582) for public review and comment.

The hearing is scheduled for 9:00 a.m., Monday, June 11, 2001, in the department's Central Office Auditorium in Building 2 at 909 West 45th Street, in Austin, Texas. Persons requiring an interpreter for the deaf or hearing impaired should contact the department's Central Office operator at least 72 hours prior to the hearing at TDD (512) 206-5330. Persons requiring other accommodations for a disability should notify Tera Jones at least 72 hours prior to the hearing at (512) 206-5854 or at the TDY phone number of Texas Relay, 1/800-735-2988.

Public comment may be submitted in writing to Steve Lorenzen, director, Medicaid Rates Setting, Health and Human Services Commission, by mail addressed to 4900 North Lamar Blvd., 4th Floor, Austin, Texas 78751, or by facsimile to (512) 424-6585. Comments must be submitted by 5:00 p.m., Monday, June 18, 2001. Further information may be obtained by calling Steve Lorenzen at (512) 424-6633.

TRD-200102791

Andrew Hardin

Chairman, Texas MHMR

Texas Department of Mental Health and Mental Retardation

Filed: May 18, 2001



#### Texas Natural Resource Conservation Commission

##### Enforcement Orders

An agreed order was entered regarding BRT INVESTMENT CORPORATION, Docket No. 1998-1010-PWS-E on May 15, 2001 assessing \$7,594 in administrative penalties with \$6,994 deferred.

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 ANGELOS KAVADAS AND IOANNIS DAGLAS DBA KATY FREEWAY TEXACO, Docket No. 1999-1197-PST-E on May 15, 2001 assessing \$4,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SCOTT MCDONALD, Staff Attorney at (817) 588-5800, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MANUEL MULLINS, Docket No. 1999-0991- PST-E on May 15, 2001 assessing \$3,500 in administrative penalties with \$2,900 deferred.

Information concerning any aspect of this order may be obtained by contacting RICHARD O'CONNELL, Staff Attorney at (512) 239-5528, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JON A. FRIEND DBA BE-SAW'S CAF, Docket No. 2000-0755-PWS-E on May 15, 2001 assessing \$2,500 in administrative penalties.



Information concerning any aspect of this order may be obtained by contacting SUBHASH JAIN, Enforcement Coordinator at (512) 239-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHATFIELD WATER SUPPLY CORPORATION, Docket No. 2000-0712-PWS-E on May 15, 2001 assessing \$11,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JORGE IBARRA, Enforcement Coordinator at (817) 469-6750, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF GROVETON, Docket No. 2000-0159-MLM-E on May 15, 2001 assessing \$6,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JAYME BROWN, Enforcement Coordinator at (512) 239-1683, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EXXON MOBIL CORPORATION, Docket No. 2000-0973-AIR-E on May 15, 2001 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting SUSAN KELLY, Enforcement Coordinator at (409) 899-8704, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ENRON METHANOL COMPANY, Docket No. 2000-1081-AIR-E on May 15, 2001 assessing \$20,325 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting FAYE LIU, Enforcement Coordinator at (713) 767-3726, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MATBON, INCORPORATED, Docket No. 2000-1107-AIR-E on May 15, 2001 assessing \$8,125 in administrative penalties with \$1,625 deferred.

Information concerning any aspect of this order may be obtained by contacting JORGE IBARRA, Enforcement Coordinator at (817) 469-6750, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. GERALD LEMLER DBA MAIN STREET MOTOR, Docket No. 2000-0899-AIR-E on May 15, 2001 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting MELINDA HOULIHAN, Enforcement Coordinator at (817) 469-6750, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WEATHERFORD AEROSPACE, INCORPORATED, Docket No. 2000-0779-AIR-E on May 15, 2001 assessing \$9,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512) 239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MORRIS LAND CLEARING, INC., Docket No. 2000-0413-AIR-E on May 15, 2001 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting DAN JOYNER, Staff Attorney at (512) 239-6366, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding LYNN MCKEE DBA TEXAS TIRE TRANSPORTER, Docket No. 2000-0216-MSW-E on May 15, 2001 assessing \$13,500 in administrative penalties with \$12,900 deferred.

Information concerning any aspect of this order may be obtained by contacting VICTOR JOHN SIMONDS, Staff Attorney at (512) 239-6201, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. DAVID DAVIS DBA AGNES DAIRY, Docket No. 2000-1142-AGR-E on May 15, 2001 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting MELINDA HOULIHAN, Enforcement Coordinator at (817) 469-3750, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LARRY GARDNER DBA GARDNER DAIRY, Docket No. 2000-1007-AGR-E on May 15, 2001 assessing \$3,500 in administrative penalties with \$700 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 CONTINENTAL CABINETS MANUFACTURING, INC., Docket No. 2000-0040-AIR-E on May 15, 2001 assessing \$1,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting WENDY COOPER, Enforcement Coordinator at (817) 469-6750, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EMPAK, INCORPORATED, Docket No. 2000-1232-AIR-E on May 15, 2001 assessing \$2,250 in administrative penalties with \$450 deferred.

Information concerning any aspect of this order may be obtained by contacting SHEILA SMITH, Enforcement Coordinator at (512) 239-1670, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EL PASO OFFSHORE GATHERING & TRANSMISSION COMPANY, Docket No. 2000-0787-AIR-E on May 15, 2001 assessing \$2,250 in administrative penalties with \$450 deferred.

Information concerning any aspect of this order may be obtained by contacting CAROL MCGRATH, Enforcement Coordinator at (361) 825-3275, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEJAS GAS PIPELINE LP, Docket No. 2000-1115-AIR-E on May 15, 2001 assessing \$7,500 in administrative penalties with \$1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting SHEILA SMITH, Enforcement Coordinator at (512) 239-1670, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SOUTHEASTERN PIPELINE COMPANY, Docket No. 2000-0856-AIR-E on May 15, 2001 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting SUZANNE WALRATH, Enforcement Coordinator at (512) 239-2134, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ROBROY INDUSTRIES - TEXAS LP, Docket No. 2000-0979-AIR-E on May 15, 2001 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting ELNORA MOSES, Enforcement Coordinator at (903) 535-5136, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RECYCLED MATERIALS INCORPORATED, Docket No. 2000-1109-AIR-E on May 15, 2001 assessing \$8,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JORGE IBARRA, Enforcement Coordinator at (817) 469-6750, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NORTH TEXAS TRENCH BURN, INCORPORATED, Docket No. 2000-0978-AIR-E on May 15, 2001 assessing \$3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JORGE IBARRA, Enforcement Coordinator at (817) 469-6750, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MOBIL CHEMICAL COMPANY, INC., Docket No. 2000-0923-AIR-E on May 15, 2001 assessing \$6,500 in administrative penalties with \$1,300 deferred.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512) 239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding G. M. TRADING CORPORATION & GLENDORA CORPORATION, Docket No. 2000-0303-IHW-E on May 15, 2001 assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting MALCOLM FERRIS, Enforcement Coordinator at (210) 403-4061, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SILICA PRODUCTS INC, Docket No. 2000-0919-IWD-E on May 15, 2001 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting TERRY MURPHY, Enforcement Coordinator at (512) 239-5025, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CONRADO RIVAS, Docket No. 2000-0742-MSW-E on May 15, 2001 assessing \$1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SANDRA ALANIS, Enforcement Coordinator at (956) 430-6044, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ACTON MUNICIPAL UTILITY DISTRICT, Docket No. 2000-0731-MWD-E on May 15, 2001 assessing \$19,975 in administrative penalties with \$3,995 deferred.

Information concerning any aspect of this order may be obtained by contacting JAYME BROWN, Enforcement Coordinator at (512) 239-1683, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF MEXIA, Docket No. 2000-1012-MWD-E on May 15, 2001 assessing \$3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JOHN MEAD, Enforcement Coordinator at (512) 239-6010, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WESTWOOD WATER SUPPLY CORPORATION, Docket No. 2000-0947-MWD-E on May 15, 2001 assessing \$5,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting LAURA CLARK, Enforcement Coordinator at (409) 899-8760, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MARATHON WATER SUPPLY AND SEWER SERVICE CORPORATION, Docket No. 2000-0300-MWD-E on May 15, 2001 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512) 239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF BOYD, Docket No. 2000-0989-MWD-E on May 15, 2001 assessing \$3,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting DAVID VAN SOEST, Enforcement Coordinator at (512) 239-0468, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JACKSON COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1, Docket No. 2000-0885-MWD-E on May 15, 2001 assessing \$11,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512) 239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding BILLY R. STRINGER DBA NATIONAL CLEANING AND PLUMBING, Docket No. 1999-1396-OSI-E on May 15, 2001 assessing \$21,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting DAN JOYNER, Staff Attorney at (512) 239-6366, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BRIGHT STAR TRANSPORT LLC, Docket No. 2000-1278-PST-E on May 15, 2001 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting JUDY FOX, Enforcement Coordinator at (817) 588-5825,

Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ZAINEB INVESTMENTS, INCORPORATED DBA TEXACO FOOD & LAUNDRY MAT, Docket No. 2000-1101-PST-E on May 15, 2001 assessing \$3,500 in administrative penalties with \$700 deferred.

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 MS. UN KYUNG PARK DBA TIMES MARKET #5, Docket No. 2000-0762-PST-E on May 15, 2001 assessing \$8,500 in administrative penalties with \$1,700 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 LONE STAR FORD, INC., Docket No. 2000-0870-PST-E on May 15, 2001 assessing \$4,050 in administrative penalties with \$810 deferred.

Information concerning any aspect of this order may be obtained by contacting KENT HEATH, Enforcement Coordinator at (512) 239-4575, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. KEMO HADDAD DBA DANNY'S MART-CONOCO, Docket No. 2000-0760-PST-E on May 15, 2001 assessing \$13,750 in administrative penalties with \$12,750 deferred.

Information concerning any aspect of this order may be obtained by contacting JORGE IBARRA, Enforcement Coordinator at (817) 469-6750, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding ROY COOK DBA COOK'S DEPOT, Docket No. 1999-1357-PST-E on May 15, 2001 assessing \$18,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TROY NELSON, Staff Attorney at (713) 422-8918, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FARMERS TRANSPORT, INC. DBA ENCHANTED HARBOR, Docket No. 2000-0503-PWS-E on May 15, 2001 assessing \$1,063 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512) 239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GRIMES COUNTY MUNICIPAL UTILITY DISTRICT 1, Docket No. 2000-1195-PWS-E on May 15, 2001 assessing \$125 in administrative penalties.

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 MORROW MARY DBA MONTICELLO MOBILE HOME PARK, Docket No. 2000-0707-PWS-E on May 15, 2001 assessing \$2,438 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 LITTLE HOPE-MOORE WATER SUPPLY CORPORATION, Docket No. 2000-0869-PWS-E on May 15, 2001 assessing \$4,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting ELVIA MASKE, Enforcement Coordinator at (512) 239-0789, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KMALI ENTERPRISES, INC. DBA FRIENDLY MART, Docket No. 2000-0680-PWS-E on May 15, 2001 assessing \$1,188 in administrative penalties.

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 FLAT ROCK WATER COOPERATIVE, Docket No. 2000-1082-PWS-E on May 15, 2001 assessing \$313 in administrative penalties.

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 DEBBIE AND MELVIN BLOCK DBA COMMUNITY WATER SYSTEM, Docket No. 2000-0883-PWS-E on May 15, 2001 assessing \$2,318 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SUSAN KELLY, Enforcement Coordinator at (409) 899-8704, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MAXEY ROAD WATER SUPPLY CORPORATION, Docket No. 2000-0633-MWD-E on May 15, 2001 assessing \$1,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512) 239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200102876

LaDonna Castañuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: May 23, 2001



Notice of Availability and Request for Comments on a Draft Restoration Plan/Environmental Assessment for Ecological Injuries and Service Losses at the Tex Tin Corporation Superfund Site

AGENCIES: Texas Natural Resource Conservation Commission (commission), Texas Parks and Wildlife Department (TPWD), Texas General Land Office (GLO), United States Department of the Interior (DOI), and National Oceanic and Atmospheric Administration (NOAA) (hereafter, Trustees).

**ACTION:** Notice of availability of a draft restoration plan and environmental assessment for ecological injuries and service losses associated with the Tex Tin Corporation Superfund Site (Site), and of a 30-day period for public comment on the draft plan beginning June 1, 2001.

**SUMMARY:** Notice is hereby given that a document entitled, "Draft Restoration Plan and Environmental Assessment for the Tex Tin Corporation Superfund Site, Texas City, Galveston County, Texas" (draft RP/EA) is available for public review and comment. This document has been prepared by the Trustees who are the state and federal natural resource trustee agencies to address natural resource injuries and resource service losses of an ecological nature attributable to releases of hazardous substances from the Site. This draft RP/EA presents the Trustees' assessment of the natural resource injuries and service losses attributable to the Site and their proposed plan to compensate for those losses by restoring ecological resources and services.

The opportunity for public review and comment on the draft RP/EA announced in this notice is required under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) 42 United States Code (USC) §9611(i) and parallels the provisions in DOI's natural resource damage assessment regulations found at 43 Code of Federal Regulations (CFR) §§11.32(c), 11.81, and 11.82 and promulgated pursuant to CERCLA.

To receive a copy of the draft RP/EA, interested members of the public are invited to contact Richard Seiler, Texas Natural Resource Conservation Commission, Remediation Division, MC 142, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2523.

**DATES:** Comments must be submitted to Richard Seiler on or before July 1, 2001, at the address listed in the previous paragraph. The Trustees will consider all written comments prior to finalizing the proposed draft RP/EA.

**SUPPLEMENTARY INFORMATION:** The Site is located in Texas City, Galveston County, Texas and encompasses releases of hazardous substances from the Site due to previous industrial activities there. The United States Government, acting through now defunct wartime agencies, commissioned the construction of a tin smelting plant at the Site in support of World War II activities. The plant was operated under government contract between 1941 and 1956. The Wah Chang Corporation bought the Site in 1957 and operated the tin smelter for 11 years. Teledyne Corporation purchased Wah Chang Corporation in 1967. In 1968, Teledyne sold the Site to Fred H. Lenway Corporation, which sold the eastern portion to Amoco Chemical Company in 1969. The Gulf Chemical and Metallurgical Company purchased the western portion of the Site from Lenway in 1970. In 1978, the Associated Metals and Minerals Corporation purchased Gulf Chemical. In 1985, Tex Tin Corporation acquired the portion of the Site controlled by Associated Metals and Minerals Corporation. Tex Tin Corporation continued operations at the Site into the early 1990s.

At various times, industrial activities at the Site have included tin ore processing, acid recovery operations, heavy metals recovery, copper washing operations using ammonia, secondary copper smelting, land filling of low-level radioactive materials, and still bottom and waste oil recovery. The smelter complex included a processing area, a small power-generation station, fuel oil tanks, acid tanks, five wastewater treatment ponds, several large abandoned acid ponds, a ferric chloride pond, and numerous slag piles and drums.

Trace metals (aluminum, antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, iron, lead, manganese, mercury, nickel, silver, tin, vanadium, and zinc) are the primary contaminants at the Site. Polycyclic aromatic hydrocarbons, volatile and semivolatile organic compounds, and polychlorinated biphenyls have been detected at the Site; however, the concentrations of trace metals are relatively

higher and consequently drive the assessment of natural resource injuries and service losses.

NOAA, DOI, TPWD, GLO, and the commission are designated natural resource trustees under §107(f) of CERCLA, 42 USC §9607(f); §311 of the Federal Water Pollution Control Act (FWPCA), 33 USC §1321; and other applicable federal or state laws, including Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR §§300.600 - 300.615. The Trustees are authorized to act on behalf of the public under these authorities to protect and restore natural resources injured or lost and services lost as a result of discharges or releases of hazardous substances.

Paralleling the Remedial Investigation/Feasibility Study (RI/FS) process for the Site conducted by the United States Environmental Protection Agency (EPA), the Trustees undertook an assessment of the natural resource injuries and service losses attributable to hazardous substances at the Site. The assessment focused on natural resource injuries or service losses of an ecological nature caused by the hazardous substances at the Site based on known contamination and anticipated response actions.

The draft RP/EA released today identifies the information and methods being used to define the natural resource injuries and losses of an ecological nature, including the scale of restoration actions, and identifies preferred restoration actions to restore, replace, or acquire resources or services equivalent to those lost. It also includes an evaluation of the resource injuries and remaining ecological losses, including their corresponding restoration requirements, based on EPA's anticipated remedy. If the remedy selected by EPA differs from EPA's anticipated remedy, then the assessment may not be appropriate and a second and supplemental RP/EA may be required. If the final remedy differs from EPA's anticipated remedy for the Site but not so as to affect the assessment of natural resource injuries and service losses, further RP/EAs will not be needed to complete the restoration planning process for this Site. This information is being included in this notice for review by the public.

For further information, contact Richard Seiler, at (512) 239-2523, email: [rseiler@mrcc.state.tx.us](mailto:rseiler@mrcc.state.tx.us).

TRD-200102853  
Margaret Hoffman  
Director, Environmental Law Division  
Texas Natural Resource Conservation Commission  
Filed: May 22, 2001



### Notice of Availability and Request for Comments on a Proposed Natural Resource Restoration Plan

**AGENCIES:** Texas Natural Resource Conservation Commission (commission) and Texas Parks and Wildlife Department; (collectively the Natural Resource Trustees).

**ACTION:** Notice of availability of a draft restoration plan for natural resource damages associated with the National Foam Cushion Manufacturing Inc. site (National Foam) in Colorado City, Mitchell County, Texas and of a 30-day period for public comment on the draft plan beginning June 1, 2001.

**SUMMARY:** Notice is hereby given that a document entitled, "Draft Restoration Plan for National Foam Cushion Manufacturing Inc., Mitchell County, Texas" is available for public review and comment. This document has been prepared by the state natural resource trustee agencies listed in the first paragraph to evaluate restoration alternatives and select the preferred alternative to compensate for potential losses of ecological resources and services as a result of releases of hazardous substances from the National Foam site. The preferred alternative is

proposed for implementation using funds recovered by the Trustees as part of a September 1999 bankruptcy settlement of a natural resource damage claim associated with releases of hazardous substances from the National Foam site. The Trustees propose to utilize the \$25,000 received from the bankruptcy settlement to restore native prairie at the Maddin Native Prairie and Wildlife Preserve near Colorado City, Mitchell County, Texas.

The opportunity for public review and comment on the draft restoration plan announced in this notice is required under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) 42 United States Code §9611(i) and parallels the provisions included in 43 Code of Federal Regulations §§11.32(c), 11.81, and 11.82 of the federal natural resource damage assessment regulations.

To receive a copy of the draft restoration plan, interested members of the public are invited to contact Richard Seiler of the Texas Natural Resource Conservation Commission, Remediation Division, MC 142, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2523.

**DATES:** Comments must be submitted to Richard Seiler on or before 5:00 p.m. on July 1, 2001, at the address listed in the previous paragraph. The Natural Resource Trustees will consider all written comments prior to finalizing the proposed draft restoration plan.

**SUPPLEMENTARY INFORMATION:** The National Foam site is the subject of an *Order Granting Joint Motion to Approve Compromise and Settlement Agreement Pursuant to Bankruptcy Rule 9019*, dated September 17, 1999, between National Foam, the Official Unsecured Creditor's Committee, the commission, and State of Texas Natural Resource Damage Trustees. The Trustees filed an unliquidated claim to preserve their potential claim for natural resource damages in the previous mentioned case and received \$25,000 to be used to replace, restore, or acquire the equivalent of natural resources injured at the National Foam site.

The National Foam site is located within the city limits of Colorado City, Texas, north of Business I-20 in Mitchell County. In 1990 National Foam purchased the site, which was previously owned by a number of oil refining companies and several foam manufacturers. The site is within the Col-Tex State Superfund Site. National Foam's operations involved bonding or gluing polyurethane scraps into carpet pads and cutting the pads to required dimensions. The facility used hydrocarbons, such as heat exchanger oil, in the manufacturing process to prevent the carpet pads from adhering to the metal forms.

Documentation of releases of hazardous substances to the surface soil began in January 1994. From November 1993 to 1996, National Foam was directed by the staff of the commission to investigate and remediate on-site contamination. Analysis of soil and groundwater samples collected at National Foam in 1995 documented that soils at the site and groundwater beneath the site contained chlorinated compounds and solvents that were known to originate from National Foam operations. In September 1998 the commission's corrective action staff referred the site to the Texas Natural Resource Conservation Commission Superfund Program for further action.

The potentially affected habitat is considered to be upland terrestrial scrub-shrub habitat native to the region. This habitat supports native shrubs, forbs, and grasses. Because of the potential for injury to trust resources caused by releases of hazardous substances, the Natural Resource Trustees are seeking to utilize the \$25,000 bankruptcy settlement to compensate for natural resource injuries at the National Foam site.

The draft restoration plan proposes a native prairie habitat project at the Maddin Native Prairie and Wildlife Preserve. This project will result

in the creation, restoration, and enhancement of a native prairie habitat comparable to the habitat potentially injured at the National Foam site.

TRD-200102854

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: May 22, 2001



### Notice of Water Quality Applications

The following notices were issued during the period of May 7, 2001 through May 11, 2001.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, **WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.**

**CITY OF AMARILLO** has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 10392-003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 12,000,000 gallons per day. Authorization for land application of sewage sludge and land disposal of treated effluent have been removed from the draft permit. The facility is located approximately 4 miles east-southeast of the intersection of State Highway Spur 335 (Hollywood Road) and Farm-to-Market Road 1541 (Washington Street) in Randall County, Texas.

**CITY OF CORRIGAN** has applied for a renewal of TNRCC Permit No. 10787-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located approximately 2,900 feet northeast of the intersection of U.S. Highway 59 and State Highway 352 in Polk County, Texas.

**CITY OF CROSBYTON** has applied for a renewal of Permit No. 10097-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 264,000 gallons per day via surface irrigation of 518.3 acres of farmland. The facility and disposal site are located approximately 3.0 miles southeast of the intersection of U.S. Highway 82 and Farm-to-Market Road 651 in Crosby County, Texas.

**CITY OF GARRISON** has applied for a renewal of TNRCC Permit No. 11304-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility is located 0.25 mile east of U.S. Highway 59 and 0.25 mile north of Farm-to-Market Road 138 in the City of Garrison in Nacogdoches County, Texas.

**PHILLIPS PETROLEUM COMPANY** which operates a rail car cleaning, maintenance, and testing center, has applied for a renewal of Permit No. 02326, which authorizes the disposal of industrial wastewater from the washing and hydrostatic testing of rail cars, boiler blowdown, and feed waste preparation water at a daily average flow not to exceed 1100 gallons per day via evaporation. The proposed draft permit authorizes the discharge of boiler blowdown/zeolite regeneration water and steam condensate (not used in cleaning) at an annual average flow not to exceed 1100 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal area are located at 919 Florida Street, west of Spur Road 246 and south of the Atchison, Topeka, and Santa Fe Railway, in the City of Berger, Hutchinson County, Texas.

CITY OF POINT has applied for a renewal of TPDES Permit No. 10964-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located approximately 2,100 feet east of the intersection of Farm-to-Market Road 47 and U.S. Highway 69 in the City of Point in Rains County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE

THE PREMCOR REFINING GROUP, INC. which operates a petroleum bulk storage terminal, has applied for a minor amendment to authorize the discharge of storm water runoff via Outfalls 001, 003, 004 and 005. The existing permit authorizes the discharge of stormwater runoff via Outfalls 001, 002, 003, 004 and 005. The facility is located on West Port Arthur Road, approximately 5.5 miles south-southeast of the City of Beaumont, in Jefferson County, Texas.

#### Concentrated Animal Feeding Operation

Written comments and requests for a public meeting may be submitted to the Office of the Chief Clerk, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

BAR 7 CATTLE COMPANY and BROWN CATTLE FEEDERS, INC. have applied for a major amendment of TPDES Registration No. 03799 to authorize the applicant to operate an existing beef cattle facility at a maximum capacity of 8,500 head. The facility is add waste application fields for the application of solid waste to its operation in Deaf Smith County, Texas. No discharge of pollutants into the waters in the state is authorized by this registration except under chronic or catastrophic rainfall conditions. The existing facility is located on the west side of an unnamed County Road about six miles west of Farm-to-Market Road 1412, and eleven miles north of the intersection of Farm-to-Market Road 1412 and Farm-to-Market Road 1058 in Deaf Smith County, Texas.

JOHN MORAN HOWLE, JR. AND ALLENE HOWLE have applied for a renewal of TPDES Wastewater Permit No. WQ0003154-000 for a Concentrated Animal Feeding Operation to authorize the operation of a 940 head dairy operation. The facility is located on Erath County Road 461 approximately 3 miles southwest of the intersection of State Highway 8 and County Road 461 in Erath County, Texas.

M.T. MCCLOY FARMS, LLC has applied for a new TPDES Registration No. WQ00004304-000 to authorize the applicant to operate a new dairy at a maximum capacity of 7,560 head in Hutchinson County, Texas. No discharge of pollutants into the waters in the state is authorized by this registration except under chronic or catastrophic rainfall conditions. The proposed facility is located two and one half miles west of the intersection of FM 1598 and State Highway 136, on the south side of FM 1598 in Hutchinson County, Texas.

TRD-200102758

LaDonna Castañuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: May 16, 2001



#### Notice of Water Right Application

The following notice of application for an amendment to a Certificate of Adjudication was issued on May 11, 2001.

Dove Creek Land and Cattle Co., Ltd., a Texas Limited Partnership, P. O. Box 42, Knickerbocker, Texas, 76939, applicant, seeks an amendment to Certificate of Adjudication No. 14-1261, as amended, pursuant to Chapter 11.122, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC Section 295.1, et seq. Certificate of Adjudication No. 14-1261 authorizes owner to maintain a dam and reservoir on Dove Creek, tributary of the Colorado River, Colorado River Basin, Irion and Tom Green Counties, to impound therein not to exceed 85 acre-feet of water. Owner is also authorized to divert and use not to exceed 1,348 acre-feet of water per annum from a point on the aforesaid reservoir at a rate of 2.0 cfs (900 gpm) for irrigation of 543 acres of land out a larger tract in Irion and Tom Green Counties. Certificate of Adjudication No. 14-1261, as amended, authorizes an increase on the diversion rate from 2.0 cfs (900 gpm) to 5.0 cfs (2,250 gpm) only when the remaining flow of Dove Creek at the U.S.G.S. gage at Knickerbocker, Texas, equals or exceeds 7.0 cfs (3,150 gpm).

The aforesaid tract is lies partially in Irion County and is located in the J. Brandes Survey No. 787, Abstract No. 28, the T. Walker Survey No. 788, Abstract No. 648, the C. Schaefer Survey No. 789, Abstract No. 521, and Survey No. 790, Abstract No.522, and the L. Garret Survey No. 2, Abstract No. 785; and in Tom Green County and is located in the J. Heinrich Survey No. 791, Abstract No. 392, and Survey No. 792, Abstract No. 391, the A. Rompf Survey No. 793, Abstract No. 1826, and Survey No. 794, Abstract No. 1825, and in the L. Garret Survey No. 2, Abstract No. 5248.

The applicants seeks to amend Certificate of Adjudication No. 14-1261, as amended, by adding two diversion points on the west or right bank of Dove Creek located downstream of the currently authorized diversion point. The proposed most upstream diversion point will be located approximately 1.8 miles downstream of the currently authorized diversion point on Latitude 31.2179 degrees N, Longitude 100.6998 degrees W, being N 31.25 degrees W, 3,440 feet from the southeast corner of the C. Schaefer Survey No. 789, Abstract No. 785. The most downstream proposed diversion point will be located approximately 3.4 miles downstream of the currently authorized diversion point on Latitude 31.2364 degrees N, Longitude 100.6843 degrees W, being N 17.63 degrees E, 10,100 feet from the southeast corner of the C. Schaefer Survey No. 789, Abstract No. 785.

The current special conditions in amendment 14-1261A, issued on April 27, 1992, that were established to address the increase in the diversion rate will no longer be necessary and appropriate for purposes of the proposed amendment. The amendment, if granted, will include special conditions that will state that the applicant will be allowed to divert water at any diversion point at a maximum rate of not to exceed 2.0 cfs (900 gpm). In addition, the two proposed diversion points and the existing diversion point will not be authorized to operate in a simultaneous mode.

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 Wednesday, May 30, 2001. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRC may grant a contested case hearing on this application if a written hearing request is filed by Wednesday, May 30, 2001. The Executive Director may approve the 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;" (4)

a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions in the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the amendment and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087 by May 30, 2001. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1- 800-687-4040. General information regarding the TNRCC can be found at our web site at [www.tnrcc.state.tx.us](http://www.tnrcc.state.tx.us).

TRD-200102756

LaDonna Castañuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: May 16, 2001



### Proposal for Decision

The State Office Administrative Hearing issued a Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on May 10, 2001. Executive Director of the Texas Natural Resource Conservation Commission, Petitioner v. Rhohay Ratsamy; Respondent; SOAH Docket No.582-01-2165; TNRCC Docket No. 2000-0046-PST-E. In the matter to be considered by the Texas Natural Resource Conservation Commission on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105 TNRCC PO Box 13087, Austin Texas 78711-3087. If you have any questions or need assistance, please contact Doug Kitts, Chief Clerk's Office, (512) 239-3317.

TRD-200102757

Douglas A. Kitts

Agenda Coordinator

Texas Natural Resource Conservation Commission

Filed: May 16, 2001



## Texas Department of Protective and Regulatory Services

### Request for Proposal-Home Instruction Program for Pre-School Youngsters

The Texas Department of Protective and Regulatory Services (PRS), Division of Prevention and Early Intervention, is soliciting proposals for service contracts in Dallas, Denton, Harris, and Travis counties for contractors to provide Home Instruction Program for Pre-School Youngsters (HIPPY) services, as taught and supported by HIPPY USA.

PRS anticipates funding no more than four contracts from this solicitation--one in each of the counties listed above. The Request for Proposal (RFP) will be released on or about May 24, 2001. The RFP will be posted on the State Internet Site at [www.marketplace.state.tx.us](http://www.marketplace.state.tx.us) on the date of its release.

**Brief Description of Services:** HIPPY is a home-based program centered on involving parents in preparing their pre-school children for educational success. The HIPPY curriculum focuses on school readiness, with each year's program offering 30 weeks worth of activities and storybooks. Children must enter the program at either three or four years of age. Five-year olds are not eligible for HIPPY services unless they received services as a four year old. Children are exposed to skills, concepts, and experiences that assist in language development, problem solving, logical thinking, and perceptual discrimination.

To meet requirements for this contract, offerors must document that the area and population they intend to serve has need indicators such as high incidence of child abuse or neglect; juvenile delinquency; teen pregnancy and low birth weight babies; low-income families; high-school drop-out rates; and percentage of children repeating kindergarten, in special education classes, or in classes to improve English skills.

Offerors must provide historical data on the number of families provided HIPPY services during Fiscal Year (FY) 2000 and FY 2001. To receive funding, selected contractors must, at a minimum, maintain current levels of service in each year of service delivery. In addition, if a successful offeror is not currently providing PRS-funded HIPPY services, the offeror must agree to serve eligible families currently enrolled in the HIPPY program whose services are funded by PRS.

**Eligible Applicants:** Eligible offerors include private nonprofit and for-profit corporations, school districts, cities, counties, state agencies/entities, partnerships, and individuals. Historically Underutilized Businesses (HUBs), Minority Business and Women's Enterprises, and Small Businesses are encouraged to apply.

The contractor may subcontract services. Subcontractors must comply with the same standards and policies required of the contractor and must be approved in advance in writing by PRS (see RFP Section I, page 8, *Subcontract Requirements*). **The offeror must submit an Historically Underutilized Business Subcontracting Plan with its proposal.** This plan should include, at a minimum, the offeror's plans to reach out to and recruit Historically Underutilized Businesses as subcontractors of its services. **If the offeror does not intend to use subcontractors, the plan may simply state this.**

**To receive funds under this RFP, offerors must provide documentation of current certification by HIPPY USA and demonstrate at least two years experience in providing HIPPY services.**

**Limitations:** Total funding of approximately \$400,000 is available for FY 2002 for this procurement. Funding of the selected proposals will be dependent upon available federal and/or state appropriations. Funding is not guaranteed at a maximum level, or at any level. Funds provided via a contract resulting from this RFP cannot be used to replace existing local, federal, or state funding.

PRS reserves the right to reject any and all offers received in response to this RFP and to cancel this RFP if it is deemed in the best interest of PRS. PRS also reserves the right to re-procure this service.

If no acceptable responses are received, or no contract may be entered into as a result of this procurement, PRS intends to procure by non-competitive means in accordance with the law, but without further notice to potential vendors.

**Deadline for Proposals, Term of Contract, and Amount of Award:**

Proposals will be due July 2, 2001, at 2:00 p.m. The effective dates of contracts awarded under this RFP will be September 1, 2001, through August 31, 2002. If contracts are renewed, funding will be reviewed annually with prescribed maximum funding levels each year.

**Contact Person:** Potential offerors may obtain a copy of the RFP on or about May 24, 2001. It is preferred that requests for the RFP be submitted in writing (by mail or fax) to: Jacqueline Gomez, Mail Code E-541; c/o Marilyn Eaton; Texas Department of Protective and Regulatory Services; P.O. Box 149030; Austin, Texas 78714-9030; Fax: (512) 438-2031.

TRD-200102843  
C. Ed Davis  
Deputy Director, Legal Services  
Texas Department of Protective and Regulatory Services  
Filed: May 21, 2001



**Public Utility Commission of Texas**

**Notice of Application for Amendment to Service Provider Certificate of Operating Authority**

On May 10, 2001, KMC Telecom filed an application with the Public Utility Commission of Texas (commission) to amend their service provider certificates of operating authority (SPCOAs) granted in SP- COA Certificate Number 60039 A - D. Applicant intends to (1) reflect a corporate restructuring; and (2) a change in its name to KMC Telecom III, Inc.

The Application: Application of KMC Telecom for Amendments to Their Service Provider Certificates of Operating Authority, Docket Number 23876.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 no later than June 6, 2001. You may contact the commission's Customer Protection Division at (512) 936-7120. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23876.

TRD-200102766  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 17, 2001



**Notice of Application for Service Provider Certificate of Operating Authority**

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on May 14, 2001, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Ganoco, Inc., doing business as American Dial Tone for a Service Provider Certificate of Operating Authority, Docket Number 24108 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, and long distance services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than June 6, 2001. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200102765  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 17, 2001



**Notice of Application for Service Provider Certificate of Operating Authority**

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on May 15, 2001, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of CommCentral, Inc., doing business as CommCentral for a Service Provider Certificate of Operating Authority, Docket Number 24109 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than June 6, 2001. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200102787  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 18, 2001



**Notice of Petition for Expanded Local Calling Service**

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition on April 10, 2001, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition of the Point Exchange for Expanded Local Calling Service, Project Number 23949.

The petitioners in the Point Exchange request ELCS to the exchanges of Sulphur Springs, Terrell, and Wills Point.

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 June 15, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200102832  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 21, 2001



#### Public Notice of Amendment to Interconnection Agreement

On May 18, 2001, Southwestern Bell Telephone Company and Western Wireless Corporation, 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 2001) (PURA). The joint application has been designated Docket Number 24135. 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 24135. 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 June 18, 2001, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas

78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24135.

TRD-200102856  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 23, 2001



#### Public Notice of Interconnection Agreement

On May 15, 2001, United Telephone Company of Texas, Inc., doing business as Sprint, Central Telephone Company of Texas doing business as Sprint (collectively, Sprint), and Focal Communications Corporation of Texas, 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 2001) (PURA). The joint application has been designated Docket Number 24111. 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 24111. 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 June 14, 2001, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24111.

TRD-200102759  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 16, 2001



### Public Notice of Interconnection Agreement

On May 15, 2001, United Telephone Company of Texas, Inc., doing business as Sprint, Central Telephone Company of Texas doing business as Sprint (collectively, Sprint), and Zephion Networks Communications, 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 2001) (PURA). The joint application has been designated Docket Number 24112. 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 24112. 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 June 14, 2001, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those

issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24112.

TRD-200102760  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 16, 2001



### Public Notice of Interconnection Agreement

On May 15, 2001, United Telephone Company of Texas, Inc., doing business as Sprint, Central Telephone Company of Texas doing business as Sprint (collectively, Sprint), and Diamond Telco, 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 2001) (PURA). The joint application has been designated Docket Number 24113. 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 24113. 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 June 14, 2001, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings

concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24113.

TRD-200102761  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 16, 2001



### Public Notice of Interconnection Agreement

On May 15, 2001, United Telephone Company of Texas, Inc., doing business as Sprint, Central Telephone Company of Texas, doing business as Sprint (collectively, Sprint), and PhoneSense, a division of JCA, 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 2001) (PURA). The joint application has been designated Docket Number 24114. 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 24114. 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 June 14, 2001, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24114.

TRD-200102762  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 16, 2001



### Public Notice of Interconnection Agreement

On May 16, 2001, KCC Telcom, Inc. doing business as K2C 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 2001) (PURA). The joint application has been designated Docket Number 24119. 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 24119. 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 June 18, 2001, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24119.

TRD-200102857  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 23, 2001



#### Request for Proposals for Expert Witness Services

Request for Proposals for expert witness services in Docket Number 22652, State Office of Administrative Hearings (SOAH) Docket Number 473-00-1968, *Remand of Docket 9300 (Application of Texas Utilities Electric Company for Authority to Change Rates)*.

A Request for Proposals will be issued in Docket Number 22652 on June 1, 2001 pursuant to the commission's delegated authority under Texas Government Code Annotated §2155.132 and Texas Utilities Code Annotated §14.001.

Eligible Proposers must be neutral and impartial to opposing parties in Docket Number 22652, and must not have direct financial interest in the provision of electric service in the state of Texas. Appearance and testimony by the proposer must not violate the ethics provisions of the Public Utility Regulatory Act, including Texas Utilities Code §12.155 or §13.043 related to prior employment with the Public Utility Commission of Texas. Persons who assisted in the development of the scope of work are not eligible to submit proposals for this project. Entities that meet the definition of a Historically Underutilized Business (HUB), as defined in Chapter 2161, Texas Government Code, §2161.001, are encouraged to submit a response.

**Project Description.** The commission seeks expert witness services to assist in the evaluation of whether the amount paid by TXU to repurchase minority interests, including litigation and fuel repurchase costs, meets the prudent investment standard. The expert will not need to consider whether repurchase in general was a prudent course of action. The commission has previously determined in Docket Number 9300 that settling the minority owner litigation was reasonable from TXU's perspective. The commission has not, however, yet determined whether the terms of the settlement represent a prudent investment on the part of TXU.

**Selection Criteria.** The proposal will be evaluated based on the ability of the proposer to provide the best value to the state and the proposer's ability to provide the requested services. In addition to the proposer's ability to carry out all of the requirements contained in the RFP, demonstrated competence and qualifications of the proposer and the reasonableness of the proposed fee will be considered. When other considerations are equal, preference will be given to a proposer whose primary place of business is in Texas or who will manage the project wholly from its offices in Texas. The commission shall also give a preference among proposals that are otherwise comparable, to a proposal submitted by a HUB. Evaluation criteria will include, but are not limited to: experience in evaluating prudent investments; experience with the electric utility industry; qualifications and experience of assigned personnel; evidence or examples of prior expert witness services; the total estimated fee and a detailed breakdown of the basis used to develop such estimate; the existence of potential conflicts of interest; and other general evidence of ability to perform the required services.

Requesting a copy of the request for proposals. A complete copy of the RFP for expert witness services may be obtained by writing Terri Eaton, Legal Division, Public Utility Commission, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, 78701, or [terri.eaton@puc.state.tx.us](mailto:terri.eaton@puc.state.tx.us), or calling (512) 936-7271. The RFP will be available June 1, 2001. You may also download the RFP from the commission website [www.puc.state.tx.us](http://www.puc.state.tx.us), under "What's New", and from the electronic business daily website sponsored by the Texas Department of Economic Development at [www.marketplace.state.tx.us](http://www.marketplace.state.tx.us).

**For Further Information.** You may request clarifying information in writing only. For clarifying information about the RFP, contact Terri Eaton, Legal Division, Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, fax (512) 936-7268, or [terri.eaton@puc.state.tx.us](mailto:terri.eaton@puc.state.tx.us).

**Deadline for Receipt of Responses.** Responses must be filed under seal with a cover letter for filing in Docket Number 22652 and received no later than 3:00 p.m. on June 15, 2001, in Central Records, room G-113, Public Utility Commission of Texas, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Central Records is open for filing between 9:00 a.m. and 5:00 p.m., Monday through Friday, except on state holidays. Regardless of the method of submission of the response, the commission will rely solely on the time/date stamp of the Central Records Division in establishing the time and date of receipt.

TRD-200102870  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 23, 2001



### Texas Department of Transportation

#### Public Notice

Public Notice: Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

<http://www.dot.state.tx.us>

Click on **Aviation**.

Click on **Aviation Public Hearing**.

Or, contact Karon Wiedemann, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4520 or 800 68 PILOT.

TRD-200102872

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: May 23, 2001



### Request for Professional Planning Services-Aviation

The Aviation Division of the Texas Department of Transportation (TxDOT), intends to engage Aviation Professional Engineering/Planning Firms for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: Fort Bend County TxDOT CSJ No.: 0112ARCOLA

#### Background:

Constructed and opened in 1978, Houston Southwest Airport (AXH) since 1988 has been owned and operated by Tejas Avco as a public use general aviation airport. The airport has one runway (5000') in the east west direction, related taxiways and apron, 21 storage hangars, 40 T-hangars, 165 based aircraft, four flight schools and one FBO operated by Tejas Avco. The non-airfield area is subdivided into lots of which 50% are owned by Tejas Avco and the rest by individual owners. In 1995 the airport was divided between two corporations with the same shareholders, Tejas Avco and Arcola Aviation.

AXH is in the Houston Galveston Area Council (HGAC) Airport System Plan and is characterized as a general aviation airport. Although a master plan meeting Federal Aviation Administration (FAA) guidelines has not been undertaken, studies exploring alternative capital improvement scenarios have been completed by the owner. These identify the order of magnitude of improvements required to bring the airport to FAA standards and to enhance its viability to attract corporate aviation.

During its ownership Tejas Avco/Arcola Aviation has made, to the extent feasible, limited investments in capital improvements, maintenance projects and when possible consolidated the ownership by purchasing lots and hangars which have become available. However, earnings from the airport have not supported the required level of maintenance and the needed capital projects to expand and enhance the operational aspects of AXH. Accordingly both have been deferred and postponed to the extent that the condition of AXH is fast approaching a critical point. Failure to undertake them will result in a deterioration of the airport to a substandard condition.

The owner has offered to sell the basic aeronautical infrastructure of AXH to Fort Bend County as opposed to seeking other alternatives to dispose of the airport. Because of the importance of the airport to the local community and to this area of the County, the County Commissioners Court after discussions with the owner, the Fort Bend Economic Council, FAA, and TxDOT have decided to explore and to assess the feasibility of this option.

#### Study Objective:

The objective of the proposed study is to complete the analyses required to prepare documents and strategies which allow the County Commissioners Court to assess and evaluate the acquisition and development of a publicly-owned airport located in east Fort Bend County to serve the immediate and long term needs of the southwest metropolitan Houston area.

#### Scope of Services:

To accomplish this objective the selected respondent shall perform the following specialized professional services:

- Forecast the general aviation demand for the service area.
- Define the size and type of airport needed to accommodate current and projected demand.
- Identify potential sites in east Fort Bend, including AXH, for airport development.
- Conduct for the selected sites, including AXH, a comparative review of air space, road access (to downtown Houston and other economic centers), economic and financial feasibility, and potential environmental consequences.
- Recommend a preferred site.
- Prepare master plan, including an ALP, Environmental Assessment, and economic impact of the airport on the area.
- Prepare financial analysis including appraisals to acquire land, develop and maintain the airport.
- Prepare alternative approaches to management and operation of the airport.

#### The Proposal shall include:

1. Firm name, address, phone number, and name of person to contact regarding the proposal.
2. Proposed project management structure delineating key personnel and subconsultants (if any) and the role of each.
3. Qualifications and recent, relevant experience (past five years) of the firm, key personnel and subconsultants relative to the performance of recent, relevant similar services for aviation/airport planning studies.
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 projects (within the last five years).
7. Statement regarding an Affirmative Action Program.
8. Proposed Disadvantaged Business Enterprise (DBE) participation.

#### Criteria for Evaluating Firms:

The following criteria will serve as a guideline to evaluate proposals submitted by interested firms; however, the Selection Committee may develop additional evaluation criteria and weighted values, if desired. The Selection Committee, after review of the proposals, will assign points to each of the criteria for each firm on a rating sheet to determine the recommended firm.

1. Recent experience, within the last five years, in the performance of airport planning projects comparable to the proposed project.
2. Reputation for personal and professional integrity, competence, timeliness, and quality of performance and work product.
3. Professional qualifications of key personnel assigned to this project relevant to the work to be performed.
4. Capability to meet the schedules and deadlines of this project.
5. Evidence of a technical approach sufficient to address the requirements of this project.

**Proposal Submission:**

Those interested firms should submit 10 copies of proposals consisting of no more than 10 pages (one side only) to provide the required information for the project. This does not include promotional material or other brochures, which may be included in addition to the ten pages. Proposals must be postmarked by U. S. Mail by midnight June 28, 2001. Mailing address: TxDOT, Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. on June 29, 2001; overnight address: TxDOT, Aviation Division, 200 East Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. June 29 2001; hand delivery address: 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Proposals received after the times specified above shall be returned unopened and not considered.

The Selection Committee appointed by the county judge will review all proposals received on time and meeting the requirements of this RFP. The Committee may select a recommended firm or short list two or more of the firms to make oral presentations to the Committee after which the Committee will select a recommended firm. Technical questions regarding this RFP must be submitted in writing to the Sponsor with a copy to the TxDOT project manager at addresses noted as follows before June 14, 2001. Questions will be answered at the sole discretion of the Sponsor and TxDOT and answers will be posted on the TxDOT web site listed under Fort Bend County.

<http://www.dot.state.tx.us/insdtdot/orgchart/avn/avninfo/notice/consult/index.htm>

or

<http://www.dot.state.tx.us>

Click on **Aviation**, then click on **Notice to Consultants**

For procedural questions, please call Linda Howard at (512) 416-4540.

TxDOT and the Sponsor reserve the right to reject any or all proposals, request additional information from the firms, request clarification from firms about their proposals, and to reopen the selection process.

The DBE goal for this project shall be 10%.

**The Sponsor's contact name and contact information:**

Fort Bend County

C/O Paul B. Gaines

2808 Virginia, Suite 2

Houston, Texas 77098

(713) 874-1301

[gainesp@compuserve.com](mailto:gainesp@compuserve.com)

**The TxDOT project manager and contact information:**

Linda Howard

Director, Planning and Programming

TxDOT Aviation Division

125 East 11th Street

Austin, Texas 78701-2483

[lhoward@dot.state.tx.us](mailto:lhoward@dot.state.tx.us)

TRD-200102871

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: May 23, 2001

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**Texas Youth Commission****Notice of Consultant Contract Award for the Financial and Procurement Systems Strategic Planning**

Under the provisions of the Texas Government Code, Chapter 2254, the Texas Youth Commission (TYC) publishes this notice of a contract award for outside human resource consultant services for the Financial and Procurement Systems Strategic Planning.

The request for consultant proposal was published in the May 26, 2000, *Texas Register* (25 TexReg 4957).

The consultant will be expected to assist the agency in the following tasks: assess and document TYC's organizational, technical and systems environment; assess and document TYC's high level needs for critical financial and procurement functions, including the following areas: general ledger, accounts payable/encumbrance accounting, budgetary control, grant and project accounting, billing and accounts receivable, cash management, cost allocation, budget development, purchasing, asset management, warehouse inventory control, student trust funds, youth court ordered child support, and payroll; identify, evaluate and document the advantages, disadvantages and feasibility of alternative solutions from an organizational, technical and systems perspective, to include: compare and document the high level functionality, risks, benefits, costs, potential issues and concerns associated with implementation of each solution; document required interfaces to/from internal agency systems; document required interfaces to/from statewide systems; develop technological enhancements required to support each solution; develop high level estimate of resources necessary to implement each solution; evaluate agency's ability to support each alternative solution; make recommendation of best solution to meet TYC's long term needs; develop high level work-plan that supports recommended solution; develop a definitive scope statement for recommended solution; report project information to TYC management; provide a final report of work supporting proposed alternative solutions and strategic planning recommendation; make an oral presentation of the report and findings to TYC management; and provide a monthly project status report.

The consultant proposal contract was awarded to Mitt A. Salvaggio, dba Salvaggio & Associates, 4815 West Braker Lane, Suite 502-179, Austin, Texas 78759.

The total value of the contract is \$154,720.00. The contract period begins on September 28, 2000, and will continue until June 30, 2001.

The consultant will provide a monthly project status report of work by the fifteenth day of the month following the last day of the calendar month that work is performed. The consultant will provide a final report summarizing the proposed alternative solutions and a strategic planning recommended solution on or before June 30, 2001. The consultant will draft an initial project work-plan and scope statement to support the recommended solution, and provide an oral presentation of findings and recommendations to the TYC management on or before June 30, 2001.

For additional information, contact Cynthia Ellis, Controller, at Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765 or (512) 424-6212.

TRD-200102845

Steve Robinson  
Executive Director  
Texas Youth Commission  
Filed: May 22, 2001



## How to Use the Texas Register

**Information Available:** The 13 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules**- sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following a 30-day public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Open Meetings** - notices of open meetings.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back

cover or call the Texas Register at (800) 226-7199.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the *TAC*: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

*Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).



# *Texas Register*

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