TEXAS REGISTER

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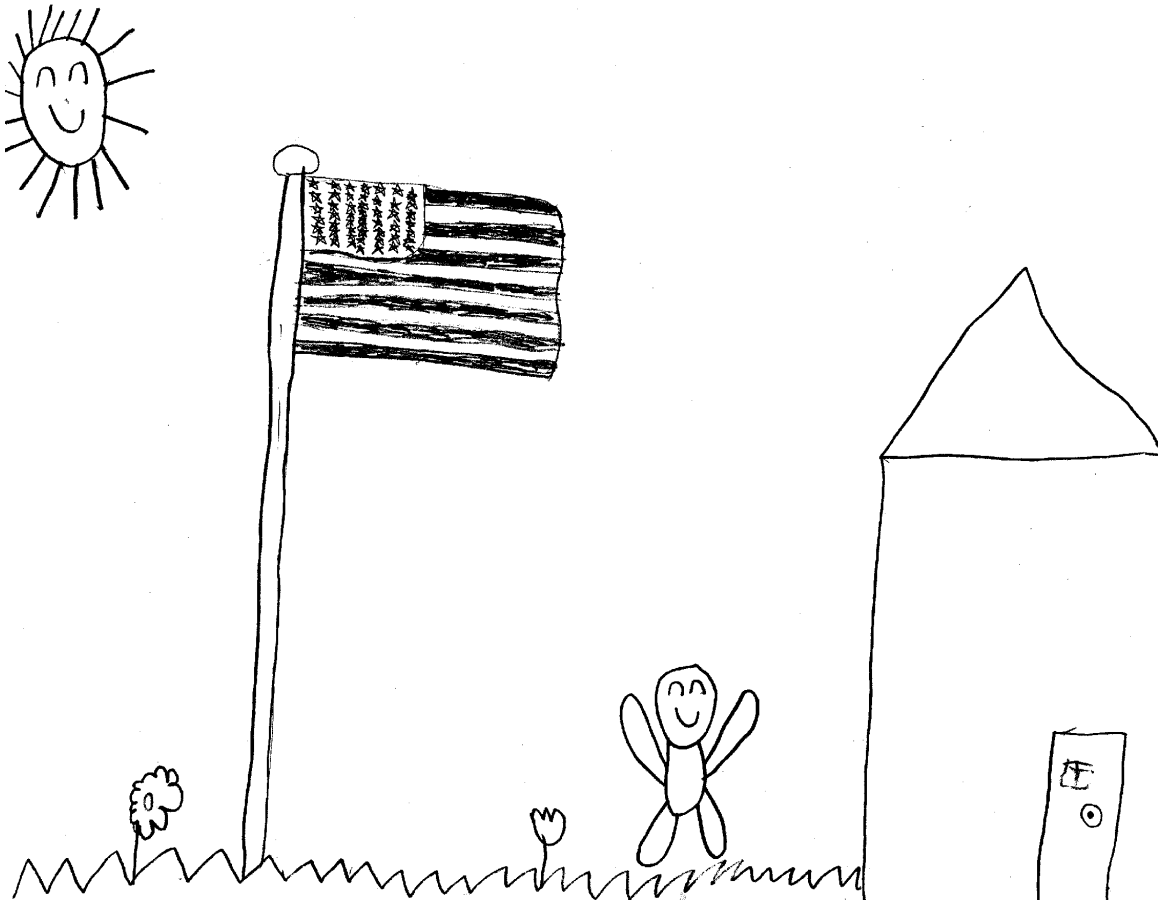

This month's front cover artwork:

Artist: *Jesus Resendiz*
1st grade
Cromack Elementary

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

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

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

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TEXAS ETHICS COMMISSION

Advisory Opinion Requests 5161

EMERGENCY RULES

TEXAS PARKS AND WILDLIFE DEPARTMENT

OYSTERS AND SHRIMP

31 TAC §58.161 5163

TEACHER RETIREMENT SYSTEM

INSURANCE PROGRAMS

34 TAC §41.30 5163

PROPOSED RULES

OFFICE OF THE ATTORNEY GENERAL

VICTIMS' ASSISTANCE GRANTS

1 TAC §§63.11, 63.15, 63.17 5167

1 TAC §63.55 5168

1 TAC §63.73 5168

1 TAC §63.81 5168

COMMISSION ON STATE EMERGENCY COMMUNICATIONS

REGIONAL PLANS--STANDARDS

1 TAC §251.10 5169

TEXAS DEPARTMENT OF AGRICULTURE

BOLL WEEVIL ERADICATION PROGRAM

4 TAC §3.117 5174

QUARANTINES

4 TAC §19.113 5174

4 TAC §19.151 5175

4 TAC §19.154 5175

TEXAS AGRICULTURAL FINANCE AUTHORITY: LINKED DEPOSIT PROGRAM

4 TAC §§26.1, 26.3, 26.9, 26.10 5176

TEXAS DEPARTMENT OF LICENSING AND REGULATION

WATER WELL DRILLERS AND WATER WELL PUMP INSTALLERS

16 TAC §76.800 5178

TEXAS LOTTERY COMMISSION

GENERAL ADMINISTRATION

16 TAC §403.401 5179

TEXAS EDUCATION AGENCY

FOUNDATION SCHOOL PROGRAM

19 TAC §§105.1021, - 105.1023 5179

TEXAS FUNERAL SERVICE COMMISSION

LICENSING AND ENFORCEMENT--PRACTICE AND PROCEDURE

22 TAC §201.5 5182

22 TAC §201.11 5183

22 TAC §201.11 5183

22 TAC §201.13 5186

22 TAC §201.15 5187

POLYGRAPH EXAMINERS BOARD

POLYGRAPH EXAMINER INTERNSHIP

22 TAC §391.3, §391.4 5188

CODE OF OPERATING PROCEDURE OF POLYGRAPH EXAMINERS

22 TAC §§395.2, 395.8, 395.10, 395.11, 395.18 5190

TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

LICENSING

22 TAC §571.3 5191

22 TAC §571.4 5192

22 TAC §571.18 5193

RULES OF PROFESSIONAL CONDUCT

22 TAC §573.10 5194

22 TAC §573.74 5196

PRACTICE AND PROCEDURE

22 TAC §575.24 5196

TEXAS DEPARTMENT OF HEALTH

WAIVER PROGRAM FOR MEDICALLY DEPENDENT CHILDREN

25 TAC §34.3 5197

TEXAS WORKERS' COMPENSATION COMMISSION

BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

28 TAC §134.1 5198

28 TAC §§134.202 - 134.208 5199

TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

LICENSING REQUIREMENTS

37 TAC §217.1 5222

37 TAC §217.7 5224

PRIVATE SECTOR PRISON INDUSTRIES OVERSIGHT AUTHORITY

GENERAL PROVISIONS

37 TAC §§245.11, 245.22, 245.30, 245.47 5225

TEXAS MILITARY FACILITIES COMMISSION

PREVAILING WAGE RATE DETERMINATION

37 TAC §377.1 5226

37 TAC §§377.2 - 377.4 5227

TEXAS DEPARTMENT OF TRANSPORTATION

TRANSPORTATION PLANNING AND PROGRAMMING

43 TAC §15.52 5227

WITHDRAWN RULES

TEXAS EDUCATION AGENCY

FOUNDATION SCHOOL PROGRAM

19 TAC §105.1021 5233

POLYGRAPH EXAMINERS BOARD

POLYGRAPH EXAMINER INTERNSHIP

22 TAC §391.3 5233

CODE OF OPERATING PROCEDURE OF POLYGRAPH EXAMINERS

22 TAC §395.2 5233

ADOPTED RULES

OFFICE OF THE ATTORNEY GENERAL

CENTRAL PURCHASING

1 TAC §69.35, §69.36 5235

TEXAS DEPARTMENT OF AGRICULTURE

COOPERATIVE MARKETING ASSOCIATIONS

4 TAC §4.5 5235

SEED ARBITRATION

4 TAC §6.5 5235

TEXAS RACING COMMISSION

GENERAL PROVISIONS

16 TAC §303.94 5236

OFFICIALS AND RULES OF HORSE RACING

16 TAC §313.507 5236

VETERINARY PRACTICES AND DRUG TESTING

16 TAC §319.111 5236

PARI-MUTUEL WAGERING

16 TAC §321.507 5237

TEXAS EDUCATION AGENCY

DRIVER TRAINING SCHOOLS

19 TAC §§176.1007, 176.1010, 176.1016, 176.1017, 176.1019 ...5237

19 TAC §§176.1101, 176.1103, 176.1105, 176.1108, 176.1111, 176.1113, 176.1114, 176.1116....5239

TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

PRACTICE AND PROCEDURE

22 TAC §575.27 5252

22 TAC §575.27 5252

STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

22 TAC §741.1 5253

22 TAC §741.41 5253

INTERAGENCY COUNCIL ON EARLY CHILDHOOD INTERVENTION

EARLY CHILDHOOD INTERVENTION

25 TAC §621.24 5255

25 TAC §621.62 5259

TEXAS WORKERS' COMPENSATION COMMISSION

AGENCY ADMINISTRATION

28 TAC §103.101 5260

28 TAC §§103.300 - 103.322 5261

28 TAC §103.400 5262

GENERAL PROVISIONS APPLICABLE TO ALL BENEFITS

28 TAC §126.10 5262

IMPAIRMENT AND SUPPLEMENTAL INCOME BENEFITS

28 TAC §130.6 5263

TEXAS DEPARTMENT OF PUBLIC SAFETY

CONTROLLED SUBSTANCES

37 TAC §13.1, §13.2 5264

37 TAC §§13.11 - 13.29 5264

37 TAC §§13.41 - 13.47 5264

37 TAC §§13.61 - 13.67 5265

37 TAC §§13.81 - 13.87 5265

37 TAC §§13.101 - 13.113 5265

37 TAC §§13.131 - 13.149 5265

37 TAC §§13.161 - 13.174 5265

CONTROLLED SUBSTANCES

37 TAC §§13.1 - 13.11 5267

37 TAC §§13.21 - 13.33 5267
37 TAC §§13.41 - 13.58 5267
37 TAC §§13.71 - 13.86 5267
37 TAC §13.101 - 13.115 5268
37 TAC §§13.131 - 13.137 5268
37 TAC §§13.151 - 13.165 5268
37 TAC §§13.181 - 13.187 5268
37 TAC §§13.201 - 13.209 5268
37 TAC §§13.221 - 13.224 5269
37 TAC §§13.231 - 13.237 5269
37 TAC §§13.251 - 13.254 5269
37 TAC §§13.271 - 13.278 5269

DRIVERS LICENSE RULES

37 TAC §15.47 5269

COMMERCIAL DRIVERS LICENSE

37 TAC §§16.93, 16.95, 16.98 5270
37 TAC §16.95, §16.96 5270

TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

ADMINISTRATION

37 TAC §211.1 5271

LICENSING REQUIREMENTS

37 TAC §217.19 5271

PRELICENSING AND REACTIVATION COURSES, TEST AND ENDORSEMENTS OF ELIGIBILITY

37 TAC §219.1 5271

TEXAS PEACE OFFICERS' MEMORIAL ADVISORY COMMITTEE

37 TAC §229.1 5272
37 TAC §229.3 5272

TEXAS MILITARY FACILITIES COMMISSION

BUILDING CONSTRUCTION ADMINISTRATION

37 TAC §375.11 5272

ADMINISTRATIVE RULES

37 TAC §379.40 5272

TEXAS DEPARTMENT OF HUMAN SERVICES

NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

40 TAC §19.2322 5273

RULE REVIEW

Proposed Rule Review

Texas Natural Resource Conservation Commission 5275

Adopted Rule Reviews

Texas Department of Agriculture 5276
Texas Workers' Compensation Commission 5276

IN ADDITION

Texas Department of Agriculture

Notice of Public Hearings 5279

Texas Commission on Alcohol and Drug Abuse

Public Hearings 5279

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program 5280

Comptroller of Public Accounts

Notice of Intent to Amend Contract 5280

Office of Consumer Credit Commissioner

Notice of Rate Ceilings 5281

Texas Department of Criminal Justice

Notice of Contract Award 5281

General Land Office

Notice of Approval of Coastal Boundary Survey 5281

General Services Commission

Notice to Bidders 5281

Texas Department of Health

Notice of Uranium Byproduct Material License Amendment Five on Exxon Mobil Corporation 5282

Notice of Uranium Byproduct Material License Amendment Four on USX, Texas Uranium Operations 5282

Notice of Uranium Byproduct Material License Amendment Seven on URI, Inc. 5283

Notice of Uranium Byproduct Material License Amendment Seven on USX, Texas Uranium Operations 5283

Notice of Uranium Byproduct Material License Amendment Three on Cogema Mining, Inc. 5284

Notice of Uranium Byproduct Material License Amendment Three on Exxon Mobil Corporation 5284

Notice of Uranium Byproduct Material License Amendment Three on USX, Texas Uranium Operations 5285

Notice of Uranium Byproduct Material License Amendment Two on Cogema Mining, Inc. 5285

Texas Department of Insurance

Insurer Services 5286

Texas Natural Resource Conservation Commission

Enforcement Orders 5286

Notice of Application and Preliminary Decision for a Municipal Solid Waste Permit 5288

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions.....5289

Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions 5291

Texas Department of Public Safety

Public Notice to Comment on Proposed Interlocal Cooperation Contract Relating to the Failure to Appear Program 5292

Public Utility Commission of Texas

Public Notice Of Amendment To Interconnection Agreement 5298

Public Notice of Amendment to Interconnection Agreement 5299

Public Notice of Amendment to Interconnection Agreement 5299

Public Notice of Interconnection Agreement 5300

Texas Racing Commission

Notice of Application Period 5300

Texas Water Development Board

Applications Received 5300

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

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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.

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statues: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Requests

AOR-479. The Texas Ethics Commission has been asked to consider whether an organization that exists for the purpose of educating, training, organizing, and supporting county political party chairmen is a political committee for purposes of title 15 of the Election Code.

AOR-480. The Texas Ethics Commission has been asked to consider whether a county court judge may raise funds to pay expenses incurred in connection with the judge's defense of charges brought by the Texas State Commission on Judicial Conduct.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 36, Penal Code; and (8) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200103728
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: June 29, 2001

♦ ♦ ♦

EMERGENCY RULES

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

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 58. OYSTERS AND SHRIMP

SUBCHAPTER B. STATEWIDE SHRIMP FISHERY PROCLAMATION

31 TAC §58.161

The Texas Parks and Wildlife department adopts, on an emergency basis, an amendment to §58.161, concerning shrimping in outside waters (Gulf waters of the Texas territorial seas--nine nautical miles). Based on sound biological data, the executive director has determined that optimum migration of small brown shrimp from the bays to the Gulf of Mexico will occur earlier than the established July 15 regulatory opening date. Sound biological data indicate that most of the shrimp on the Gulf fishing grounds will be of satisfactory size to achieve maximum benefits from the resource on July 8, 2001.

The purpose of the closed Gulf season is to protect brown shrimp during their major period of emigration from the bays to the Gulf of Mexico until they reach a larger, more valuable size before harvest and to prevent waste caused by the discarding of smaller individuals. The season closed 30 minutes after sunset, May 15, 2001.

The executive director finds imminent peril to the public welfare which requires an emergency measure to set an opening date to minimize social and economic hardship in a depressed industry by opening the season 7 days earlier than scheduled to obtain optimum yield from the resource.

The amendment is adopted on an emergency basis under authority of Parks and Wildlife Code, §77.062. In April 1978, the Texas Parks and Wildlife Commission delegated to the executive director the duties and responsibilities of opening and closing the shrimping season under this section.

§58.161. Shrimping in Outside Waters.

(a)-(c) (No change.)

(d) Gulf shrimping seasons. The outside waters are open to shrimping except:

(1)-(5) (No change.)

(6) Early Opening of the Gulf Shrimping Season. The provisions of paragraph (3)(A) of this subsection are replaced, as follows: the general closed season for shrimp in outside waters extends from 30 minutes after sunset on May 15, 2001 to 30 minutes after sunset on July 8, 2001.

This agency hereby certifies that the emergency adoption 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 July 2, 2001.

TRD-200103740
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: July 2, 2001
Expiration date: September 20, 2001
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM

CHAPTER 41. INSURANCE PROGRAMS

SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH

34 TAC §41.30

The Teacher Retirement System of Texas (TRS) adopts on an emergency basis new §41.30 concerning participation in the Texas School Employees Uniform Group Health Coverage Act by school districts, other educational districts, charter schools, and regional education service centers. The new section is adopted on an emergency basis pursuant to §2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The section is also adopted in accordance with §2001.006 of the Government Code, which allows the agency to adopt rules and take other administrative action in preparation for the implementation of legislation that has become law but has not taken effect. Adoption of the section will allow TRS to prepare to implement House Bill 3343, which was passed by the 77th Legislature, 2001, (the "Act").

In accordance with the Act, the new section sets forth the manner, form and effect of elections to opt in or out of participation in the coverage under the Act. The section includes provisions regarding the deadlines for certain entities to opt in or out of participation and the effect of such elections.

This emergency adoption is necessary because the retirement system is required to comply with timelines under the Act, including a requirement in section 5.03 of the Act that TRS provide written information to certain entities described in the Act "not later than July 31, 2001" and requirements that certain entities provide notice or make elections by September 1, 2001 in the manner prescribed by TRS. Adoption of the new section on an emergency basis allows TRS to take action to prepare to implement the new law, such as notifying interested parties of applicable deadlines. However, the new section shall not become effective until the date the new law becomes effective: September 1, 2001.

The agency has determined that this section is necessary and appropriate in accordance with Government Code §2001.006, which allows the agency to adopt rules and take other administrative action in preparation for the implementation of legislation that has become law but has not taken effect. In addition, the agency finds that requirements of state law (specifically those found in sections 1.01 and 5.03 of the Act) require the adoption of this new rule on fewer than 30 days notice.

The new section is adopted on an emergency basis under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and for the transaction of business of the board. The new section is also adopted under House Bill 3343, which was passed by the 77th Legislature, 2001. As described above, the section is also adopted under Government Code §2001.006 and Government Code §2001.034. Alternatively, the section is adopted under Insurance Code article 3.50-4, §§5 and 7A, which authorize TRS to adopt rules relating to the existing insurance programs.

There are no other codes affected.

§41.30. Participation in the Texas School Employees Uniform Group Health Coverage Act by School Districts, Other Educational Districts, Charter Schools, and Regional Education Service Centers.

(a) Manner, form and effect of election. All elections to opt in or opt out of participation in the uniform group coverage under the Texas School Employees Uniform Group Health Coverage Act (the "Act") pursuant to the provisions of Insurance Code, Article 3.50-7, §§5 or 6, as added by the 77th Legislature, 2001 in House Bill 3343 shall be in writing, on an election form prescribed by the Teacher Retirement System of Texas ("TRS"), and received by TRS no later than 5:00 p.m. on or before the applicable election deadline date specified in this section. An election form otherwise valid received by facsimile before the applicable deadline is acceptable if TRS receives the original, signed election form within seven calendar days after the applicable deadline. An incomplete or unsigned form will not be deemed received by TRS for purposes of determining whether a valid election has been exercised. A valid election filed with TRS is irrevocable once the election deadline passes, unless TRS is authorized to extend a deadline and does so by resolution of the TRS Board of Trustees. Entities electing to participate in the uniform group coverage under the Act may not discontinue participation unless authorized by Insurance Code, Article 3.50-7, and by appropriate rule or resolution adopted by the TRS Board of Trustees. Entities opting out of participation in the uniform group coverage under the Act have no further opportunity to elect to participate except as authorized by Insurance Code, Article 3.50-7, and by appropriate rule or resolution adopted by the TRS Board of Trustees. If an entity has an option to opt in and thereby participate in the coverage under the Act, a failure to properly or timely file the election form shall have the effect of the entity electing not to participate. Likewise, if an entity has an option to opt out and thereby not participate in the coverage under the Act, a failure to properly or timely file the election form shall have the effect of the entity electing to participate.

(b) School districts with 500 or fewer employees. Pursuant to Insurance Code, Article 3.50-7 §5(a), school districts with 500 or fewer employees as of January 1, 2001 are required to participate effective September 1, 2002 in the uniform group coverage under the Act, except that certain of these school districts may delay or opt out of participation by specified election deadlines as provided in paragraphs (1) through (3) of this subsection. On or before September 1, 2001, all school districts must furnish information and verifications requested by TRS on the form prescribed by TRS, regardless of whether an election to delay or opt out of participation applies to such district or is being exercised by such school district.

(1) Pursuant to Insurance Code, Article 3.50-7 §5(g), a school district with 500 or fewer employees as of January 1, 2001 that, on January 1, 2001, was individually self-funded for the provision of health care coverage to its employees may elect to opt out of the mandatory participation in coverage effective September 1, 2002, by filing its election form with TRS on or before September 1, 2001.

(2) Pursuant to Insurance Code, Article 3.50-7 §5(e), a school district with 500 or fewer employees as of January 1, 2001 that was a member on January 1, 2001 of a risk pool established under the authority of Local Government Code, Chapter 172, may opt out of the mandatory participation in coverage effective September 1, 2002 by filing its election form with TRS on or before September 1, 2001 and electing thereby to continue in the risk pool that the district participated in on January 1, 2001.

(3) Pursuant to Insurance Code, Article 3.50-7 §5(h), a school district with 500 or fewer employees as of January 1, 2001 that is a party to a contract for the provision of health insurance coverage to the employees of the district that is in effect on September 1, 2002 may delay mandatory participation in coverage effective September 1, 2002, by filing its election with TRS on or before September 1, 2001. At the time of such election, such a school district must provide the expiration date of the contract to TRS and shall begin mandatory participation in the uniform group coverage under the Act on the first day of the month immediately following the month in which termination or expiration of the contract occurs.

(c) School districts with 501 or more employees. Pursuant to Insurance Code, Article 3.50-7 §5(b), school districts with 501 or more employees on January 1, 2001 may elect to participate in the uniform group coverage under the Act, with coverage effective September 1, 2005. January 1, 2005 is the deadline for such a school district to file its election with TRS to participate in the uniform group coverage under the Act. Notwithstanding the preceding two sentences, school districts with 501 or more employees may elect to participate prior to September 1, 2005 as set forth in paragraphs (1) and (2) of this subsection. All school districts must furnish information and verifications to TRS on or before September 30, 2001 on a form prescribed by TRS, regardless of whether an election to participate prior to September 1, 2005 applies to such district or is being exercised by such district.

(1) Pursuant to Insurance Code, Article 3.50-7 §5(b-1), school districts may elect to participate prior to September 1, 2005 if TRS determines that participation prior to September 1, 2005 by school districts with more than 500 employees on January 1, 2001 would be administratively feasible and cost-effective. TRS will set the

election deadline from time to time by rule or resolution of the TRS Board of Trustees, as applicable.

(2) Pursuant to Insurance Code, Article 3.50-7 §5(a-1), September 30, 2001 is the deadline for a school district with at least 501 but not more than 1,000 employees on January 1, 2001 to file its election to commence participation effective September 1, 2002. A school district that does not elect to opt in early and participate effective September 1, 2002, may elect in the future to opt in if otherwise permitted under this subsection.

(d) Educational districts. Pursuant to Insurance Code, Article 3.50-7 §5(i), educational districts whose employees are members of TRS are required to participate effective September 1, 2002 in the uniform group coverage under the Act, except that educational districts with 500 or fewer employees on January 1, 2001 may opt out of participation. September 1, 2001 is the deadline for such an educational district to file its election with TRS to opt out of participation in the uniform group coverage under the Act. Regardless of whether an educational district elects to opt out of participation and file an election form, information and verifications requested by TRS must be furnished by all educational districts on the form prescribed by TRS and returned to TRS on or before September 1, 2001.

(e) Charter schools. Pursuant to Insurance Code, Article 3.50-7 §6, an open-enrollment charter school established under Education Code, Chapter 12, Subchapter D, ("charter school") may elect to participate in the uniform group coverage under the Act. Only an eligible charter school may elect to participate. A charter school that received funding in accordance with Education Code, Chapter 12, prior to June 1, 2001, must furnish information and verifications requested by TRS, on the form prescribed by TRS, on or before September 1, 2001, whether or not the charter school elects to participate in the uniform group coverage.

(1) Pursuant to Insurance Code, Article 3.50-7 §6(a), to be eligible, a charter school must agree to inspection of all records of the school relating to its participation in the uniform group coverage under the Act by TRS, by the administering firm as defined in Insurance Code, Article 3.50-7 §2(1), by the commissioner of education, or by a designee of any of those entities, and further must agree to have its accounts relating to participation in the uniform group coverage under the Act annually audited by a certified public accountant at the school's expense. The agreement of the charter school shall be evidenced in writing and shall constitute a part of the election form prescribed by TRS pursuant to subsection (a) of this section.

(2) Pursuant to Insurance Code, Article 3.50-7 §6(b), an eligible charter school shall elect to participate in the uniform group coverage under the Act effective September 1, 2002, by filing its election form with TRS on or before September 1, 2001 if the charter school received any state funding in accordance with Education Code, Chapter 12, prior to June 1, 2001.

(3) Pursuant to Insurance Code, Article 3.50-7 §6(b), an eligible charter school that did not receive any state funding in accordance with Education Code, Chapter 12, prior to June 1, 2001, shall elect, if at all, to participate in the uniform group coverage under the Act by filing its election form with TRS on or before the later of September 1, 2001 or the ninetieth calendar day following the date the Texas Education Agency authorized the Comptroller to issue the first payment of state funds to such charter school. Participation in coverage for such eligible charter school shall be effective on the later of September 1, 2002 or the first day of the month following the month in which a valid election to participate is filed with TRS.

(f) Regional education service centers. Pursuant to Insurance Code, Article 3.50-7 §5(a), each regional education service center established under Education Code, Chapter 8, is required to participate effective September 1, 2002 in the uniform group coverage under the Act. Information and verifications requested by TRS must be furnished by each regional education service center on the form prescribed by TRS and returned to TRS on or before September 1, 2001.

(g) This section becomes effective at the earliest date permitted by law, but not later than September 1, 2001.

This agency hereby certifies that the emergency adoption 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 July 2, 2001.

TRD-200103733
Charles Dunlap
Executive Director
Teacher Retirement System
Effective date: September 1, 2001
Expiration date: December 30, 2001
For further information, please call: (512) 391-2115

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 63. VICTIMS' ASSISTANCE GRANTS

The Office of the Attorney General (OAG) proposes amendments to 1 TAC Subchapters B, D, E, and F, §§63.11, 63.15, 63.17, 63.55, 63.73, and 63.81, relating to rules for administration of crime victims' assistance grants (VAG). Subchapter B, §§63.11, 63.15, and 63.17, define projects that are eligible to receive VAGs, expand funding levels, and clarify approved uses of grant funds, expand the grant period. Subchapter D, §63.55 clarifies that a grant may be funded for a 2 year period. Subchapter E, §63.73 addresses the continuation of funding. Subchapter F, §63.81 addresses personnel matters.

Subchapter B. (Grants for Victim Assistance Coordinator or Crime Victim Liaison, §§63.11, 63.15, and 63.17).

Section 63.11 as amended would allow the payment of fringe benefits, travel and training for the grant paid personnel. Section 63.15 as amended would increase grant funding levels to $39,400 for each project. Section 63.17 as amended would allow grant funds to be used to pay fringe benefits, travel and training for grant paid personnel.

Subchapter D. (Grant Application, Scope of Grant, Approval, §63.55).

Section 63.55 as amended would clarify that a grant may be funded for a 2 year period.

Subchapter E. (Funding of Grants, § 63.73).

Section 63.73 as amended would clarify that a grant will be reviewed to determine if funding for the second year is approved.

Subchapter F. (Grant Budget Requirements, §63.81).

Section 63.81 as amended would clarify that a grantee must provide fringe benefits, travel expenses and training for grant personnel.

Ms. Melissa Foley, Grant Coordinator, has determined that for the first five year period in which the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering these sections.

Ms. Foley has also determined that the proposed amendments will not have an adverse economic effect on small businesses because the amendments of these rules impose no additional burden on anyone. There is no anticipated economic cost to persons who are required to comply with these rules as proposed.

Ms. Foley has determined that for the five-year period in which the rules are in effect, the anticipated public benefit is better administration of the VAG program by the Office of the Attorney General, as mandated by the Texas legislature, without increased costs to the state. The rules will enable direct service providers to victims of crime to provide more services to the victims of crime and to enhance the payment of benefits to victims of crime from the Victims of Crime Fund.

Comments may be submitted, in writing, no later than 30 days from the date of this publication to Melissa Foley, Grants Coordinator, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548 or by telephone (512) 463-0826 or by e-mail to www.melissa.foley@oag.state.tx.us.

SUBCHAPTER B. GRANTS FOR VICTIM ASSISTANCE COORDINATOR OR CRIME VICTIM LIAISON

1 TAC §§63.11, 63.15, 63.17

The amendments are proposed under the Texas Code of Criminal Procedure, Article 56.541, which the OAG interprets as authorizing the Office of the Attorney General to adopt rules reasonable and necessary to implement Chapter 56, and in order to provide funds for grants or contracts that support crime victim-related services or assistance.

The Texas Code of Criminal Procedure, Chapter 56 is affected by these proposed amendments.

§63.11. Eligible Projects.

Grants awarded under this subchapter may be used [~~only~~] to defray all or part of the salary, fringe benefits and travel and training expenses of the positions of victim assistance coordinator or crime victim liaison. A grantee shall aggressively pursue training for those persons employed in these VAG-funded positions. To the extent possible, a grantee shall use all available resources to enhance victim services, increase the filing of applications for benefits for victims of crime, protect the rights of victims, and fulfill the duties established for these positions under the Code of Criminal Procedure, Chapter 56.

§63.15. Funding Levels.

The minimum amount of funding that may be applied for is $10,000 for each project [~~paid position~~]. The Maximum amount of funding that may be applied for is $39,400[~~$30,000~~] for each project[~~paid position~~]. The salary of a Victim Assistance Coordinator and Crime Victim Liaison is set at a maximum of $30,000 per annum for each full time paid position.

§63.17. Use of Grant Funds.

The use of grant funds is limited to salaries , fringe benefits, travel and training [~~only~~] for the position of Victim Assistance Coordinator and Crime Victim Liaison. [~~The grant funds may not be used to pay for fringe benefits, including, but not limited to, retirement, health insurance, etc.~~] In addition, the grant funds may not be used to pay for other operational costs, including, but not limited to, [~~travel,~~] computer equipment, telephone service, office rent, or other office equipment.

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 July 2, 2001.

TRD-200103773
Rick Gilpin
Assistant Attorney General
Office of the Attorney General
Earliest possible date of adoption: August 12, 2001
For further information, please call: (512) 463-2110

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SUBCHAPTER D. GRANT APPLICATION, SCOPE OF GRANT, APPROVAL

1 TAC §63.55

The amendments are proposed under the Texas Code of Criminal Procedure, Article 56.541, which the OAG interprets as authorizing the Office of the Attorney General to adopt rules reasonable and necessary to implement Chapter 56, and in order to provide funds for grants or contracts that support crime victim-related services or assistance.

The Texas Code of Criminal Procedure, Chapter 56 is affected by these proposed amendments.

§63.55. Grant Period.

(a) A project will be funded for a 2 year [~~12-month~~] period, beginning no earlier than September 1 of each year, and ending August 31 of each year.

(b) The maximum number of years that a project may be funded at one time is two years.

(c) An applicant may submit an application for funding for two years. If the application is approved, the project will be awarded[~~funded~~] for two years, but will be reviewed at the end of one year to determine if funding for the second year is approved [~~the first year,~~] and will receive automatic consideration for second year funding. No additional application will be required for the second year, but the OAG may require a grantee to submit updated attachments, contracts, bonds, resolutions, and other information as necessary. The OAG will base its final decision on second-year funding on first year performance, including the timeliness and thoroughness of reporting, the success of the project in meeting its goals, and the outcomes of OAG on-site visits.

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 July 2, 2001.

TRD-200103774
Rick Gilpin
Assistant Attorney General
Office of the Attorney General
Earliest possible date of adoption: August 12, 2001
For further information, please call: (512) 463-2110

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SUBCHAPTER E. FUNDING OF GRANTS

1 TAC §63.73

The amendments are proposed under the Texas Code of Criminal Procedure, Article 56.541, which the OAG interprets as authorizing the Office of the Attorney General to adopt rules reasonable and necessary to implement Chapter 56, and in order to provide funds for grants or contracts that support crime victim-related services or assistance.

The Texas Code of Criminal Procedure, Chapter 56 is affected by these proposed amendments.

§63.73. Continuation Funding.

(a) There is no commitment by the OAG that a grant, once funded, will receive subsequent funding. Continuation of funding for existing grant projects must meet all requirements of this chapter and have a history of timely submission of progress and financial reports. Continuation of funding of new and existing projects is contingent on the availability of funds.

(b) There is no limit on the number of years that a grant can be continued to be funded.

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 July 2, 2001.

TRD-200103775
Rick Gilpin
Assistant Attorney General
Office of the Attorney General
Earliest possible date of adoption: August 12, 2001
For further information, please call: (512) 463-2110

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SUBCHAPTER F. GRANT BUDGET REQUIREMENTS

1 TAC §63.81

The amendments are proposed under the Texas Code of Criminal Procedure, Article 56.541, which the OAG interprets as authorizing the Office of the Attorney General to adopt rules reasonable and necessary to implement Chapter 56, and in order to provide funds for grants or contracts that support crime victim-related services or assistance.

The Texas Code of Criminal Procedure, Chapter 56 is affected by these proposed amendments.

§63.81. Personnel.

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

(h) A grantee must provide grant funded personnel fringe benefits as provided for all other non-grant funded personnel in the grantee agency.

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

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

TRD-200103776
Rick Gilpin
Assistant Attorney General
Office of the Attorney General
Earliest possible date of adoption: August 12, 2001
For further information regarding this publication, please call: A.G. Younger at (512) 463-2110

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PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. REGIONAL PLANS--STANDARDS

1 TAC §251.10

The Commission on State Emergency Communications (CSEC) proposes an amendment to §251.10, concerning proposed guidelines for implementing wireless E9-1-1 services funded with 9-1-1 funds.

The proposed rule would modify parts of the rule that are outdated since the rule was last adopted and in light of modifications, clarifications, priorities, and rulings by the Federal Communications Commission related to wireless E9-1-1. It would also further clarify and incorporate the ad hoc process that has been used to determine reasonable costs for purposes of wireless service provider reimbursement and would recognize that the Commission may substitute the ad hoc process with a rule process.

Carey F. Spence, interim executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Spence also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be improved services in facilitating the delivery of a wireless emergency call through automatic number and location information data. No historical data is available, however, there appears to be no direct impact on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no anticipated local employment impact as a result of enforcing the section.

Comments on the proposed rule may be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to Carey F. Spence, Interim Executive Director, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942.

The proposed rule is proposed pursuant to the Health and Safety Code, Chapter 771, §§771.051, 771.071, 771.0711, 771.072, and 771.075, which authorize the Commission to adopt policies and procedures prescribing the distribution and use of 9-1-1 funds for providing 9-1-1 service.

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

§251.10. Guidelines for Implementing Wireless E9-1-1 Service.

(a) Definitions. When used in this rule, the following words and terms shall have the meanings identified in this section, unless the context and use of the word or terms clearly indicates otherwise.

(1) 9-1-1 Database Record--A physical record, which includes the telephone subscriber information to include the caller's telephone number, related locational information, and class of service, and conforms to NENA adopted database standards.

(2) 9-1-1 Funds--Funds assessed and disbursed in accordance with the Texas Health and Safety Code, Chapter 771.

(3) 9-1-1 Equipment--Capital equipment acquired partially or in whole with 9-1-1 funds and designed to support and/or facilitate the delivery of an emergency 9-1-1 call to an appropriate emergency response agency.

(4) 9-1-1 Governmental Entity--An RPC or District, as defined in Texas Health and Safety Code Chapter 771.055, and Chapter 772, Subchapter B, C, or D, that administers the provisioning of 9-1-1 service.

(5) 9-1-1 Governmental Entity Jurisdiction--As defined in applicable law, Texas Health and Safety Code Chapters 771 and 772, the geographic coverage area in which a 9-1-1 Governmental Entity provides emergency 9-1-1 service.

(6) 9-1-1 Operator--The PSAP operator receiving 9-1-1 calls.

(7) 9-1-1 Network Provider--The current operator of the selective router/switching that provides the interface to the PSAP for 9-1-1 service.

(8) Automatic Location Identification (ALI) Database--A computer database used to update the Call Back Number information of wireless end users and the Cell Site/Sector information for Phase I call delivery, as well as the X, Y coordinates for longitude and latitude for Phase II call delivery.

(9) Call Associated Signaling (CAS)--A method for delivery of the mobile directory number (MDN) of the calling party plus the emergency service routing digits (ESRD) from the wireless network through the 9-1-1 selective router to the PSAP. The 20 digits of data delivered are sent either over Feature Group D (FG-D) or ISUP from the wireless switch to the 9-1-1 router. From the router to the PSAP, the 20-digit stream is delivered using either Enhanced Multi-Frequency (EMF) or ISDN connections.

(10) Call Back Number--The mobile directory number (MDN) of a Wireless End User who has made a 9-1-1 call, which usually can be used by the PSAP to call back the Wireless End User if

a 9-1-1 call is disconnected. In certain situations, the MDN forwarded to the PSAPs may not provide the PSAP with information necessary to call back the Wireless End User making the 9-1-1 call, including, but not limited to, situations affected by illegal use of Service (such as fraud, cloning, and tumbling) and uninitialized handsets and non-authenticated handsets.

(11) Cell Site--A radio base station in the WSP Wireless Network that receives and transmits wireless communications initiated by or terminated to a wireless handset, and links such telecommunications to the WSP's network.

(12) Cell Sector--An area, geographically defined by WSP (according to WSP's own radio frequency coverage data), and consisting of a certain portion of all of the total coverage area of a Cell Site.

(13) Cell Site/Sector Information--Information that indicates, to the receiver of the information, the location of the Cell Site receiving a 9-1-1 call initiated by a Wireless End User, and which may also include additional information regarding a Cell Sector.

(14) Cell Sector Identifier--The unique numerical designation given to a particular Cell Sector that identifies that Cell Sector.

(15) Class of Service--A standard acronym, code or abbreviation of the classification of telephone service of the Wireless End User, such as WRLS (wireless), that is delivered to the PSAP CPE.

(16) Digital Map--A computer generated and stored data set based on a coordinate system, which includes geographical and attribute information pertaining to a defined location. A digital map includes street name and locational information, data sets related to emergency service provider boundaries, as well as other associated data.

(17) Emergency Communication District (District)--A public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service; or a district created under Texas Health and Safety Code, Chapter 772, Subchapter B, C, or D.

(18) Emergency Service Number (ESN)--A number stored by the selective router/switch used to route a call to a particular PSAP.

(19) Emergency Service Routing Digits (ESRD)--As defined in J-Std-034, an ESRD is a digit string that uniquely identifies a base station, cell sector, or sector. This number may also be a network routable number (but not necessarily a dialable number).

(20) FCC--The Federal Communications Commission.

(21) FCC Order--The Federal Communications Commission Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 94-102, released July 26, 1996, and as amended by subsequent decisions.

(22) Host ALI Records--Templates from the ALI Database that identify the Cell Site location and the Call Back Number of the Wireless End User making a 9-1-1 call.

(23) Hybrid CAS/NCAS--This method for wireless E9-1-1 call delivery uses a combination of CAS and NCAS techniques to deliver the location and call back numbers to a PSAP. The MSC sends the location and call back information to a selective router using the standard CAS interface defined in J-Std-034. The selective router then uses an NCAS approach to deliver the information to a PSAP. That is, the selective router sends the location and call back information to the wireline emergency services database and the caller's call back number, or MDN, to the PSAP. The MDN is then used as a key to retrieve the cell/tower information for PSAP display.

(24) J-Std-034--A standard, jointly developed by the Telecommunications Industry Association (TIA) and the Alliance for Telecommunications Industry Solutions (ATIS), to provide the delta changes necessary to various existing standards to accommodate the Phase I requirements. This standard identifies that the interconnection between the mobile switching center (MSC) and the 9-1-1 selective router/switch is via:

(A) an adaptation of the Feature Group-D Multi Frequency (FG-D protocol), or

(B) the use of an enhancement to the Integrated Services Digital Network User Part (ISUP) Initial Address Message (IAM) protocol. In this protocol, the caller's location is provided as a ten-digit number referred to as the emergency services routing digits (ESRDs). The protocol NENA-03-002, Recommendation for the Implementation of Enhanced Multi Frequency (MF) Signaling, E9-1-1 Tandem to PSAP, is the corollary of J-Std-034 FG-D protocol.

(25) Mobile Directory Number (MDN)--A 10-digit dialable directory number used to call a Wireless Handset.

(26) Mobile Switching Center (MSC)--A switch that provides stored program control for wireless call processing.

(27) National Emergency Number Association (NENA).

(28) NENA 02-001--A standard set of protocols for the Automatic Location Identification (ALI) data exchange between service providers and Enhanced 9-1-1 systems, developed by the NENA Data Standards Subcommittee (June 1998 revision).

(29) NENA 03-002--A standard, or technical reference, developed by the NENA Network Technical Committee, to provide recommendations for the implementation of Enhanced Multi Frequency (MF) Signaling, E9-1-1 Tandem to PSAP. The J-Std-034 FG-D protocol, referenced in paragraph (24) of this subsection, is the corollary protocol of NENA 03-002.

(30) Non-Callpath Associated Signaling (NCAS)--This method for wireless E9-1-1 call delivery delivers routing digits over existing signaling protocol, including commonly applied CAMA trunking into and out of selective routers or SS7 into selective routers. The voice call is set up using the existing interconnection method that the wireline company uses from an end office to the router and from the router to the PSAP. The ANI delivered with the voice call is an emergency service routing digit (ESRD), not a MDN. All data, including the MDN and cell sector that receives the call, is delivered to the PSAP via the data path within the ALI record.

(31) Phase I E9-1-1 Service--The service by which the WSP delivers to the designated PSAP the Wireless End User's call back number and Cell Site/Sector information when a wireless end user has made a 9-1-1 call, as contracted by the 9-1-1 Governmental agency.

(32) Phase II E9-1-1 Service--The service by which the WSP delivers to the designated PSAP the Wireless End User's call back number, cell site/sector information, as well as X, Y (longitude, latitude) coordinates to the accuracy standards set forth in the FCC Order.

(33) Phase I E9-1-1 Service Area(s)--Those geographic portions of a 9-1-1 Governmental Entity Jurisdiction in which WSP is licensed to provide Service. Collectively, all such geographic portions of the 9-1-1 Governmental Entity's Jurisdiction subject to this rule shall be referred to herein as the "Phase I E9-1-1 Service Areas".

(34) Regional Planning Commission--A commission established under Local Government Code, Chapter 391, also referred to as a council of governments (COG).

(35) Regional Strategic Plans--Regional plans developed in compliance with Chapter 771 shall include a strategic plan that projects regional 9-1-1 service costs, and service fee and other non-equalization surcharge revenues at least five years into the future, beginning September 1, 1994. Within the context of Section 771.056(d), the [~~Advisory~~] Commission on State Emergency Communications (CSEC) [~~(ACSEC)~~] shall consider any revenue insufficiencies to represent need for equalization surcharge funding support.

(36) Public Safety Answering Point (PSAP)--A 24-hour communications facility established as an answering location for 9-1-1 calls originating within a given service area, as further defined in applicable law Texas Health and Safety Code Chapters 771 and 772.

(37) Service Control Point (SCP)--A centralized database system used for, among other things, wireless Phase I E9-1-1 Service applications. It specifies the routing of 9-1-1 calls from the Cell Site to the PSAP. This hardware device contains special software and data that includes all relevant Cell Site locations and Cell Sector Identifiers.

(38) Selective Router--A switching office placed in front of a set of PSAPs that allows the networking of 9-1-1 calls based on the ESRD assigned to the call.

(39) Uninitialized Call--Any wireless E9-1-1 call from a wireless handset which, for any reason, has either not had service initiated or authenticated with a legitimate WSP.

(40) Vendor--A third party used by either the 9-1-1 Governmental Entity or WSP to provide services.

(41) WSP--The named wireless service provider and all its affiliates (collectively referred to as "WSP").

(42) WSP Subscribers--Wireless telephone customers who subscribe to the Service of WSP and have a billing address within a 9-1-1 Governmental Entity Jurisdiction.

(43) Wireless 9-1-1 call--A call made by a wireless end user utilizing a WSP wireless network, initiated by dialing "9-1-1" (and, as necessary, pressing the "Send" or analogous transmitting button) on a Wireless Handset.

(44) Wireless End User--Any person or entity receiving service on a WSP Wireless System.

(45) WSP Wireless System--Those mobile switching facilities, Cell Sites, and other facilities that are used to provide wireless Phase I & II E9-1-1 service.

(b) Policy and Procedures. As authorized by the Texas Health and Safety Code, Chapter 771.051, the [~~Advisory~~] Commission on State Emergency Communications (Commission) shall develop minimum performance standards for equipment and operation of 9-1-1 service to be followed in developing regional plans, and impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 9-1-1 service throughout the State of Texas. The implementation of such service involves the procurement, installation and operation of equipment, database and network services and facilities designed to either support or facilitate the delivery of an emergency call to an appropriate emergency response agency. As mandated by FCC Order, and as authorized by Chapter 771, section .0711, of the Texas Health and Safety Code, the CSEC [~~ACSEC~~] shall impose on each wireless telecommunications connection a 9-1-1 emergency service fee to provide for the automatic number identification and automatic location identification of wireless E9-1-1 calls. Furthermore, the Commission recognizes the rapidly changing telecommunications environment in wireline and wireless services and its impact on 9-1-1 emergency services. Automatic number and location information is crucial data in facilitating the delivery of an emergency call. It is the policy of the Commission that all 9-1-1 emergency calls for service be handled at the highest level of service available. In accordance with this policy, the following policies and procedures shall apply to the procurement, installation, and implementation of wireless E9-1-1 services funded in part or in whole by the 9-1-1 funds referenced above. Prior to the Commission considering allocation and expenditure of 9-1-1 funds for implementation of wireless Phase I and/or Phase II wireless E9-1-1 services, a COG and/or District receiving 9-1-1 fees and/or equalization surcharge funds from the Commission shall meet the following requirements listed in paragraphs (1)-(15) of this subsection:

(1) Commission Survey and Review--Prior to any wireless E9-1-1 Service implementation in any regional council (COG) area, the Commission shall solicit in writing from all WSPs within the State of Texas a detailed description of its technical approach to implementing Phase I and/or Phase II (where applicable); and, the proposed WSP reasonable cost associated with that implementation. The Commission will review and evaluate this information and consider its appropriateness for implementation. Upon completion of this process, the Commission will communicate these WSP evaluations to the regional councils (COGs), and notify the COGs that they may request and implement wireless E9-1-1 service as described in paragraphs (2)-(15) of this subsection.

(2) Phase I E9-1-1 Implementation--The provisioning for delivery of a caller's mobile directory number and the location of a cell site receiving a 9-1-1 call to the designated PSAP. Implementation of Phase I service must be accomplished within 6-months of written request according to the FCC Order. Prior to implementing Phase I wireless E9-1-1 service, the following conditions must be satisfied and demonstrated to the Commission as described in paragraph (14) of this subsection:

(A) sufficient budgeted funds are available [~~funding mechanism~~] for the recovery of the COGs [~~all~~] reasonable costs relating to the provisioning of such service is in place;

(B) the PSAPs administered by the 9-1-1 entity are capable of receiving and using the data associated with such service;

(C) 9-1-1 entity requests such service in writing from the service provider or the Commission Staff requests such service in writing on behalf of the COG.[~~;~~]

[~~(D) an executed contract between 9-1-1 entity and WSP for such service, and which includes a wireless service work plan, fee schedule and standards.~~]

(3) Phase II E9-1-1 Implementation--provisioning for delivery of a caller's mobile directory number and the caller's location, within 125 meters RMS level of accuracy, to the designated PSAP. Implementation of Phase II service will be consistent with the FCC Order. Prior to implementing Phase II wireless E9-1-1 service, the following conditions, in addition to those listed in paragraph (2) of this subsection must be satisfied and demonstrated to the Commission as described in paragraph (14) of this subsection:

(A) provision for digital base map and graphical display, in conjunction with approved Strategic Plan and Commission §251.7 of this title (relating to Guidelines for Implementing Integrated Services);

(B) demonstrate, and provide in writing, that the [~~location determination technology and~~] digital base map and PSAP CPE are capable of displaying [~~identifying~~] the caller's location within [~~125 meters in at least 67% of calls delivered, or~~] the degree of accuracy [~~as~~]specified by the applicable [~~required by~~] FCC Order.[~~;~~]

[(C) a revised executed contract between 9-1-1 entity and WSP for such service and which includes a wireless service work plan, fee schedule and standards.]

(4) Responsibilities--It shall be the responsibility of the 9-1-1 entity, the WSP and any necessary third party (including, but not limited to, 9-1-1 Network Provider/Local Exchange Carrier, Host ALI Provider, SCP software developers and hardware providers, and other suppliers and manufacturers) to fully cooperate for the successful implementation and provision of Phase I and Phase II E9-1-1 service. These same parties are also responsible for ensuring that the deployment and implementation of their wireless E9-1-1 solution is thoroughly interoperable with other wireless E9-1-1 solutions, including permitting the proper and seamless transfer of wireless E9-1-1 emergency call information to PSAPs between differing wireless E9-1-1 solutions. The Commission acknowledges that the successful and timely provision of such service is dependent upon the timely and effective performance and cooperative efforts of all of the parties listed in this section. All parties shall comply with FCC Order, Texas laws and Commission Rules.

(5) Deployment--Unless otherwise approved by the Commissionor Commission Staff as an exception, the 9-1-1 entity and the WSP will agree upon one or both of the following methods of wireless call delivery [listed in subparagraphs (A)-(D) of this paragraph]:

[(A)] Call Associated Signaling (CAS); and

[(B)] Non-Callpath Associated Signaling (NCAS).[;]

[(C) Hybrid CAS/NCAS Architecture;]

[(D) Exceptions to CAS, NCAS, or Hybrid CAS/NCAS, as in the case of standalone ALI environments--specific solution should be illustrated and demonstrated prior to execution of contract.]

(6) Data Delivery--Unless otherwise approved by the Commission or Commission Staff as an exception, the 9-1-1 entity and the WSP will agree upon one or both of the following methods for the delivery of data elements necessary for Phase I E9-1-1 service. The 9-1-1 entity and WSP shall provision for redundancy within all methods.

(A) SS7/ISUP--WSP will deliver the twenty digits of information necessary for Phase I services by sending SS7 signaling messages in ISUP format to the 9-1-1 selective router;

[(B) Feature Group D--WSP will deliver the twenty digits of information necessary for completion of Phase I services to the 9-1-1 selective router in the standard format required;]

(B) [(C)] Service Control Point (SCP)--WSP will route all necessary information directly to the 9-1-1 entity's ALI database through an independent service control point.

(7) Standards--Unless an exception is approved by the Commission, the 9-1-1 entity, the WSP and any third party/vendor, will ensure that all appropriate and applicable industry standards be adhered to in provisioning E9-1-1 wireless service. These standards shall include, but not be limited to:

(A) J-Std 34 and NENA 03-002 for CAS and Hybrid CAS/NCAS deployments;

(B) NENA 02-001 as benchmark data standards. All parties shall cooperate fully in the development and maintenance of all wireless data, such as cell site locations, Emergency Service Routing Digits, selective routing databases, and timely updates of any such data;

(C) Any and all modifications to these standards, currently under development by appropriate standards bodies, for CAS, NCAS, [Hybrid CAS/NCAS], and Phase II/LDT deployments. Any such pending standard should be adhered to upon adoption;

(D) The Commission hereby establishes a standard Class of Service (COS) to be used by the 9-1-1 entity's PSAPs and the WSPs to identify calls delivered to the PSAP as WRLS (wireless), or until a standard is established by NENA;

(E) Commission §251.4 of this title (relating to Guidelines for the Provisioning of Accessibility Equipment) for provisioning of TTY/TDD equal access consistent with FCC rules and orders;

(F) All applicable standards shall be agreed upon by both parties to the wireless service contract.

(G) The Commission may approve exceptions to the standards listed in this section upon demonstration by the WSP and PSAP of valid reasons and comparable efficiency and cost.

(8) Reasonable Cost Elements--After recovery of the COGs reasonable costs relating to the provisioning of Phase I and Phase II service, the [The] Commission will consider that the reasonable costs incurred by the WSP to be reimbursed by the 9-1-1 entity may include the following listed in subparagraphs (A)-(B) [(F)] of this paragraph:

(A) Trunking--To provide network connectivity between the necessary network elements, the following costs listed in clauses (i)-(iii) [(vi)] of this subparagraph may [shall] be allowed:

(i) From mobile switching center (MSC) to selective router (including in that connectivity any port connection charges or other pre-LEC selective router charges) at a rate and quantity no higher than determined to be reasonable by the Commission, Commission Staff, or Commission rule;

(ii) [From selective router to PSAP;]

[(iii) From PSAP to ALI Database;]

[(iv)] From mobile switching center (MSC) to service control point (SCP) at a rate and quantity no higher than determined to be reasonable by the Commission, Commission Staff, or Commission rule; and[;]

(iii) [(v)] From service control point (SCP) to ALI Database at a rate and quantity no higher than determined to be reasonable by the Commission, Commission Staff, or Commission rule.[;]

[(vi) From ALI Database to PSAP.]

[(B) Network--To provision the transference of necessary digits from the selective router to the PSAP in a CAS deployment, an upgrade or modification to the selective router will be necessary. The Commission will not consider this as an allowable cost.]

(B) [(C)] Database--To provision and deliver the necessary data through the network and to the PSAP for Phase I compliance, the following costs listed in clauses in (i)-(ii) of this subparagraph may [will] be allowed:

(i) Non-recurring costs associated with initial emergency service routing digits (ESRD) load into selective router or SCP at a rate and quantity no higher than determined to be reasonable by the Commission, Commission Staff, or Commission rule;

(ii) Monthly recurring costs associated with maintaining ESRD data in the selective router or SCP at a rate and quantity no higher than determined to be reasonable by the Commission, Commission Staff, or Commission rule.

[(D) CPE--To provision the 9-1-1 entity's PSAP equipment to have the capability to receive and display information necessary to comply with Phase I call delivery requirements, the Commission has previously funded software upgrades to CPE for 20-digit and two 10-digit capability. These costs should be accommodated within the regional council's currently, or previously, approved strategic plan.]

[(E) Map Display--The cost to provision the 9-1-1 entity's PSAP equipment to have the capability to receive and graphically display caller's cell site/sector location information, as well as the X, Y (longitude, latitude coordinates).]

[(F) Training--The cost to train COG and/or PSAP personnel to efficiently and effectively receive and process Phase I & Phase II wireless E9-1-1 calls. This training shall be conducted by the COG, WSP, local service provider, and/or third party, as necessary, upon initial deployment of wireless service and at regularly scheduled intervals. Training plans and any associated costs shall be proposed to COG within WSP written proposal of service, submitted to the Commission for approval via the strategic plan amendment review process as outlined in §251.6 of this title (relating to Guidelines for Strategic Plans, Amendments, and Equalization Surcharge Allocation), and included in an executed standardized contract for wireless E9-1-1 service.]

(9) Testing--The COG, WSP, local service provider and any third party shall conduct initial and regularly scheduled network, database and equipment testing to ensure the integrity of the existent and proposed wireline/wireless 9-1-1 system operated by the COG, for any Phase I and/or Phase II wireless E9-1-1 service deployment. These tests shall include, at a minimum:

(A) network connectivity;

[(B) call setup times;]

(B) initial implementation field testing of each of a WSPs cell sites routing to the designated PSAP;

(C) equipment capabilities of receiving and displaying callback number and cell site/sector information;

(D) ability to transfer the wireless E9-1-1 call. The COG shall submit the initial testing documentation and findings to the Commission within the strategic plan amendment approval process as referenced in paragraph (8) of this subsection, Reasonable Cost Elements, and as established through Commission wireless testing policies and procedures. The COG shall maintain documentation of initial and regularly scheduled testing and notify the Commission of any on-going, negative outcomes.

(10) Fair and Equitable Provisioning of Wireless E9-1-1 Service--[The COG shall establish the level of wireless E9-1-1 service required within its region, and shall ensure that each WSP operating within its region provides comparable levels of wireless E9-1-1 service to all wireless subscribers within the region, within reasonable implementation parameters.] In determining the reasonableness of costs, the Commission may compare the costs being submitted for recovery by one provider to the costs of other, similarly situated providers. No single WSP shall be reimbursed for costs above the comparable costs of the other WSP within the COG region or at a rate and quantity higher than determined to be reasonable by the Commission, Commission Staff, or Commission rule. As a requirement for reimbursement of reasonable costs, the WSP must categorize and itemize its proposed reasonable costs and its invoices for payment in the manner requested by the Commission, Commission Staff, or Commission rule.

(11) Uninitialized Calls--Must be passed through the wireless 9-1-1 network, and uniformly identified to the PSAP.

(12) Third Party Contracts--Any and all subcontracts between WSP and third party vendors, for the deployment of Phase I & II wireless E9-1-1 service deployments, shall adhere to the primary contract as executed between COG and WSP and/or the FCC Orders and Rules applicable to WSP.

(13) Proposals for Wireless E9-1-1 Service--All proposals by WSPs for wireless 9-1-1 service should be presented to the COG in writing and shall include a complete description of network, database, equipment display requirements, training and accessibility elements. Such proposals should include detailed cost information, as well as technical solutions, network diagrams, documented wireless 9-1-1 call set-up times, deployment plans and timelines, specific work plans, WSP network contingency and disaster recovery plans, escalation lists, trouble call response times, as well as any other information required by the COG. Unless otherwise confidential by law, all information provided to the COG becomes a matter of public record and is subject to the Texas Public Information Act.

(14) Strategic Plan Amendment Review and Approval Process--Upon demonstration of compliance with paragraphs (2)(A) and (3)(A) of this subsection, and prior to executing a standardized contract for wireless 9-1-1 service, the COG shall submit such proposals, as described in paragraph (13) of this subsection, to the Commission for approval, via the strategic plan review and/or amendment process described in §251.6 of this title. Strategic Plan amendment requests should include all of the information provided by WSP to COG, as well as complete information regarding the geographic areas as well as the tandems, exchanges and PSAPs affected [effected] by the proposed deployment.

(15) Standardized Contract--Upon review and approval by CSEC [ACSEC], COG and WSP shall enter into a standardized Wireless E9-1-1 Service Agreement. The standard contract shall be provided by the Commission, and shall include all of the information contained in the proposal and amendments reviewed and approved by the Commission. Commission staff shall review all such contracts before they are executed. COG shall provide the Commission a copy of all fully executed contracts.

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 July 2, 2001.

TRD-200103777
James D. Goerke
Executive Director
Commission on State Emergency Communications
Earliest possible date of adoption: August 12, 2001
For further information, please call: (512) 305-6933

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 3. BOLL WEEVIL ERADICATION PROGRAM

SUBCHAPTER E. CREATION OF ERADICATION ZONES

4 TAC §3.117

The Texas Department of Agriculture (the department) proposes new §3.117 concerning the creation of a nonstatutory boll weevil eradication zone The new section is proposed to establish a new nonstatutory boll weevil eradication zone consisting of counties not currently located in a statutory zone created under Chapter 74, Subchapter D, §74.1021. New §3.117 proposes, upon the request of a representation of cotton growers in Austin, Brazoria, Colorado, Fort Bend, Jackson, Matagorda, Wharton and Waller counties, the designation of the Upper Coastal Bend Boll Weevil Eradication Zone, in accordance with the Texas Agriculture Code, §74.1042.

Brian Murray, special assistant for producer relations, has determined that for the first five-year period the section is in effect there may be no fiscal implications for state as a result of enforcing or administering the new section. For the first two years of the program, the costs of administering the boll weevil eradication program in the new zone will be paid by grower assessments and federal funds. In the following three years, there may be state funds available to offset some costs of the program. It is not possible at this time to determine whether or not those funds will be available, or what the amount of such funding would be. The date of availability and amount of funding made available for use by this zone would be set by the Texas Legislature. There will be no fiscal implications for local government as a result of enforcing or administering the new section.

Mr. Murray also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the sections will be that cotton growers in the affected area will have a local, efficient, and responsive eradication program to facilitate boll weevil eradication in Texas. The anticipated economic cost to microbusinesses, small businesses and individuals who will be required to comply with the new sections, as proposed, is not determinable at this time. If the proposed zone is established and an eradication program and assessment approved by cotton growers in the zone, cotton growers in the zone will be assessed annually to cover costs of an eradication program in that zone. The costs to individual growers will depend on voter approval of an eradication program and assessment, and the amount of the assessment established for the zone.

Comments on the proposal may be submitted to Brian Murray, Special Assistant for Producer Relations, P. O. Box 12847, Austin, Texas 78711, and must be received no later than 30 days from the date of the publication of this proposal in the *Texas Register*.

The new section is proposed under the Texas Agriculture Code, §74.1042, which provides the commissioner of agriculture with the authority, by rule, to designate an area of the state as a proposed boll weevil eradication zone.

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

§3.117. Upper Coastal Bend Boll Weevil Eradication Zone.

The Upper Coastal Bend Boll Weevil Eradication Zone shall consist of the following area: all of Austin, Brazoria, Colorado, Fort Bend, Jackson, Matagorda, and Wharton counties, and that part of Waller County lying south of State Highway 159 from the Austin County line north and east to Hempstead, then east on State Highway 6/290 to the Harris County line.

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-200103772
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 12, 2001
For further information, please call: (512) 463-4075

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CHAPTER 19. QUARANTINES
SUBCHAPTER K. EUROPEAN CORN BORER QUARANTINE

4 TAC §19.113

The Texas Department of Agriculture (the department) proposes amendments to §19.113, concerning the European Corn Borer Quarantine. The amendments are proposed to clarify restrictions upon movement of quarantined articles entering the European corn borer-free areas of Texas. The proposal also provides for exceptions to facilitate the movement of quarantined articles originating from an approved establishment in a quarantined state that has a current compliance agreement with the department.

Dr. Awinash Bhatkar, coordinator for plant quality programs, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications for state government as a result of enforcing or administering the amended section. There will be no fiscal implication for local government as a result of enforcing or administering the amended section.

Dr. Bhatkar also has determined that for each year of the first five years the amended section is in effect the public benefit anticipated as a result of enforcing the amended section will be to mitigate the risk of introduction of European corn borer from the infested areas to the free areas Texas. There will be no anticipated costs to microbusinesses, small businesses or persons required to comply with the amended section.

Comments on the proposal may be submitted to Awinash Bhatkar, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Agriculture Code, § 71.007 which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the entry into a pest- free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The Texas Agriculture Code, Chapter 71 is affected by the proposal.

§19.113. Restrictions.

(a) (No change)

(b) Exemptions. The following quarantined articles are exempt from the restrictions of this subchapter.

(1) (No change.)

(2) grain [~~quarantined articles~~] comprised of packages less than 10 pounds and free from portion of plants or fragments capable of harboring the European Corn Borer; and

(3) ornamentals [~~quarantined articles~~] with divisions without stems of the previous year's growth, rooted cuttings, seedling plants or cut flowers shipped during the period between November 30th to May 1st.

(c) Exceptions.

(1) A quarantined article may be shipped into a free area in Texas if it is accompanied by a certificate issued by an authorized representative of the origin state's department of agriculture certifying that the article has met one of the following conditions:

(A) (No change.)

(B) grain has [~~the quarantined articles have~~] been screened through a 1/2 inch or smaller mesh screen, or otherwise processed prior to loading and is [~~are~~] free from stalks, cobs, stems or such portions of plants or fragments; or

(C) (No change.)

(D) the quarantined article originated from an approved establishment :

(i) in Texas, which has a current compliance agreement with the department; or

(ii) which has a current compliance agreement with the originating state department of agriculture; or

(E) the greenhouse or the growing area where ornamentals [~~quarantined articles~~] with divisions without stems of the previous year's growth, rooted cuttings, seedling plants or cut flowers were produced, were inspected and no European Corn Borer was found.

(2) (No change.)

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

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TRD-200103713
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 12, 2001
For further information, please call: (512) 463-4075

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SUBCHAPTER O. WEST INDIAN FRUIT FLY QUARANTINE

The Texas Department of Agriculture (the department) proposes the repeal of §19.151, concerning the quarantined areas for the West Indian fruit fly, and an amendment to §19.154. The repeal of §19.151 is proposed because the West Indian fruit fly quarantine and treatment program successfully reduced infestation levels to the point of eradication of the fly from the designated quarantined area. This determination was made following the completion of three consecutive life cycle periods with no detection of additional flies present in any life stage. The quarantine of the area designated in §19.151 has been lifted by the United States Department of Agriculture. The proposed repeal deletes the quarantined area that was established by the infestation detected by traps during the 2000 growing season. The proposed amendment to §19.154 amends this section to provide that cost of treatment under this subchapter may be paid by growers, rather than making payment by growers mandatory. This amendment is proposed to allow for situations under which the department may be able to assist growers with costs of treatment.

Ed Gage, coordinator for pest management programs, has determined that for the first five year period that the repeal and amendment are in effect, there will be no fiscal impact on state or local government as a result of enforcing and administering the section.

Mr. Gage has also determined that for the first five years the repeal and amendment are in effect, the public benefit as a result of administering or enforcing the repeal and the amendment will be that the commercial citrus markets in Texas will be allowed to resume normal operations without handling and treatment restrictions and the department will be able, where appropriate, to provide some costs of treatment to growers. There are no anticipated costs to microbusinesses, small businesses or individuals required to comply with the repeal.

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

4 TAC §19.151

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

The repeal of §19.151 is proposed in accordance with the Texas Agriculture Code (the Code), §71.002, which authorizes the department to establish a quarantine if it determines that a dangerous insect pest not widely distributed in the state exists within an area of the state; and the Code, §71.007, which authorizes the department to adopt rules to provide for the destruction of trees or fruits, to provide for the cleaning or treatment of orchards,

The code that is affected by the proposal is the Texas Agriculture Code, Chapter 71.

§19.151. Quarantined Areas.

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 July 2, 2001.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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4 TAC §19.154

The amendment to §19.154 is proposed in accordance with the Texas Agriculture Code (the Code), §71.002, which authorizes

the department to establish a quarantine if it determines that a dangerous insect pest not widely distributed in the state exists within an area of the state; and the Code, §71.007, which authorizes the department to adopt rules to provide for the destruction of trees or fruits, to provide for the cleaning or treatment of orchards,

The code that is affected by the proposal is the Texas Agriculture Code, Chapter 71.

§19.154. Establishment of Quarantined Area; Core Area; Treatment of Infestation; and Destruction of Quarantined Articles.

(a) (No Change.)

(b) The owner or orchard manager may [~~shall~~] bear all treatment expenses.

(c) - (g) (No Change.)

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

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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CHAPTER 26. TEXAS AGRICULTURAL FINANCE AUTHORITY: LINKED DEPOSIT PROGRAM

4 TAC §§26.1, 26.3, 26.9, 26.10

The Board of Directors of the Texas Agricultural Finance Authority (TAFA) of the Texas Department of Agriculture (the department) proposes amendments to §§26.1, 26.3, 26.9 and 26.10, concerning the TAFA Linked Deposit Program. The amendments are proposed in order to make the sections consistent with changes made to the Texas Agriculture Code, Chapters 44 and 58 by the enactment of Senate Bill 716 (SB 716), 77th Legislature (2001).

SB 716 provides authority for TAFA to establish a new category of linked deposit loans for nonagricultural businesses in rural areas of the state, if such a business is providing an economic benefit to a rural city or county. Other amendments are made to update the sections in regards to the definition and listing of customarily grown and alternative crops. The amendments to §26.1, concerning Definitions, at paragraph (12), change the date for the reference used to determine customarily grown crops found in the definition of "Customarily grown"; at paragraph (15), add a new subparagraph (F) to add to the definition of "Eligible borrower" that includes in the definition a person providing nonagricultural goods or services in a rural area; and, add a definition of "Rural area" as new paragraph (21). The amendment to §26.3, concerning Purpose, amends the section to add as a purpose to provide financing for nonagricultural businesses in a rural area. The amendment to §26.9, concerning Use of the Loan Proceeds, amends subsection (a) to add "any nonagricultural business expense" identified in the application to the purposes for which loan proceeds may be used. The amendments to §26.10, concerning Program Limitations, amend paragraph (1) to increase the maximum amount available under the program from $25 million to $30 million, and to provide that $5 million of that amount may be used only to finance the economic development of businesses in rural areas; add a new paragraph (5) which provides that the maximum amount of a loan to finance a loan in a rural area is $250,000; amend newly renumbered paragraph (9) to change the reference to paragraph (5) to paragraph (6); amend newly renumbered paragraph (12) to delete celery and wool from the list of customarily grown crops not eligible for participation in the production financing for alternative crops portion of the program, and add chicken to that list; amend newly renumbered paragraph (13) to add celery, mules and wool to the list of alternative crops not customarily grown that are eligible for participation in the production financing portion of the program; and add new paragraph (17) which provides that any nonagricultural business meeting the criteria for being located in a rural area that creates an economic benefit to the rural area is a project eligible for financing under the program.

Mr. Robert Kennedy, deputy assistant commissioner for agricultural finance, has determined that for the first-five year period the amended sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections.

Mr. Kennedy also has determined that for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of enforcing the amended sections will be the potential to create an economic benefit to rural areas of the state and to generate greater number of approved applicants for the Linked Deposit Program. There will be no effect on microbusinesses or small businesses. There will be no anticipated economic cost to persons who are required to comply with the sections as amended.

Comments on the proposal may be submitted to Mr. Robert Kennedy, Deputy Assistant Commissioner for Finance, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of this proposal in the *Texas Register*.

The amendments are proposed under the Texas Agriculture Code (the Code), §44.007, which provides the TAFA board with the authority to adopt rules for the loan portion of the linked deposit program; and the Code, §58.022 which provides the TAFA board with the authority to adopt rules and procedures for administration of the programs of TAFA, including the Linked Deposit Program.

The code affected by the proposal is the Texas Agriculture Code, Chapters 58 and 44.

§26.1. Definitions.

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

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

(12) Customarily grown--Crops produced in this state that utilize conventional management systems, and have cash receipts equal to or exceeding $5 million as listed in the 1999 [~~1997~~] Texas Agricultural Cash Receipts by Commodity, compiled by the Texas Agricultural Statistics Service for the period ending December 1999 [~~1997~~], except for experimental varieties of these crops.

(13) - (14) (No change.)

(15) Eligible borrower--A person who is in the business or entering the business of:

(A) processing and marketing agricultural crops in this state;

(B) producing alternative agricultural crops in this state;

(C) producing agricultural crops in this state, the production of which has declined because of natural disasters;

(D) producing agricultural crops in this state using water conservation equipment for agricultural production purposes; [~~or~~]

(E) financing of water conservation projects ; or [~~.~~]

(F) providing nonagricultural goods or services in a rural area.

(16) - (20) (No change)

(21) Rural area-An area which is predominately rural in character, meeting the criteria as identified in the policy approved by the Board for the program.

(22) [~~(21)~~] Staff--The staff of the department designated by the commissioner of agriculture as performing duties for the Authority.

§26.3. Purpose.

The purpose of the program is to encourage private commercial loans for the enhancement of production, processing, and marketing of certain agricultural crops, the creation and enhancement of value-added businesses, providing assistance for disaster relief projects, [~~and~~] for the financing of water conservation projects or equipment for agricultural production purposes , and for nonagricultural businesses in a rural area. These sections are adopted to provide standards of eligibility and procedures for obtaining financial assistance under the Act.

§26.9. Use of the Loan Proceeds.

(a) Loan proceeds under the program may be used for any agriculture-related operating expense, including the purchase or lease of land or fixed asset acquisition or improvement, or any nonagricultural business expense, as identified in the application. A loan under this program may be applied to existing debt for applicants eligible to participate under this program.

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

§26.10. Program Limitations.

In addition to the limitations already set forth in these rules, the following limitations apply.

(1) Not more than $30 [~~$25~~] million, of which $10 million may only be used to finance water conservation projects, and of which $5 million may be used only to finance the economic development of businesses in rural areas, may be placed concurrently in linked deposits under the Act.

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

(5) The maximum amount of a loan to finance an eligible borrower in a rural area is $250,000.

(6) [~~(5)~~] The maximum amount of a loan to process and market agricultural crops is $500,000.

(7) [~~(6)~~] All linked deposits placed under this program shall expire upon expiration of the biennium; however, subject to legislative authorization and approval by the Authority and the comptroller, linked deposits that expired as a result of the expiration of the biennium may be renewed.

(8) [~~(7)~~] The state shall not be liable for any failure to comply with the terms and conditions of the loan, or any failure to make any payments or any other losses or expenses that occur directly or indirectly from the program.

(9) [~~(8)~~] An applicant may have more than one application and linked deposit loan with the program provided that the total applications and total linked deposits approved do not exceed the limitations of the program maximums as defined in paragraphs (2)-(6) [~~(2)-(5)~~] of this section, and that any previous outstanding linked deposit loans with a lender be of a satisfactory status. The total of all linked deposit loans to an applicant cannot exceed a maximum of $500,000.

(10) [~~(9)~~] A person shall not receive approval of an application if a previous loan under the program is in default.

(11) [~~(10)~~] An applicant who proposes operations to produce crops that are customarily grown in this state is not eligible for participation in the production financing for alternative crops portion of the program.

(12) [~~(11)~~] The following customarily grown crops are not eligible for participation in the production financing for alternative crops portion of the program: bell peppers, broilers, cabbage, cantaloupe, carrots, cattle, chicken [~~celery~~], corn, cotton, cottonseed, cucumbers, eggs, grapefruit, green peppers, certain greenhouse or nursery products, hay, hogs, honeydew melons, lambs, cow's milk, mohair, spring and summer onions, peaches, peanuts, pecans, potatoes, poultry, quarter horses, rice, sheep, soybeans, sorghum grain, spinach, sugarbeets, sugarcane, sunflowers, sweet potatoes, fresh tomatoes, turkeys, watermelons, and wheat [~~, and wool~~].

(13) [~~(12)~~] The following alternative crops that are not customarily grown in this state are eligible for participation in the production financing portion of the program: aloe vera, barley, beets other than sugar, blueberries, broccoli, buffalo, canola, cashmere goats, catfish, cauliflower, celery, crambe, crawfish, cut flowers, dairy goats, eggplant, emu, experimental varieties of customarily grown crops, exotic game species for venison, farm chickens, table and wine grapes, greens, herbs, honey, thoroughbred horses, jalapenos, jojoba, kenaf, llamas, lean and natural beef, lettuce, longhorn cattle, mesquite, mules, mushrooms, native plants, oats, oriental vegetables, oranges, ostrich, pinto beans, pistachios, pumpkins, quail, rabbits, redfish, rhea, rye, shrimp, snap beans, squash, strawberries, sweet corn, tilapia, turnips, Christmas trees, wildflowers, wool and any other crops not currently produced in the state. The Authority may, on a case by case basis, approve for program participation crops which are not listed in this paragraph.

(14) [~~(13)~~] A project eligible for natural disaster relief in this state is a project that resides in an area of the state that has declined because of a natural disaster, and has been declared in a state of disaster by the United States Department of Agriculture or the President of the United States. The term of eligibility for participation in the program is dependent the effect of the natural disaster and the asset being financed.

(15) [~~(14)~~] The following types of equipment considered as water conservation equipment for agricultural production purposes are eligible for financing in the production financing portion of the program: underground pipe; in-line valves; pipe increasers/reducers; gate valves; fittings and bushings; flow meters and accessories; complete circular watering systems; drip irrigation systems complete with installation; and any other equipment which can be identified and verified as water conservation equipment for use within the state.

(16) [~~(15)~~] The following types of water conservation projects would be eligible for financing under the program: brush control projects, stock tank renovation or construction; dam renovation

or construction; or any other project that can be identified as a water conservation project.

(17) Any nonagricultural business meeting the criteria for being located in a rural area that creates an economic benefit to the rural area.

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

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

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 76. WATER WELL DRILLERS AND WATER WELL PUMP INSTALLERS

16 TAC §76.800

The Texas Department of Licensing and Regulation (the Department) proposes amendments to 16 Texas Administrative Code, §76.800 concerning the fees for the Water Well Drillers and Water Well Pump Installers program.

The Department proposes to increase the application exam fees for driller and installer examinations from $125 to $150 for each examination; increase the fee for re-examination from $100 to $125 for each re-examination; increase the license fees for driller and installer licenses (both initial and renewal) from $170 to $200 each; increase the license and renewal fees for the combination driller and installer license from $220 to $310; and add the combination driller and installer apprentice registration (both initial and renewal) of $100.

The Department is required by Texas Occupations Code, Chapter 51, §51.202 and Texas Water Code, Chapters 32 and 33, §32.002 and §33.002, to set fees in amounts reasonable and necessary to cover the costs of administering programs, which include the Water Well Drillers and Water Well Pump Installers 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 Water Well Drillers and Water Well Pump Installers program.

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 fee changes.

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 $25 for each examination and each re-examination administered by the Department, an increase of $30 for each driller and installer license (both initial and renewal) issued by the Department, an increase of $90 for each person who obtains or renews a combination driller and installer license issued by the Department, and allow persons to obtain a combination driller and installer apprentice registration issued by the Department.

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) 463-1376 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 Water Code, Chapters 32 and 33, §32.002 and §33.002. 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 §32.002 as authorizing the Commission to set fees for examinations, re-examinations, and licenses under Chapter 32 with respect to the Water Well Drillers program. The Department interprets §33.002 as authorizing the Commission to set fees for examinations, re-examinations, and licenses with respect to the Water Well Pump Installers program.

The statutory provisions affected by the proposed amendments are Texas Occupations Code, Chapter 51, §51.202 and the Texas Water Code, Chapters 32 and 33, §32.002 and §33.002. No other statutes, articles, or codes are affected by the proposed amendments.

§76.800. Fees.

(a) Exam Fees.

(1) Driller and Installer application exam fees are $150 [~~$125~~] per exam.

(2) Re-exam fee is $125 [~~$100~~] for each exam.

(b) Annual License Fees.

(1) Driller's license is $200 [~~$170~~].

(2) Installer's license is $200 [~~$170~~].

(3) A combination Driller and Installer license is $310 [~~$220~~].

(4) Apprentice registration is $50.

(5) A combination Driller and Installer Apprentice registration is $100.

(c) Annual License Renewal Fees.

(1) Driller's renewal license is $200 [~~$170~~].

(2) Installer's renewal license is $200 [~~$170~~].

(3) A combination Driller and Installer renewal license is $310 [~~$220~~].

(4) Apprentice renewal registration is $50.

(5) A combination Driller and Installer Apprentice renewal registration is $100.

(d) Lost, revised, or duplicate license $25.

(e) Variance request fee is $100.

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

Filed with the Office of the Secretary of State, on June 29, 2001.

TRD-200103722
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: August 12, 2001
For further information, please call: (512) 463-7348

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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 403. GENERAL ADMINISTRATION

16 TAC §403.401

The Texas Lottery Commission proposes new §403.401, relating to the assignment and use of Commission motor vehicles. The new rule will designate Commission motor vehicles as Commission property and provides that a Commission motor vehicle may not be assigned to a specific employee or agency head, but must be assigned to the Commission's motor pool and be available for checkout. The new rule is required by §2171.1045, Government Code.

Bart Sanchez, Financial Administration Director for the Texas Lottery Commission, has determined that for each year of the first five year period the new rule is in effect there will be no foreseeable additional fiscal implications for state or local government as a result of enforcing or administering the rule. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the rule.

Vince Devine, Facilities Support Manager for the Texas Lottery Commission, has determined that for each of the first five years the new rule is in effect the public benefit anticipated will be increased confidence by the public that Commission vehicles will be used solely for official Commission purposes and in conformance with Chapter 2171, Government Code.

Written Comments on the proposal may be submitted to Ridgely C. Bennett, Deputy General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6330.

The new section is proposed under §467.102, Government Code, which provides the Texas Lottery Commission with the authority to adopt rules for the enforcement and administration of the State Lottery Act and the laws under the Commission's jurisdiction, §2171.1045, Government Code, which directs state agencies to adopt rules relating to the assignment and use of the agency's vehicles and Chapter 2001, Government Code, which provides for the adoption of administrative rules.

Chapters 467 and 2171, Government Code are affected by the proposed new rule.

§403.401. Use of Commission Motor Vehicles.

(a) A motor vehicle owned by the Commission is state property and may be used for official Commission business only. A Commission motor vehicle may not be assigned to a specific employee or agency head, but must be assigned to the Commission's motor pool and be available for checkout. All Commission motor vehicles will be housed at the Commission's Austin headquarters or at the Commission's business resumption warehouse.

(b) A Commission employee is eligible to use a Commission motor vehicle if the employee has passed a background investigation conducted by the Commission's Security Division or the Department of Public Safety, possesses a valid Texas driver's license and has a satisfactory driving record.

(c) An employee operating a Commission motor vehicle must comply with all applicable federal and state traffic laws and the Commission's traffic safety policies and procedures. A violation of one of those laws, policies or procedures is grounds for disciplinary action, up to and including termination of the employee's at-will employment.

(d) An employee operating a Commission motor vehicle must enter the following information in the Commission's vehicle logbook:

(1) beginning and ending mileage;

(2) beginning and ending time;

(3) destination; and

(4) the name of each passenger being transported in the Commission's motor vehicle.

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

Filed with the Office of the Secretary of State, on June 26, 2001.

TRD-200103630
Ridgley C. Bennett
Deputy General Counsel
Texas Lottery Commission
Earliest possible date of adoption: August 12, 2001
For further information, please call: (512) 344-5113

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 105. FOUNDATION SCHOOL PROGRAM

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SEVERANCE PAYMENTS

19 TAC §§105.1021, - 105.1023

The Texas Education Agency (TEA) proposes new §§105.1021, 105.1022, and 105.1023, concerning severance payments made to superintendents. These proposed new sections replace an earlier version that was filed as proposed in the January 5, 2001, issue of the *Texas Register* (26 TexReg 55), which has been withdrawn. The notice of withdrawal can be found in the Withdrawn Rules section in this issue.

Like the earlier version, these proposed new sections detail provisions for definitions, identification, administration, reduction of Foundation School Program (FSP) funds, audit, and compliance to implement the reporting of severance payments made to superintendents and the process for reducing FSP funds. Senate Bill (SB) 1446, 77th Texas Legislature, 2001, warrants that a distinction be made regarding the applicability of payments made before September 1, 2001, and payments made on or after that date. These proposed new sections include this distinction that was not addressed in the earlier withdrawn version.

Texas Education Code (TEC), §11.201(c), enacted by SB 1, 75th Texas Legislature, 1995, and amended by SB 1446, 77th Texas Legislature, 2001, requires the commissioner of education to reduce an independent school district's FSP funds based upon the amount of the severance payment reported by a board of trustees of an independent school district that makes a severance payment to a superintendent. TEC, §11.201(c), establishes the requirement that a board of trustees shall report to the commissioner the terms of a severance payment made to a superintendent.

Section 105.1021 primarily applies to any payments made to a superintendent based upon a written agreement entered into on or after September 1, 2001. A district must submit a disclosure form to TEA within 60 days following execution of an agreement to make payments of any kind to a departing superintendent, or any payment under such an agreement, whichever is sooner. Notwithstanding any other subsection in the proposed sections, districts may also elect to apply the provisions of §105.1021 to all payments made to departing superintendents on or after May 30, 1995. Section 105.1022 details the provisions for identification, reduction of FSP funds, audit, and compliance for payments subject to the provisions in both §105.1021 and 105.1023. In addition, §105.1023 applies to all payments made to departing superintendents between May 30, 1995, and August 31, 2001. A district must report these payments no later than January 1, 2002, even when a district elects to apply the provisions of §105.1021 to any agreement entered into prior to September 1, 2001.

Tom Canby, managing director for school financial audits, has determined that for fiscal years 2001 through 2005 there will be no significant fiscal implications for state government as a result of enforcing or administering the new sections. There will be fiscal implications for local government. The fiscal impact will be to school districts that elect to make severance payments to departing superintendents. FSP funds for a district that makes severance payments will be reduced; therefore, the amount of the fiscal impact will depend on the amount of severance payment. A school district is not obligated to make a severance payment to a departing superintendent.

Mr. Canby 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 the establishment of clear procedures to implement the requirement that districts report severance payments. The proposed sections will also clearly establish the administration of the FSP reduction of funds resulting from severance. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new sections.

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* 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 new sections are proposed under the Texas Education Code, §11.201(c), which requires the commissioner of education to reduce an independent school district's Foundation School Program funds based upon the amount of the severance payment reported by a board of trustees of an independent school district that makes a severance payment to a superintendent. TEC, §11.201(c), stipulates that a board of trustees is required to report to the commissioner the terms of a severance payment made to a superintendent.

The new sections implement the Texas Education Code, §11.201(c).

§105.1021. Severance Payments to Superintendents After September 1, 2001.

(a) Applicability. The provisions of this section apply to any payments made to a superintendent based upon a written agreement entered into on or after September 1, 2001. An independent school district may elect to apply the provisions of this section to any agreement subject to §105.1023 of this title (relating to Severance Payments to Superintendents Prior to September 1, 2001).

(b) Definitions.

(1) Severance payment--Any amount paid by the board of trustees of an independent school district to or in behalf of a superintendent on early termination of the superintendent's contract that exceeds the amount earned by the superintendent under the contract as of the date of termination, including any amount that exceeds the amount of earned standard salary and benefits that is paid as a condition of termination of the contract. Payments to a former superintendent who remains employed by a school district in another capacity or contracts with a school district for services may be severance payments in whole or in part, if the payments are compensation for the early termination of a prior employment agreement. A severance payment includes any payment for actual or threatened litigation involving or related to the employment contract. The amount of the severance payment in excess of one year's salary and benefits under the superintendent's terminated contract, as applicable, is deducted from the district's Foundation School Program funds, in accordance with Texas Education Code (TEC), §11.201(c), as amended by Senate Bill 1446, 77th Texas Legislature, 2001.

(2) Superintendent--The educational leader and chief executive officer of an independent school district. "Departing superintendent" means an individual no longer acting as superintendent and includes a former superintendent who is employed by or contracts with the same school district in any other capacity.

(c) Administration. The commissioner of education shall reduce the district's Foundation School Program funds by the severance payment amount disclosed in the Superintendent Payment Disclosure Form that exceeds one year's salary and benefits under the superintendent's terminated contract, in accordance with §105.1022 of this title (relating to Administration of Severance Payment Reporting and Payment Reduction).

§105.1022. Administration of Severance Payment Reporting and Payment Reduction.

(a) Applicability. This section applies to any severance payment determined under §105.1021 of this title (relating to Severance

Payments to Superintendents After September 1, 2001) and §105.1023 of this title (relating to Severance Payments to Superintendents Prior to September 1, 2001), with certain exceptions, as stated.

(b) Identification.

(1) Identification of an independent school district subject to reductions in state funding attributable to severance payment to superintendent provisions under Texas Education Code (TEC), §11.201(c), is based on information filed by the district with the Texas Education Agency (TEA) on the Superintendent Payment Disclosure Form. A district must file the Superintendent Payment Disclosure Form with the TEA not later than 60 days following execution of an agreement to make payments of any kind to a departing superintendent or any payment under such an agreement, whichever is sooner. No report is required to be filed for payments already earned and payable under the terms of a terminated employment contract, such as accrued vacation. The interim superintendent, new superintendent, or school board president is responsible for timely filing of the Superintendent Payment Disclosure Form. Reporting on the disclosure form is required regardless of whether the district considers the payment to be a severance payment within the meaning of TEC, §11.201(c).

(2) The commissioner of education or the commissioner's designee will determine whether a payment to a departing superintendent is a severance payment for purposes of this section, based on the documentation submitted and any additional documentation required, or from agency documents that are made available to the district. The commissioner or the commissioner's designee may determine that an amount greater or less than the presumptive amount under §105.1023 of this title is a severance payment based upon the documentation considered. A determination by the commissioner or the commissioner's designee upon the record compiled under this section is the final agency administrative decision and may not be appealed under TEC, §7.057(a).

(c) Reduction of Foundation School Program funds.

(1) The commissioner shall reduce the district's Foundation School Program (FSP) funds for the school year following the school year in which the first payment is made by an amount equal to the severance payment made by the board of trustees to the superintendent, as determined under this section. The commissioner shall also reduce the district's FSP funds in the school year following each school year that any additional severance payment(s) are made to the superintendent. Districts will be subject to reductions to FSP state funding amounts in TEC, Chapter 42, for one or more school years until the liability amount(s) has(have) been liquidated in full, if the liability to the state exceeds the total flow of estimated earned revenue to a district under the FSP. The reduction in FSP state aid payments may apply to any FSP state aid sources of estimated earned revenue. The reductions in FSP state aid will be proportionately deducted from each FSP state aid payment for the school year(s).

(2) For districts subject to the provisions of TEC, Chapter 41, any reduction for severance payments shall be made to the FSP Tier I allotment for the district prior to computation of weighted average daily attendance for purposes of determining the district's equalized wealth level.

(3) Reductions in FSP amounts arising from severance payments will not affect the district's requirements to comply with all provisions of TEC, Chapter 42, to provide educational services to special populations and other provisions of TEC, Chapter 42.

(d) Audit. Accurate reporting of a district's Superintendent Payment Disclosure Form is subject to audit by the TEA division responsible for school financial audits. The audit shall examine amounts accrued as earned salaries and benefits for services provided by the superintendent prior to termination from the district which are deducted from the gross amount of severance payment(s) and reconciled with the liability amount disclosed by the district.

(e) Noncompliance. Compliance with the reporting requirements of this section shall be considered as part of the district's compliance with required financial accounting practices under TEC, §39.075(a)(4). Failure to comply with disclosure requirements may result in sanctions as authorized by TEC, §39.075(c).

(f) Implementation. Notwithstanding any other subsection of this section, all payments made to a departing superintendent on or after May 30, 1995, are required to be reported to TEA on forms distributed to a district for the purpose of administering the provisions of this section. Upon a determination that all or part of such a payment is a severance payment, FSP funds available to a district shall be reduced for payments due for the school year(s) that follow the school year(s) of any severance payment(s), in accordance with this section.

§105.1023. Severance Payments to Superintendents Prior to September 1, 2001.

(a) Applicability. The provisions of this section apply to any payments made to a superintendent based upon a written agreement entered into prior to September 1, 2001. An independent school district may elect to apply the provisions of §105.1021 of this title (relating to Severance Payments to Superintendents After September 1, 2001) to any agreement subject to this section.

(b) Definitions.

(1) Severance Payment--Any amount paid by the board of trustees of an independent school district to or in behalf of a superintendent on early termination of the superintendent's contract that exceeds the amount earned by the superintendent under the contract as of the date of termination, including any amount that exceeds the amount of earned standard salary and benefits that is paid as a condition of termination of the contract. Payments to a former superintendent who remains employed by a school district in another capacity or contracts with a school district for services may be severance payments in whole or in part, if the payments are compensation for the early termination of a prior employment agreement. A severance payment does not include a settlement payment for actual or threatened litigation separate from the termination of the employment contract. A severance payment to a departing superintendent up to the amount paid or equal to one year's salary and benefits under the superintendent's terminated contract, whichever is less, is deducted from the district's Foundation School Program funds, in accordance with Texas Education Code (TEC), §11.201(c), as enacted by the 74th Texas Legislature, 1995.

(2) Superintendent--The educational leader and chief executive officer of an independent school district. "Departing superintendent" means an individual no longer acting as superintendent and includes a former superintendent who is employed by or contracts with the same school district in any other capacity.

(3) Settlement--A payment made to an employee to settle actual or threatened litigation, or to resolve an actual or disputed claim the employee may have against the employer. A settlement does not include payments for the early termination of a contract. Damages for early termination of an employment contract, including loss of benefits, are severance payments regardless of whether litigation has commenced or the form of the settlement.

(c) Identification. Identification of an independent school district subject to reductions in state funding attributable to severance payment to superintendent provisions in TEC, §11.201(c), is based on information filed by the district with the Texas Education Agency (TEA)

on the Superintendent Payment Disclosure Form. No report is required to be filed for payments already earned and payable under the terms of a terminated employment contract, such as accrued vacation. The interim superintendent, new superintendent, or school board president is responsible for timely filing of the Superintendent Payment Disclosure Form. Reporting on the disclosure form is required regardless of whether the district considers the payment to be a severance payment within the meaning of TEC, §11.201(c).

(d) Administration.

(1) All payments made to a departing superintendent reported under the Superintendent Payment Disclosure Form are presumed to be severance payments, up to the total amount to be paid or one year's salary and benefits under the terminated contract, whichever is less. All payments in excess of one year's salary and benefits under the terminated contract are presumed to be payments in settlement of potential litigation and not severance payments. A school district may elect to apply the provisions of §105.1021 of this title to any agreement subject to this section. A school district must submit the Disclosure Form no later than January 1, 2002, to report severance payments from agreements signed between May 30, 1995, and August 31, 2001.

(2) A school district may submit documentation with its Superintendent Payment Disclosure Form to rebut the presumptions created by this section. Such evidence must demonstrate that the value to the departing superintendent of the full remaining term of the terminated employment contract is less than the presumptive amount under this section to reduce the amount of reduction under this section. A district submitting documentation to rebut the presumptive amount must include the following items:

(A) final signed agreement terminating the employment relationship;

(B) canceled check(s) for any payment(s) made to a departing superintendent beyond amounts earned under the contract at the time the employment relationship is terminated;

(C) Internal Revenue Service Form W-2, Wage and Tax Statement, reporting payments as supplemental wages (compensation paid in addition to the employee's regular wages) and/or special wage payments (amount paid to an employee or former employee for services performed in a prior year) that the district submits to cover in whole or in part payments made to a departing superintendent;

(D) worksheet(s) documenting calculation of earned payroll amounts through last day of employment;

(E) general ledger detail documenting transactions involving payment(s) to a departing superintendent;

(F) minutes of board of trustees documenting approval of a final agreement to make payment(s) to a departing superintendent;

(G) employment contract for the most recent contractual period (year) of employment and for the year immediately preceding, if applicable;

(H) compensation plan or salary schedule for a superintendent for the most recent contractual period (year) of employment and for the year immediately preceding, if applicable;

(I) salary distribution records for the most recent contractual period (year) of employment and for the year immediately preceding, if applicable; and

(J) board policy covering employee benefits including monthly allowances, deferred compensation, vacation days, personal leave days, and sick leave days in effect at the time of termination of employment.

(3) The commissioner of education may require any additional documentation to evaluate the documentation submitted.

(4) Failure to timely submit the Superintendent Payment Disclosure Form, failure to notify the commissioner of disagreement with the presumptive amount under this section, failure to submit required documents with the Superintendent Payment Disclosure Form, or failure to submit additional documentation within 30 days of request constitutes a waiver of a district's ability to contest the presumption under 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.

Filed with the Office of the Secretary of State, on June 29, 2001.

TRD-200103727
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Earliest possible date of adoption: August 12, 2001
For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 201. LICENSING AND ENFORCEMENT--PRACTICE AND PROCEDURE

22 TAC §201.5

(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 Funeral Service Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Funeral Service Commission proposes to repeal §201.5, concerning Transcripts and Cost.

O.C. "Chet" Robbins, Executive Director, has determined that for the first five-year period this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

O.C. "Chet" Robbins, Executive Director, has determined that the public benefit is that the repeal of this section will get rid of obsolete rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the repeal may be submitted to O.C. "Chet" Robbins, Executive Director, Texas Funeral Service Commission, 510 South Congress Avenue, Suite 206, Austin, Texas 78704, (512) 936-2474 or 1-888-667-4881. Comments may also be submitted electronically to crob@tfsc.state.tx.us or faxed to (512) 479-5064.

The repeal is proposed under Section 651.152 of the Texas Occupation Code, as amended by Section 18 of House Bill 3516, 76th Legislature which authorizes the Commission to issue such rules and regulations as may be necessary to effect the provisions of this Section.

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

§201.5. Transcripts and Cost.

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

Filed with the Office of the Secretary of State, on June 29, 2001.

TRD-200103729
O.C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: August 12, 2001
For further information, please call: (512) 936-2474

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22 TAC §201.11

(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 Funeral Service Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Funeral Service Commission proposes the repeal of §201.11, concerning Disciplinary Guidelines. The repeal is being proposed to allow the proposal of a new §201.11, that will clarify rules regarding disciplinary guidelines to protect the consumer and maintain the integrity of the funeral industry.

O.C. "Chet" Robbins, Executive Director, Texas Funeral Service Commission, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administrating the repeal.

Mr. Robbins also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be enhancement of the professional practice of the funeral industry, providing the consumer with the highest level of professional standards and ethical conduct. There will be no effect on small business. There is no anticipated economic cost to entities who are required to comply with the repeal as proposed.

Comments on the proposed repeal of §201.11 may be submitted to O.C. "Chet" Robbins, Executive Director, Texas Funeral Service Commission, 510 South Congress Avenue, Suite 206, Austin, Texas 78704, (512) 936-2474 or 1-888-667-4881. Comments may also be submitted electronically to *crob@tfsc.state.tx.us* or faxed to (512) 479-5064.

The repeal is proposed under the Texas Occupation Code, §651.152 as amended by Section 18 of House Bill 3516, 76th Legislature which authorizes the Commission to issue such rules and regulations as may be necessary to effect the provisions of the Section.

The Texas Occupation Code, §651.152 is affected by this proposed section.

§201.11. Disciplinary Guidelines.

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

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

TRD-200103688
O.C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: August 12, 2001
For further information, please call: (512) 936-2480

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22 TAC §201.11

The Texas Funeral Service Commission proposes new §201.11, concerning Disciplinary Guidelines. The section is being proposed to clarify rules regarding disciplinary guidelines to protect the consumer and maintain the integrity of the funeral industry.

O.C. "Chet" Robbins, Executive Director, Texas Funeral Service Commission, has determined that for the first five-year period this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administrating the section.

Mr. Robbins also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be enhancement of the professional practice of the funeral industry, providing the consumer with the highest level of professional standards and ethical conduct. There will be no effect on small business. There is no anticipated economic cost to entities who are required to comply with the section as proposed.

Comments on the proposed new §201.11 may be submitted to O.C. "Chet" Robbins, Executive Director, Texas Funeral Service Commission, 510 South Congress Avenue, Suite 206, Austin, Texas 78704. (512) 936-2474 or 1-888-667-4881. Comments may also be submitted electronically to *crob@tfsc.state.tx.us* or faxed to (512) 479-5064.

The new section is proposed under the Texas Occupation Code, §651.152 as amended by Section 18 of House Bill 3516, 76th Legislature which authorizes the Commission to issue such rules and regulations as may be necessary to effect the provisions of the Section.

The Texas Occupation Code, §651.152 is affected by this proposed section.

§201.11. Disciplinary Guidelines.

When the commission finds that a provisional licensee, individual licensee, funeral establishment or commercial embalming establishment has committed any of the acts or violated any of the provisions of the Texas Occupations Code Chapter 651, or any of the provisions of the rules and regulations promulgated in Chapters 201 - 210 of this title, it shall:

(1) before a SOAH hearing, issue Preliminary finding of facts and conclusions of law, in addition to imposing appropriate penalties ranging from a letter of warning to monetary administrative penalties of not less $100 but not more than $5,000 for each violation in accordance with Texas Occupation Code §651.552.

(2) The following guidelines will be utilized in the setting of administrative penalties.

(A) Texas Occupation Code §651.451, Certain Fraudulent and Deceptive Acts.

(i) Presentation to the Commission of any license, certificate or diploma that was illegally or fraudulently obtained, or

when fraud or deception was used in passing an examination. The impersonation of, or acting as a proxy for, another in any examination required by this Act for a funeral director and/or embalmer, (1) and (2)--$1,000 - $5,000;

(ii) The purchase, sale, barter, or use, or any offer to purchase, sale, barter, or use any license, certificate, or transcript of license or certificate, in or incident to an application to the Commission for license to practice as a funeral director and/or embalmer, (3)--$1,000 - $5,000;

(iii) Altering, with fraudulent intent, any funeral director and/or embalmer license certificate, or transcript of license or certificate, (4)--$1,000 - $5,000;

(iv) The use of any funeral director and/or embalmer license, certificate, diploma or transcript of any such funeral director and/or embalmer license, certificate, or diploma that has been fraudulently purchased, issued, counterfeited, or materially altered, (5)--$1,000 - $5,000;

(v) The impersonation of a licensed funeral director or embalmer as authorized by the Act, or permitting or allowing another to use a person's license or certificate to practice as a funeral director or embalmer in this state, (6) and (7)--$1,000 - $5,000;

(vi) Presentation of false certificate of word done as a provisional licensee (8)--$100 - $2,000.

(B) Texas Occupation Code §651.452, Lack of Fitness to Practice.

(i) Conviction of a misdemeanor related to the practice of embalming or funeral directing; or a felony, (1)--$500 - $5,000;

(ii) Being unfit to practice as a funeral director and/or embalmer by reason of insanity and having been adjudged by a court of competent jurisdiction to be of unsound mind, NONE;

(iii) Unfitness by reason of present substance abuse, NONE.

(C) Texas Occupation Code §651.453, Unethical Advertising. The use of any advertising statement of a character that misleads or deceives the public or use of, in connection with advertisements, the names of person who do not hold a license as a funeral director or embalmer and representing them as being so licensed, (1)--$500 - $3,000.

(D) Texas Occupation Code §651.454, Other Unethical Conduct in Soliciting Customers.

(i) Failure by any person arranging for funeral services or merchandise to: provide a prospective consumer with a copy of the brochure required by Section 6E of this Act at the beginning of the arrangement process (1)--$500 - $5,000;

(ii) provide a retail price list to an individual inquiring in person about any funeral service or merchandise for that person to keep, (2)--$500 - $5,000;

(iii) explain to the customer or prospective customer that a contractual agreement for funeral services or merchandise may not be entered into before the presentation of the retail price list to that person; or (3)--$500 - $5,000

(iv) provide general price information by telephone within a reasonable time, (4)--$500 - $5,000;

(v) restricting, hindering, or attempting to restrict or hinder:

(I) the advertising or disclosure of prices and other information regarding the availability of funeral services and funeral merchandise that is not deceptive or unfair to consumers; or

(II) agreements for funeral services between any consumer or group of consumers and funeral directors and embalmers, (b)(1) and (2)--$500 - $5,000.

(vi) Whenever a licensee, provisional licensee, or any other person, whether an employee, agent, or representative or one in any manner associated with a funeral establishment shall solicit business or offer any inducement, pecuniary or otherwise, for the purpose of securing or attempting to secure business of such funeral establishment, unless such solicitation is made pursuant to a permit issued under Chapter 154 Texas Finance Code, (c)--$1,000 - $5,000.

(E) Texas Occupation Code §651.455, False or Misleading Statements Regarding Funeral Merchandise or Funeral Services.

(i) The use of any statement that misleads or deceives the public, including but not limited to false or misleading statements regarding any legal, religious, or cemetery requirement for funeral merchandise or funeral services, (1)--$500 - $5,000;

(ii) the preservative qualities of funeral merchandise of funeral merchandise or funeral services in preventing or substantially delaying natural decomposition or decay of human remains, (2)--$500 - $5,000;

(iii) the airtight or watertight properties of a casket or outer enclosure, (3)--$500 - $5,000;

(iv) representations as to licensed personnel in the operation of a funeral establishment (4)--$500 - $5,000.

(F) Texas Occupation Code §651.456, Unethical Conduct Regarding Custody of Dead Human Body

(i) Taking custody of a dead human body without the permission of the person or the agent of the person authorized to make funeral arrangements for the deceased, (1)(A)--$250 - $5,000;

(ii) or without the permission of the medical examiner or the justice of the peace when a medical examiner or justice of the peace has jurisdiction over the body under Articles 49.02, 49.03, 49.04, and 49.05, Code of Criminal Procedure, (1)(B)--$250- $5,000;

(iii) refusing to promptly surrender a dead human body to a person or agent authorized to make funeral arrangements for the deceased, (2)--$250 - $5,000.

(G) Texas Occupation Code §651.457, Unethical Conduct Regarding Embalming.

(i) embalming a body without the expressed written or oral permission of a person authorized to make funeral arrangements for the deceased, (a)(1)(A)--$250 - $5,000, or;

(ii) without making a documented reasonable effort over a period of at least three hours to obtain the permission, (B) --$250 - $5,000;

(iii) embalming or attempting to embalm without proper authority a dead human body, evidence of which includes making an incision on the body, raising a circulatory vessel of the body, or injecting a chemical into the body, (2)--$250 - $5,000;

(iv) allows the presence or participation of a student for credit or satisfaction of academic requirements during the embalming of a dead human body without complying with §651.407, (3)--$250 - $5,000;

(v) places a chemical or substance on or in a dead human body to disinfect or preserve the body or to restore body tissues and structures without holding an embalmer's license, (4)--$250 - $5,000.

(H) Texas Occupation Code §651.458, Unethical Conduct by Funeral Establishment. A person violates this chapter if the person makes a distinction in providing funeral information to a customer regardless of any affiliation of the customer or whether the customer has a present need for the services or merchandise, $100 - $5,000;

(I) Texas Occupation Code §651.459, Other Unethical Conduct In Providing Funeral Services.

(i) willfully makes a false statement on a death certificate or a document required by this chapter or a rule adopted under this chapter, (a)(1)--$500 - $2,000;

(ii) engages in fraudulent, unprofessional, or deceptive conduct in providing funeral services or merchandise to a customer, (2)--$1,000 - $5,000;

(iii) dishonest conduct, willful conduct, negligence, or gross negligence in the practice of embalming or funeral directing that is likely to or does deceive, defraud, or otherwise injure the public, (3)--$500 - $5,000;

(iv) causes the execution of a document by the use of fraud, deceit, or misrepresentation, (4)--$750 - $5,000;

(v) directly or indirectly employs a person to solicit individuals or institutions by whose influence dead bodies may be turned over to a particular funeral director, embalmer or funeral establishment, (5)--$1,000 -$5,000;

(vi) misappropriates funds held by a license holder, a funeral establishment, an employee or agent of the funeral establishment, or another depository, that create an obligation to provide a funeral service or merchandise, including retaining for an unreasonable time excess funds paid by or on behalf of the customer for which the customer is entitled to a refund, (6)--$250 - $5,000;

(vii) performing acts of funeral directing or embalming that are outside the licensed scope and authority of the licensee, or performing acts of funeral directing or embalming in a capacity other than that of an employee, agent, subcontractor, or assignee of a licensed funeral establishment that has contracted to perform those acts, (7)--$500 - $5,000;

(viii) Statement or implication by a funeral director or embalmer that a consumer's concern with the cost of any funeral service or funeral merchandise is improper or indicates a lack of respect for the deceased, (b)--$500 - $5,000;

(ix) Failure by the Funeral Director in Charge to provide a funeral director or an embalmer for direction or personal supervision for a "first call", (c)--$500 - $5,000.

(J) Texas Occupation Code §651.460, Prohibited Practices Related To Failure to Comply With Other Legal Requirements.

(i) arranges for funeral services or merchandise and fails to provide a customer with a purchase agreement as required by §651.406, (a)(1)--$500 - $5,000;

(ii) fails to retain and make available to the commission, on request, copies of all price lists, written notices, embalming documents, and memoranda of agreement required by this chapter for two years after the date of distribution or signing, (2)--$250 - $5,000;

(iii) violation of this chapter, any rule adopted under this chapter, an order by the commission revoking, suspending, or probating a license, an order assessing and administrative penalty, or an agreement to pay an administrative penalty regardless of whether the agreement is express or implied by §651.554, (3)--$500 - $5,000;

(iv) allows the use of a dead human body by an embalming establishment for research or educational purposes without complying with §651.407, (4)--$500 - $5,000;

(v) associated with the funeral establishment, whether as an employee, agent, subcontractor, assignee, owner, or otherwise, and whether licensed or unlicensed, to comply with chapter or a rule adopted under this chapter, (5)--$100 - $5,000;

(vi) failure of a funeral establishment to substantially comply with §651.351 Licensed Required violation is against the funeral establishment, (b)(1)--$250 - $5,000;

(vii) the funeral establishment or a person acting on behalf of the funeral establishment violates Chapter 193 or 361, Health and Safety Code - violation is against the funeral establishment, (2)--$250 -- $5,000;

(viii) any violation by a funeral establishment or a person acting on behalf of a funeral establishment or any person directly or indirectly connected with a funeral establishment of Chapter 154, Finance Code or a rule adopted under that chapter, (3)--$250 - $5,000.

(3) Based upon consideration of the following factors, the Executive Director or the Executive Director's designee may use the following criteria in the assessing of administrative penalties:

(A) the severity of the offense plus 0 - 10 points

(B) the danger to the public plus 0 - 10 points

(C) the number of repetition of offense plus 0 - 10 points

(D) the number of complaints previously found justified against the licensee plus 0 - 10 points

(E) the length of the time licensee has practiced plus 0 - 10 points

(F) the actual damage, physical or otherwise, caused by the violations; plus 0 - 10 points

(G) the deterrent effect of the penalty imposed plus 0 - 10 points

(H) refusal by licensee to correct or stop violations plus 0 -10 points

(I) penalties imposed for related offenses plus 0 -10 points

(J) any other mitigating or aggravating circumstances plus or minus 0 - 10 points

(K) attempts by licensee to correct or stop violations minus 0 - 10 points

(4) Penalties imposed by the commission using the guidelines of paragraphs (2) and (3) of this section may be imposed for each violation, but may not exceed the following limitations:

(A) imposition of an administrative penalty not to exceed $5,000 for each count or separate offense;

(B) utilizing the point system described in paragraph (3) of this section, a total point accumulation of 0 - 10 results in a penalty less than $1,000; 10 - 20 points result in a penalty between $1,000 -

$2,000; 20 - 30 points result in a $2,000 penalty; 30 - 40 points result in a penalty between $2,000 - $3,000; 40 - 50 points result in a penalty of $3,000; 50 - 60 points result in a penalty of between $3,000 - $4,000; 60 - 70 points result in a penalty of $4,000; 70 - 80 points results in a penalty of $4,500; 80 - 100 points results in a penalty of $5,000.

(5) The provisions of paragraphs (1) - (4) of this section shall not be construed so as to prohibit other appropriate civil or criminal action and remedy and enforcement under other laws.

(6) After a hearing, or with the waiver of a hearing, the commission may, in it's discretion, using the disciplinary guidelines in paragraph (2) of this section,

(A) place a license on probation for a period of time and subject to such conditions as the commission may specify;

(B) suspend or revoke a license; or

(C) deny the application for a license.

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

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

TRD-200103669
O.C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: August 12, 2001
For further information, please call: (512) 936-2480

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22 TAC §201.13

The Texas Funeral Service Commission proposes an amendment to §201.13, concerning Inspections and Investigations. The amendment is being proposed to clarify rules regarding inspections and investigations.

O.C. Robbins, Executive Director, Texas Funeral Service Commission, has determined that for the first five-year period this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administrating the section.

Mr. Robbins also has determined that for each year of the first five-year period this section is in effect the public benefit is anticipated as a result of conforming the rule to the enabling statute. There will no effect on local government. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to O.C. Robbins, Executive Director, Texas Funeral Service Commission, 510 South Congress Avenue, Suite 206, Austin, Texas 78704, (512) 936-2474 or 1-888-667-4881. Comments may also be submitted electronically to *www.tfsc.state.tx.us*or faxed to (512) 479-5064.

The amendment is proposed under the Texas Occupations Code, §651.152 which authorizes the Commission to issue such rules and regulations as may be necessary to effect the provisions of the Section.

The Texas Occupation Code, §651.152 is affected by this proposed amendment.

§201.13. Inspections and Investigations.

(a) INSPECTIONS.

(1) Any premise on which embalming or funeral directing is conducted shall be open at all times to inspection for any violation of Chapter 651, Texas Occupations Code, or of Chapters 193 or 361, Health and Safety Code [~~under Texas Civil Statutes, Article 4582b, and under the Health and Safety Code, Chapters 193 and 361~~], by any agent of the commission.

(2) [~~(b)~~] Each licensed establishment shall be, at a minimum, inspected once every two years [~~on a annual basis~~].

(3) [~~(c)~~] The inspector shall review the previous inspection report on the facility prior to the inspection [~~and shall note on the inspection checklist any areas of noncompliance that have not been corrected on the inspection form~~].

(A) A permanent computerized database of inspection deficiencies shall be maintained for recording the deficiencies reported by inspectors.

(B) The computerized record will note: the name of the establishment, the date of inspection, the type of deficiency, proof of compliance provided within 15 days of inspection, the inspector's initial.

(4) [~~(d)~~] Inspections shall be unannounced. Upon entering the facility, the inspector shall provide agency identification and state the purpose of the visit [~~identify himself and request that an employee accompany him throughout the inspection~~]. The inspector shall physically inspect the facilities, noting all exceptions on the inspection checklist. The inspector shall also inspect all required forms and shall personally draw and inspect a random sample of at least five files of cases that have been performed since the last inspection date.

(5) [~~(e)~~] Upon completion of the inspection, the inspector shall complete all forms, explain all exceptions to an establishment representative, ask the establishment representative to sign the acknowledgment section, and tell the establishment representative that the establishment must correct any noted exceptions and provide proof of [~~report such~~] corrective action in writing to the commission within 15 days of the inspection. The inspector shall give one copy of the inspection form to the establishment representative, forward one copy to the commission office, and keep one copy for his files.

(b) INVESTIGATIONS.

(1) The commission shall investigate each complaint received relating to a funeral director, embalmer, provisional license holder, funeral establishment, or other person licensed or registered under Chapter 651, Texas Occupation Code in accordance with the Commission Policy and Procedures Manual.

(2) The beginning of the investigation process shall be the assignment of a tracking number, followed by an intake process to determine if the complaint alleges a violation of statute or rule that the Commission has the ability to resolve.

(3) The complainant will be notified of receipt of the complaint within ten working days of the assignment of the tracking number and at least every three months regarding the status of the investigation until final resolution.

(4) If no allegation of a violation of statute or rule under the jurisdiction of the Commission exists, the complaint will be closed, subject to approval by the executive director, or the executive director's designee.

(5) If a violation of law is alleged that would be better suited for another agency to investigate, the complaint will be forwarded to that agency and a letter of explanation of the Commission's actions sent to the complainant.

(6) A notification of the complaint will be sent to the subject of the complaint, unless the complaint or subsequent investigation is covert in nature.

(7) For complaints not dismissed under paragraph (4) of this subsection or referred under paragraph (5) of this subsection the investigator will submit a preliminary report in summary form including a Findings of Fact and Conclusions of Law to the commission for consideration.

(8) Once the commission has voted on a finding of fault or no fault the executive director will assess an administrative penalty utilizing the guidelines in §201.11 of this title (relating to Disciplinary Guidelines).

(9) The subject of the investigation will be notified of the Findings and Conclusions and given 30 days to respond by either paying the penalty and accepting any conditions or requesting in writing an informal conference before a panel of the Board of Commissioners.

(10) The Complainant will be notified of the opportunity to appear at the informal conference.

(11) The Informal Conference Panel may uphold, reverse, or modify the preliminary Findings and Conclusions and sanctions. If the decision of the Informal Conference Panel is accepted, an agreed resolution will be signed by both the executive director, representing the Commission and the subject of the investigation or an appropriate designee. When the respondent timely performs all obligations under the agreement, the complaint is closed and the final resolution reported to the Board of Commissioners and the complainant.

(12) Disputed complaint cases that cannot be resolved by informal conference, will be forwarded to the Office of the Attorney General to prosecute at the State Office of Administrative Hearings (SOAH), in accordance with the Texas Administrative Procedure Act and SOAH's procedural rules found at 1 TAC Chapter 155.

(c) Conclusion of the investigation will be followed by the issuance of a letter of dismissal from the Executive Director in appropriate circumstances or Findings of Fact, Conclusions of Law when a violation exists.

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

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

TRD-200103654
O.C "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: August 12, 2001
For further information, please call: (512) 936-2480

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22 TAC §201.15

The Texas Funeral Service Commission proposes an amendment to §201.15, concerning Joint Memorandum of Understanding. The rule is amended to conform language with the codification of certain Vernon Civil Statutes.

O.C. "Chet" Robbins, Executive Director, Texas Funeral Service Commission, has determined that for the first five-year period this 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. Robbins has also determined that for the first five-year period this section is in effect the public benefit will be that the Joint Memorandum of Understanding with the Department of Banking and the Department of Insurance continues. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to O.C. "Chet" Robbins, Executive Director, Texas Funeral Service Commission, 510 South Congress Avenue, Suite 206, Austin, Texas 78704, (512) 936-2474 or 1-888-667-4881. Comments may also be submitted electronically to crob@tfsc.state.tx.us or faxed to (512) 479-5064.

The amendment is proposed under §651.152 of the Texas Occupation Code, as amended by Section 18 of House Bill 3516, 76th Legislature which authorizes the Commission to issue such rules and regulations as may be necessary to effect the provisions of this Section.

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

§201.15. Joint Memorandum of Understanding.

(a) Pursuant to Texas Occupations Code, Chapter 651 [~~Texas Civil Statutes, Article 4582b, §4(I)~~], the Texas Funeral Service Commission (herein referred to as the TFSC), the Texas Department of Insurance (herein referred to as the TDI), and the Texas Department of Banking (herein referred to as the DOB) hereby adopt the following joint memorandum of understanding (JMOU) relating to prepaid funeral services and transactions. The TFSC, TDI, and DOB intend this memorandum of understanding to serve as a vehicle to assist the three agencies in their regulatory activities, and to make it as easy as possible for a consumer with a complaint to have the complaint acted upon by all three agencies, where appropriate. In order to accomplish this end, where not statutorily prohibited, the three agencies will share information between the agencies which may not be available to the public generally under the Open Records Act, Texas Civil Statutes, Article 6252-17a. Such information will be transmitted between agencies with the notation on the information that it is considered confidential, is being furnished to the other agencies in furtherance of their joint responsibilities as state agencies in enforcing their respective statutes, and that it may not be disseminated to others except as required.

(b) Responsibilities of each agency in regulating prepaid funeral services and transactions:[~~.~~]

(1) The Texas Funeral Service Commission is responsible for the following:

(A) licensing funeral directors,and embalmers, provisional [~~apprentice~~] funeral directors apprentice [~~and~~] embalmers [~~(Texas Civil Statutes, Article 4582b, §3)~~] and funeral establishments [~~(Texas Civil Statutes, Article 4582b, §4(A))~~]. The TFSC may refuse to license a person or establishment that violates Chapter 154, Texas Finance Code [~~Texas Civil Statutes, Article 548b,~~] under Texas Occupations Code §651.460(b)(3). [~~Texas Civil Statutes, Article 4582b, §3(H)(10);~~]

(B) taking action against any licensee violating Chapter 154, Texas Finance Code [~~Article 548b~~] under Texas Occupations Code §651.460(b)(3) [~~Texas Civil Statutes, Article 4582b, §3(H)(10)~~].

(C) taking action against any funeral director in charge and/or funeral establishment for violations of Chapter 154, Texas Finance Code [~~Article 548b~~], by persons directly or indirectly connected to the funeral establishment, under Texas Occupations Code §651.460(b)(3) [~~Texas Civil Statutes, Article 4582b, §4(D)(1)(f) and §4(E)~~].

(2) The Texas Department of Banking is responsible for administering Chapter 154, Texas Finance Code [~~Texas Civil Statutes, Article 548b~~], including, but not limited to, the following:

(A) issuing permits to sell prepaid funeral services or funeral merchandise pursuant to Chapter 154, Texas Finance Code [~~Texas Civil Statutes, Article 548b, §1 and §3~~].

(B) approving forms for sales contracts pursuant to Chapter 154, Texas Finance Code [~~Texas Civil Statutes, Article 548b, §2~~].

(C) canceling or refusing to renew permits pursuant to Chapter 154, Texas Finance Code [~~Texas Civil Statutes, Article 548b, §4~~]; and providing notice of alleged violations to the attorney general of Texas and to sellers pursuant to Chapter 154, Texas Finance Code [~~Texas Civil Statutes, Article 548b, §9(e) and (f)~~];

(D) approving the release or withdrawal of funds under certain circumstances or for certain purposes, pursuant to Chapter 154, Texas Finance Code [~~Texas Civil Statutes, Article 548b, §5(3), (4) and (5)~~];

(E) providing for reporting requirements and performing examinations under Chapter 154, Texas Finance Code [~~Texas Civil Statutes, Article 548b, §7 and §8(a)~~];

(F) maintaining a guaranty fund with respect to prepaid funeral benefits owned by trusts, pursuant to Chapter 154, Texas Finance Code [~~Texas Civil Statutes, Article 548b, §8A~~].

(3) (No change.)

(c) (No change.)

(d) Procedures to be used by each agency in investigating a complaint.

(1) (No change.)

(2) The Texas Funeral Service Commission.

(A) The TFSC, in accordance with Chapter 154, Texas Finance Code [~~Texas Civil Statutes, Article 4582b, §4(D)((2)(b)~~], will investigate violations of prepaid funeral services only if the investigation does not interfere with or duplicate an investigation conducted by the DOB.

(B) (No change.)

(3) Texas Department of Banking.

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

(D) In the event that a licensee under the TFSC's jurisdiction is found[~~, after hearing,~~] to have violated one or more provisions of Texas Occupations Code, Chapter 651 [~~Article 548b~~], the DOB will inform the TFSC of the violation(s) in writing and provide documentation supporting the occurrence of the violation(s).

(4) (No change.)

(e)-(f) (No change.)

(g) Administrative penalties each agency imposes for violations.

(1) (No change.)

(2) Texas Funeral Service Commission. The TFSC may impose an administrative penalty, issue a reprimand, or revoke, suspend, or place on probation any licensee who violates Chapter 154, Texas Finance Code [~~Article 548b~~]. The recommended range of administrative penalty for a violation of Chapter 154, Texas Finance Code [~~Article 548b~~] is $500 - $5,000[~~. Also, a funeral establishment may be assessed an administrative penalty fee of $250 to $5,000~~] for each violation of Chapter 154, Texas Finance Code [~~Article 548b~~] by a person directly or indirectly connected to the funeral establishment, under §201.11(a)(6) and (25) of this title (relating to Disciplinary Guidelines).

(3) Texas Department of Banking. The DOB may impose the following administrative penalties.

(A) cancel a permit or refuse to renew a permit pursuant to Chapter 154, Texas Finance Code [~~Texas Civil Statutes, Article 548b, §4~~].

(B) seize prepaid funeral funds and records of a prior permit holder pursuant to Chapter 154, Texas Finance Code [~~Texas Civil Statutes, Article 548b, §4~~].

(4) (No change.)

(h) (No change.)

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

Filed with the Office of the Secretary of State, on June 26, 2001.

TRD-200103631
O.C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: August 12, 2001
For further information, please call: (512) 936-2474

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PART 19. POLYGRAPH EXAMINERS BOARD

CHAPTER 391. POLYGRAPH EXAMINER INTERNSHIP

22 TAC §391.3, §391.4

The Polygraph Examiners Board proposes amendments to §391.3 and §391.4, concerning Intern Sponsor Reporting. The sections are being amended to delete and add language due to board review.

Frank DiTucci, Executive Officer, Polygraph Examiners Board, has determined that the amendments will not result in any fiscal implications to the state or to units of local government for the first five year period.

Mr. DiTucci also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be updated language. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the amendments may be submitted to: Frank DiTucci, Executive Officer, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773-0001.

The amendments are proposed under the Polygraph Examiners Act, Article 4413 (29cc), §6, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Article 4413 (29cc).

The amendments implement the Polygraph Examiners Act, Article 4413 (29cc).

§391.3. Internship Training Schedule.

The following internship schedule has been approved and adopted by the Board as a minimum type and number of hours of any internship training program to be utilized in course of supervised instruction:

(1) History and development of polygraph--four hours.

(2) Legal and ethical aspects of polygraph.

(A) Texas Polygraph Examiners Act--10 hours.

(B) Statements and reports, civil rights, examiner and professional ethics--10 hours.

(3) Physiology--24 hours.

(A) Nervous system, autonomic nervous system.

(i) Sympathetic system.

(ii) Parasympathetic system.

(B) Circulatory system and the heart.

(C) Respiratory system.

(D) Effects of drugs, alcohol, and illness.

(4) Psychology--24 hours.

(A) General.

(B) Abnormal.

(C) As applied to polygraphy.

(5) Interrogation and interviews--100 hours.

(A) Receiving case briefing.

(B) Pre-test interview.

(C) Post-test interview.

(6) Chart interpretation--120 hours.

(A) All types of tests and responses.

(B) Chart marking.

(C) Test results: No Deception Indicated, Deception Indicated, Inconclusive or No Opinion.

(7) Question formulation and test construction--120 hours.

(A) All types of tests.

(B) All types of questions.

(C) Semantics.

(8) Instrumentation--10 hours.

(A) Construction and maintenance.

(B) Trouble shooting.

(C) Nomenclature.

(9) Summary and general review --10 hours.

(10) Supervised testing and interviewing--minimum of 30 tests.

(11) Counseling and critique as required in opinion of sponsor.

(12) A list of approved polygraph schools be maintained in the Board office and will be made available upon request. Board approval of a polygraph school will be based on current American Polygraph Association (A.P.A.) accreditation[~~Those Board approved polygraph schools the Board normally provides a list of current reference material and that information will be made available to sponsor and interns upon request~~].

(13) The Board may request and require inspection and review of the internship program of any licensed examiner or internee at any time to ascertain compliance with the program approved by the Board.

(14) Each sponsoring polygraph examiner shall submit to the Board progress reports every 60 days from the date of Board approval of the internship on each intern on forms furnished by the Board. To serve as a sponsor for an intern polygraph examiner, a Texas licensed polygraph examiner must have held an original Texas polygraph license continuously for at least two years immediately preceding the application and completed a minimum of 40 hours of continuing education in the two years immediately proceeding the sponsorship. Documentation of this continuing education must be on file with the Board office prior to approval of the examiner as a sponsor.

(15) No licensed examiner shall have more than two interns under his sponsorship at any one time.

(16) The Secretary of the Board and/or the Executive Officer may approve an intern applicant who meets the qualifications set forth in §391.2 of this title (relating to Procedure and Qualifications) and:

(A) who is a graduate of a polygraph examiners course approved by the Board and has completed not less than six months of internship training; or

(B) who is not a graduate of an approved polygraph examiners course and has completed not less than 12 months of internship training; and

(C) the Executive Officer may approve an intern applicant who meets the qualifications set forth in §391.2 of this title (relating to Procedure and Qualifications).

(17) The intern licensing period shall begin:

(A) on the date of the first class day, of a Board approved polygraph basic school and continue as long as the intern maintains a passing grade in that class provided the intern has, prior to the commencement of the school, completed all of the requirements for the intern license;

(B) if the school has begun and the applicant has not completed all of the requirements for licensure, the internship shall begin on the date the applicant is approved for the intern license; or

(C) if the applicant is not a graduate of an approved polygraph examiners course but intends to complete not less than 12 months of internship training; the internship shall begin on the date the applicant is approved for the intern license by the Board.

§391.4. State Examinations for Polygraph Examiners License.

State examinations for polygraph examiner license shall conform with the following.

(1) When an intern becomes eligible, as provided by law, the intern may take the state examination for a polygraph examiners license under the direct supervision of the Board. The intern can take the

academic and scenario portions of the licensing examination under the Director supervision any time after successful graduation from a Board approved polygraph school. The oral board portion of the licensing examination can only be taken after the intern has completed six (6) full months of internship under a sponsoring, licensed examiner.

(2) Such examinations shall be held at Austin, Texas, or at other locations designated by the Board. Persons eligible to take the examination will be notified of the time, date, and location.

(3) Examinations shall be held at the discretion of the Board,[~~quarterly Board meetings~~] the dates, locations, and times being designated by the Board.

(4) Examinations shall consist of and include questions relating to those topics set forth in the internship training schedule and a presentation of actual polygraph examinations conducted by the applicant during their internship training for Board evaluation.

(5) The grades by all grading members on the licensing examinations will be totaled and averaged and a grade of seventy percent (70%) must be obtained in order to pass.

(6) Failure to pass any portion[~~phase~~] of the examination shall require such person to retake that portion [~~phase~~] failed. No polygraph examiner's license shall be issued until the intern has passed all portions [~~phases~~] of the examination.

(7) Persons failing any portion(s)[~~phase (s)~~] thereof may retake the portion(s) [~~phase(s)~~] at the next scheduled examination date, provided that such person is qualified to retake the portion(s)[~~phase(s)~~] under the law or as set forth herein under the rules and regulations pertaining to interns. Provided further that if any person taking and failing any portion[~~phase~~] of such examination for the third time, such person shall not be eligible to take another examination until the expiration of twelve(12) months from the date of the last examination, providing such person is otherwise qualified to take such examination by law and under the applicable regulations.

(8) When an intern fails the original licensing examination, or any portion[~~phase~~] thereof, the intern shall not be permitted to engage in any actual polygraph testing until such time as the intern and the sponsor have reviewed the failing examination with a member of the Board or a member of the Board's staff at the discretion of the Board chairman. The time, date, and place of the review will be designated by the Board or its staff. The sponsor shall furnish the Chairperson or their designated representative with a written affidavit stating what corrective action will be taken or an oral discussion of those corrective actions acceptable to the Chairperson.

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 July 2, 2001.

TRD-200103756
Frank DiTucci
Executive Officer
Polygraph Examiners Board
Earliest possible date of adoption: August 12, 2001
For further information, please call: (512) 424-2058

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CHAPTER 395. CODE OF OPERATING PROCEDURE OF POLYGRAPH EXAMINERS

22 TAC §§395.2, 395.8, 395.10, 395.11, 395.18

The Polygraph Examiners Board proposes amendments to §§395.2, 395.8, 395.10, 395.11, and new §395.18, concerning Code of Operating Procedure of Polygraph Examiners. The sections are being amended to delete and add language due to board review.

Frank DiTucci, Executive Officer, Polygraph Examiners Board, has determined that the amendments and new section will not result in any fiscal implications to the state or to units of local government for the first five year period.

Mr. DiTucci also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be updated language in accordance with board review. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the amendments may be submitted to: Frank DiTucci, Executive Officer, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773-0001.

The amendments and new section are proposed under the Polygraph Examiners Act, Article 4413 (29cc), §6, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Article 4413 (29cc).

The amendments and new section implement the Polygraph Examiners Act, Article 4413 (29cc).

§395.2. Marking Questions and Answer.

All questions asked a subject during a polygraph examination by the examiner and all examinee's [~~subject's~~] answers shall be marked on each polygraph chart as well as the corresponding question list. The chart[~~Such~~] marking shall be accomplished by making a stimulus mark at the exact point on each polygraph chart where questions commenced, concluded, and the examinee's[~~subject's~~] answer was given. Each polygraph examination administered shall have a written question sheet which contains the exact wording of every question asked. The use of abbreviations is prohibited, unless they are defined on the question sheet for that polygraph examination. Questions on these question sheets may be identified by numbers, letters, or any number, or combination [~~thereof. Each question asked on every polygraph chart shall be noted by marking the letter, number, or combination~~] of same. The notation of these questions on the question sheet should be in the proximate area of the stimulus marks on the polygraph chart so that the relationship of the question asked on the chart and the exact wording of the question on the question sheet may be reasonably identified. Question sheets shall be regarded as pertinent documents [~~papers~~] and subject to filing and retention requirements identified in this Act, Regulation 395.4.

§395.8. Questions Asked Two Separate Times.

The examiner shall not render a verbal or written [~~adverse~~] opinion, based on chart analysis, until the same pertinent or relevant questions have been asked the examinee [~~subject~~] a minimum of two (2) separate times.

§395.10. Examination Results.

(a) The polygraph examiner shall advise the examinee of the results of the examination prior to the termination of the polygraph examination. The results will be conveyed to the examinee as:

(1) deception indicated;

(2) no deception indicated;[~~or~~]

(3) Inconclusive; or[~~,~~]

(4) no opinion.

(b) The examinee [~~of the examination~~] shall be given an opportunity to explain the relevant question results.

§395.11. Response Intervals.

The polygraph examiner shall allow a minimum of twenty(20) seconds between each question to allow the subject ample time to physiologically respond to each verbal stimulus. Note: The twenty (20) second period is measured [~~20 seconds~~] from the commencement [~~termination~~] of one question until the commencement of the next question, or the ending of the examination. There is no testing technique, involving an examinee being tested, that is excluded from this rule. This rule does not apply to chart markings such as the announcement of the start of the examination nor does it apply to any comment made by the examiner during the examination that does not require an answer from the examinee such as answering and/or movement instructions by the examiner.

§395.18. No Interrogation on Political, Racial, or Religious Beliefs.

The polygraph examiner shall not include in the testing phase, questions that are intended to inquire into or develop information about an examinee's religion, racial or political beliefs except when it is relevant to a specific investigation.

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 July 2, 2001.

TRD-200103758
Frank DiTucci
Executive Officer
Polygraph Examiners Board
Earliest possible date of adoption: August 12, 2001
For further information, please call: (512) 424-2058

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PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING

SUBCHAPTER A. EXAMINATION

22 TAC §571.3

The Texas Board of Veterinary Medical Examiners ("Board") proposes amendments to §571.3 concerning Eligibility for Examination and Licensure. The section contains requirements for veterinary licensure in Texas. A graduate of a school or college of veterinary medicine accredited by the American Veterinary Medical Association ("AVMA") is eligible for licensure by the Board. A graduate of a college of veterinary medicine not accredited by the AVMA may become eligible for licensure if the graduate secures a certificate from the Educational Commission for Foreign Veterinary Graduates ("ECFVG") program. The American Association of Veterinary State Boards ("AAVSB") is developing a veterinary education equivalency program called the Program for Assessment of Veterinary Education Equivalence ("PAVE") that will be an alternative to the ECFVG program. The amendments will inform prospective licensees that graduates of a non-accredited college of veterinary medicine may become eligible by completing and obtaining a certificate from either the ECFVG program or PAVE.

Mr. Ron Allen, Executive Director, has determined that for the first five-year period the amended 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. Allen has also determined that for the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide graduates of non-accredited veterinary schools a choice of which equivalency program to pursue, based on their particular needs. There will be no effect on small businesses. There will be no anticipated economic cost to persons required to comply with the amended section as proposed.

Comments on the proposed amendments may be submitted in writing to Judy Huppert, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 2-330, Austin, Texas 78701-3998, phone (512) 305-7555, and must be received by September 1, 2001.

The amendments are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, Section 801.151 (a) which states that the Board may adopt rules necessary to administer the chapter.

The amendments affect the Veterinary Licensing Act, Texas Occupations Code, Section 801.252 which pertains to licensing eligibility requirements.

§571.3. Eligibility for Examination and Licensure

(a) (No change.)

(b) Qualifications of Licensees.

(1) To be eligible for licensure, an applicant must present satisfactory proof to the Board that the applicant:

(A) is at least 18 years of age;

(B) has obtained at least a passing score on:

(i) the NAVLE if an applicant sits for that examination subsequent to its inauguration date; or

(ii) the national examination if an applicant sat for that examination prior to the inauguration date of the NAVLE; and

(iii) the SBE; and

(C) is a graduate of a school or college of veterinary medicine that is approved by the Board and accredited by the Council on Education of the American Veterinary Medical Association (AVMA). Applicants who are graduates of a school or college of veterinary medicine not accredited by the Council on Education of the AVMA are eligible provided that the applicant presents satisfactory proof to the Board that the applicant is a graduate of a school or college of veterinary medicine and possesses an Educational Commission for Foreign Veterinary Graduates (ECFVG) Certificate or a Program for Assessment of Veterinary Education Equivalence (PAVE) Certificate. The Board may refuse to issue a license to an applicant who meets the qualification criteria but is otherwise disqualified as provided in the Texas Occupations Code, §801.401.

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

(c) (No change.)

(d) Licensing Examination

(1) Eligibility

(A) An applicant may sit for the NAVLE or the SBE provided that the requirements of subsection (c) of this section have been met and the applicant is a graduate of:

(i) an approved and accredited veterinary medical school or college, as defined in subsection (b) (1)(C) [~~(3)~~] of this section; or

(ii) a veterinary medical school or college not approved and accredited, as defined in subsection (b) (1)(C) [~~(3)~~] of this section, but who has obtained an ECFVG Certificate or a PAVE Certificate.

(B) A person must first take and pass the national examination or the NAVLE in order to sit for the SBE.

(2) Eligibility Prior to Graduation. An applicant who has not graduated from veterinary medical school may sit for examinations provided the following conditions have been complied with:

(A) To sit for the SBE, an applicant must be enrolled in an approved and accredited veterinary medical school or college as defined in subsection (b) (1)(C)~~[(3)]~~ and must obtain a document from the Dean of the school or college from which the applicant expects to graduate certifying that the applicant is within 60 days of completion of a veterinary college program and is expected to graduate.

(B) An applicant enrolled in a joint or combined degree program who has completed the applicant's veterinary medical education but has not received a diploma or transcript certifying award of the applicant's DVM degree, must obtain a letter from the Dean of the school or college of veterinary medicine stating the applicant did in fact graduate before the applicant is eligible to sit for the SBE or the NAVLE.

(C) To sit for the NAVLE, a candidate must, at the time an application is submitted, demonstrate that the candidate is within six (6) months of the expected graduation date falling within the appropriate testing window and comply with all of the NBEC's testing requirements for the NAVLE.

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

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

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

TRD-200103678
Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners
Proposed date of adoption: October 18, 2001
For further information, please call: (512) 305-7555

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22 TAC §571.4

The Texas Board of Veterinary Medical Examiners proposes amendments to §571.4 concerning Special Licenses. The amendments update and clarify the requirements for issuance of a special license to a particular category of veterinarians. Under existing law and rules, a graduate of a school or college of veterinary medicine accredited by the American Veterinary Medical Association ("AVMA") is eligible for special licensure by the Board. A graduate of a college of veterinary medicine not accredited by the AVMA may become eligible for licensure if the graduate secures a certificate from the Educational Commission for Foreign Veterinary Graduates ("ECFVG") program. The American Association of Veterinary State Boards ("AAVSB") is developing a veterinary education equivalency program called the Program for Assessment of Veterinary Education Equivalence ("PAVE") that will be an alternative to the ECFVG program. The amendments will inform prospective licensees that graduates of a non-accredited college of veterinary medicine may become eligible for special licensure by completing and obtaining a certificate from either the ECFVG program or PAVE.

In addition, the section is amended to reflect legislation passed by the 77th Texas Legislature which provides that an applicant for special licensure who is not a graduate of a board approved veterinary program at an institution of higher education or who does not possess and ECFVG or PAVE certificate may be licensed if the applicant provides to the Board a written affirmation by the dean of an approved veterinary program in Texas or the executive director of the Texas Animal Health Commission or the executive director of the Texas Veterinary Medical Diagnostic Laboratory that the applicant meets a critical need for staffing at the named entities and is certified by a nationally recognized veterinary specialty board or is eligible for that certification.

Mr. Ron Allen, Executive Director, has determined that for the first five-year period the amended 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. Allen has also determined that for the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide graduates of non-accredited veterinary schools a choice of which equivalency program to pursue, based on their particular needs. Another public benefit will be that public entities that hire veterinarians will be able to select staff from a larger pool of qualified persons. There will be no effect on small businesses. There will be no anticipated economic cost to persons required to comply with the amended section as proposed.

Comments on the proposed amendments may be submitted in writing to Judy Huppert, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 2-330, Austin, Texas 78701-3998, phone (512) 305-7555, and must be received by September 1, 2001. The amendments are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151 (a) which states that the Board may adopt rules necessary to administer the chapter.

The amendments affect the Veterinary Licensing Act, Texas Occupations Code, §801.256 which pertains to special licenses.

§571.4. Special Licenses.

(a) General requirements for licensure; examination scores; issuance and renewal. [~~Section 10A provisions. Under the provisions of the Veterinary Licensing Act, §10A, the State Board of Veterinary Medical Examiners shall offer the State Board Jurisprudence Examination to applicants for Special Licensure at least annually under the following conditions.~~]

(1) The board shall schedule a jurisprudence examination at least once a year for applicants for special licenses. [~~Candidates for Special Licensure must be identified to the board, in writing, from the employing or controlling authority as meeting the provisions of §10A. The letter will state the candidate's name, mailing address, and specific official duties that require a Special License. A board-approved program at an institution of higher education shall mean any program which is recognized and accredited, or in the accreditation process, by an appropriate body of the American Veterinary Medical Association.~~]

(2) An applicant for a special license under §801.256 (a)(1) - (3), Texas Occupations Code, must:

(A) be at least 21 years of age;

(B) be a graduate of a board approved veterinary program at an institution of higher education or possess an Educational Commission for Foreign Veterinary Graduates (ECFVG) Certificate or a Program for Assessment of Veterinary Education Equivalence (PAVE) Certificate; or

(C) provide to the board a written affirmation by the dean of a board approved veterinary program at an institution of higher education in this state or the executive director of the Texas Animal Health Commission or the executive director of the Texas Veterinary Medical Diagnostic Laboratory that the applicant:

(i) meets a critical need for staffing at the institution of higher education or the Texas Animal Health Commission or the Texas Veterinary Medical Diagnostic Laboratory; and

(ii) is certified by a nationally recognized veterinary specialty board or is eligible for that certification; and

(D) pass the board's jurisprudence examination. The applicant must submit a completed application for examination to the board [~~offices~~] by no later than forty-five (45) [~~45~~] days prior to the examination date. The completed application includes payment of examination fees and certification from the applicant's employer [~~employing official~~] attesting to the applicant's employment position.

(3) For purposes of this section, a "board approved veterinary program at an institution of higher education" means any program which is recognized and accredited by an appropriate body of the American Veterinary Medical Association (AVMA).

(4) [~~(3)~~]The applicant must submit with his application a written statement from his employer describing the applicant's official duties that require the issuance of a special license under §801.256 (a)(1) - (3), Texas Occupations Code. Upon completion of the jurisprudence examination, [~~State Board Jurisprudence Examination, each applicant shall receive a letter of notification from~~] the board shall notify [~~notifying~~] the applicant of the pass/fail results. A grade of 75% has been established as the minimum passing grade. For successful candidates, the letter shall constitute the special license [~~authority~~] for limited practice in the State of Texas [~~in accordance with each applicant's certified employment position~~].

(5) [~~(4)~~] A special license [~~Special License~~] will be issued for the calendar year in which the requirements for licensure have been met. Annually thereafter, a renewal certificate [~~special license~~] will be issued upon receipt of a registration renewal form which has been re-certified by the employing official and [~~also upon~~] payment of the annual registration fee.

(6) [~~(5)~~] A special license is subject to the renewal requirements set out in §801.303, Texas Occupations Code. [~~Renewals will follow the provisions set forth in the Veterinary Licensing Act, Texas Civil Statutes, Article 8890, §12 (1) - (6)~~]

(7) [~~(6)~~] An applicant [~~Applicants~~] who fails [~~fail~~] the jurisprudence examination for special license [~~State Board Jurisprudence Examination~~] and wishes [~~wish~~] to be re-examined[~~,~~] will be required to resubmit an application and fees for a later [~~the next~~] scheduled jurisprudence examination. [~~or later, Special Licensing Examination.~~]

(b) Applicant requirements for unrepresented or under represented specialty practice. An applicant for a special license to practice a veterinary medicine specialty in this state must: [~~Applicant Criteria. Applicants for a Special License applying under the Veterinary Practice Act, §10A (4) (un/underrepresented) shall meet the following criteria:~~]

(1) be a graduate of a board approved veterinary program at an institution of higher education [~~an AVMA accredited college of veterinary medicine~~] or possess an ECFVG or PAVE Certificate [~~issued by the AVMA~~];

(2) be licensed in another United States [~~U.S.~~] jurisdiction;

(3) not currently be holding a special license under this section; and [~~any other paragraph of Veterinary Practice Act, §10A~~]

(4) [~~shall~~] have a certification from an employing sponsor or controlling authority approved by the board [~~who will certify~~] that the need for a special license [~~Special License~~] exists. [~~and;~~]

[~~(5) be deemed competent in the field for which the Special License is requested.~~]

(c) The board may issue a special license to an applicant for an unrepresented or under represented specialty practice if the board finds that[~~Need Criteria. In making a determination if a field is un/underrepresented, the board shall consider empirical and statistical evidence that~~]:

(1) there is a need, shortage, or demand for the specialty practice in the State of Texas; [~~there is a need or demand for that veterinary discipline; and~~]

(2) the applicant is competent to practice veterinary medicine in the particular specialty; and [~~that there is a shortage of DVMs practicing that veterinary discipline.~~]

(3) the applicant has taken and passed the jurisprudence examination for special license.

(d) Change of special license status. A request by the holder of a special license to change the license from one category to another must be submitted to the board for approval.

[~~(d) Competency Criteria. In determining competence, the board shall consider one or more of the following:~~]

[~~(1) that the applicant has taken and passed the required licensing examinations in another state or jurisdiction;~~]

[~~(2) that the applicant holds a certificate of special competency issued by a specialty board as recognized by the AVMA;~~]

[~~(3) that the applicant take and pass the Texas Jurisprudence examination.~~]

[~~(e) General. A change in status from one special license category to another must be approved by the board.~~]

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

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

TRD-200103679
Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners
Proposed date of adoption: October 18, 2001
For further information, please call: (512) 305-7555

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22 TAC §571.18

The Texas Board of Veterinary Medical Examiners proposes an amendment to §571.18 concerning Provisional Licensure. A

graduate of a school or college of veterinary medicine accredited by the American Veterinary Medical Association ("AVMA") is eligible for provisional licensure by the Board. A graduate of a college of veterinary medicine not accredited by the AVMA is eligible for provisional licensure if the graduate secures a certificate from the Educational Commission for Foreign Veterinary Graduates ("ECFVG") program. The American Association of Veterinary State Boards ("AAVSB") is developing a veterinary educational equivalency program called the Program for Assessment of Veterinary Education Equivalence ("PAVE") that will be an alternative to the ECFVG program. The amendment will inform prospective provisional licensees that graduates of a non-accredited college of veterinary medicine may become eligible for provisional licensure by completing and obtaining a certificate from either the ECFVG program or PAVE.

Mr. Ron Allen, Executive Director, 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. Allen has also determined that for the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide graduates of non-accredited veterinary schools a choice of which equivalency program to pursue, based on their particular needs. There will be no effect on small businesses. There will be no anticipated economic cost to persons required to comply with the amended section as proposed.

Comments on the proposed amendment may be submitted in writing to Judy Huppert, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 2-330, Austin, Texas 78701-3998, phone (512) 305-7555, and must be received by September 1, 2001.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151 (a) which states that the Board may adopt rules necessary to administer the chapter.

The amendment affects the Veterinary Licensing Act, Texas Occupations Code, §801.257 which pertains to provisional licenses.

§571.18. Provisional Licensure

(a) (No change.)

(b) The Board may grant a provisional license containing specific practice restrictions to a person who meets the following criteria:

(1) proof of a current license in good standing in another state[,] or jurisdiction of the United States that has licensing requirements that are substantially equivalent to the requirements of the Veterinary Licensing Act, Texas Occupations Code, Chapter 801.

(2) proof of receipt of a passing score on the national examination or NAVLE. The Board may, upon written petition of the applicant, provide an exception to this requirement based on the applicant's satisfaction of the other requirements of this section and consideration of factors set out in section 571.3 (b)(2).

(3) proof of sponsorship by a veterinarian licensed by the Board who will directly supervise the provisional licensee's practice during the term of the provisional license. An applicant requesting waiver of the sponsorship requirement due to hardship must make a personal appearance before the Board to obtain a waiver.

(4) passing score on the state board jurisprudence examination.

(5) payment of the required application fee.

(6) proof of graduation from a college of veterinary medicine accredited by the Council on Education of the American Veterinary Medical Association (AVMA) or an Educational Commission for Foreign Veterinary Graduates (ECFVG) Certificate or a Program for Assessment of Veterinary Education Equivalence (PAVE) Certificate.

(7) proof of veterinary experience. This requirement can be satisfied by letter of reference from a least two veterinarian employers or persons with direct knowledge of the applicant's veterinary practice and experience.

(c) - (g) (No change.)

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

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

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Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners
Proposed date of adoption: October 18, 2001
For further information, please call: (512) 305-7555

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CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER B. SUPERVISION OF PERSONNEL

22 TAC §573.10

The Texas Board of Veterinary Medical Examiners proposes amendments to §573.10 concerning Supervision of Non-licensed Employees. The amendments update and reorganize the section and clarify the definition of a registered veterinary technician ("RVT") and the degree of supervision required of a veterinarian for a RTV and non-RVT. In addition, this section now requires that a veterinarian be on-site at livestock markets (auctions) to perform testing for brucellosis or that the veterinarian provide direct supervision of a non-veterinarian animal health technician who performs the testing. The livestock markets have experienced difficulties in securing enough veterinarians to perform the testing or directly supervise the technicians that perform the testing. The amendments will reduce this problem by allowing an animal health technician approved by the Texas Animal Health Commission ("TAHC") to perform the testing under the general supervision of a veterinarian approved by the TAHC.

Mr. Ron Allen, Executive Director, has determined that for the first five-year period the amended 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. Allen has also determined that for the first five years the amended section is in effect the public benefit anticipated as a result of enforcing the section will be to eliminate uncertainty concerning the degree of supervision required of veterinarians for non-licensed staff and increase the public health and safety by providing adequate brucellosis testing of animals at livestock

auctions. There will be no effect on small businesses. There will be no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the section may be submitted in writing to Judy Huppert, Texas State Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 2-330, Austin, Texas 78701-3998, phone (512) 305-7555, and must be received by September 1, 2001.

The amendments are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151 (a) which states that the Board may adopt rules necessary to administer the chapter.

This amended section affects the Veterinary Licensing Act, Texas Occupations Code, §801.002 which contains the definitions of "direct supervision" and "general supervision."

§573.10. Supervision of Non-Licensed Employees

(a) - (c) (No change.)

(d) Delegation Relating to Official Health/Test Documents

(1) A licensee must personally sign any official health documents issued by the licensee provided, however, that rabies certificates may be authenticated by either:

(A) the licensee's personal signature; or

(B) use of a signature stamp in accordance with the requirements of §573.51 of this title (relating to Rabies Control).

(2) The issuance of any pre-signed or pre-stamped official health documents by a licensee is a violation of this rule.

(3) [~~(2)~~] Unless otherwise prohibited by law, [~~the Act, Board rule, state or federal law~~] and except as provided in subsection (d)(4) of this section, a licensee may permit a non-licensed employee under the licensee's [~~his/her~~] direct supervision to collect samples from animals for official tests.

(4) A person approved by the Texas Animal Health Commission (TACH) and under the general supervision of a TACH approved veterinarian may perform testing for brucellosis at a livestock market.

(5) A veterinarian shall only allow the use of the veterinarian's (his/her) signature stamp by a non-licensed employee under direct supervision of the veterinarian.

(e) Responsibility for Acts of Non-Licensed Employees. A licensee may determine a non-licensed employee's qualifications necessary to perform routine patient care and treatment. The licensee is directly responsible for all actions of non-licensed employees acting under the licensee's [~~his/her~~] directions or authorization. A licensee failing to properly supervise a non-licensed employee or improperly delegating care and/or treatment responsibilities may be subject to disciplinary action by the Board.

(f) Prohibited Services. An unlicensed individual shall not perform the following health services:

(1) surgery;

(2) invasive dental procedures;

(3) diagnosis and prognosis of animal diseases and/or conditions; or

(4) prescribing drugs and appliances.

(g) [~~The~~] Level of Supervision of [~~on~~] Non-Licensed Employees.

(1) A licensee shall determine when general, direct or immediate supervision of a non-licensee's actions is appropriate, except where such actions of the non-licensee may otherwise be prohibited by law. [~~General or Direct supervision as defined by the Act, shall be at the discretion and responsibility of the licensed veterinarian except where such acts of non-licensees are prohibited by the Act or Board Rule~~] A licensee [~~Licensees~~] should consider both the level of training and experience when determining level of supervision and duties of non-licensed employees.

(2) When feasible, a licensee should delegate greater responsibility to a registered veterinary technician [~~Registered Veterinary Technician~~] (RVT) than to a [~~over~~] non-RVT.[~~non- registered veterinary technicians~~] An RVT is a person who performs the duties specified by the American Veterinary Medical Association's Committee on Veterinary Technician Education and Activities and is qualified and registered by the Texas Veterinary Medical Association. [~~RVT's may perform those duties they have been trained to do as set forth by the American Veterinary Medical Association (Committee on Veterinary Technician Education and Activities) provided those duties are performed under the direction, supervision, and responsibility of a veterinarian licensed by the Board, and such duties are not prohibited by Board Rule, State or Federal law, and where employment of the RVT is not an attempt to circumvent the Act or Board Rule.~~]Under the direct or immediate supervision of a licensee, an [~~An~~] RVT may:

(A) suture existing surgical skin incisions; and

(B) induce anesthesia. [~~under the direct or immediate supervision of a veterinarian~~]

(3) The [~~These~~] procedures authorized to be performed by an RVT in subsection (g)(2) of this section may be performed by a non-registered veterinary technician only under the immediate supervision of [~~by~~] a veterinarian.

(4) Euthanasia may be performed by a veterinary technician only under the immediate supervision of a veterinarian.

(h) Emergency Care. [~~A licensee~~] In [~~in~~] an emergency situation where prompt treatment is essential for the prevention of death or alleviation of extreme suffering, a licensee may, after determining the nature of the emergency(,) and the condition of the animal, issue treatment directions to a non-licensee [~~an unlicensed person~~] by means of telephone, electronic mail or messaging, [~~or~~] radio, or facsimile communication. The Board may [~~can~~] take action against a veterinarian if, in the Board's sole discretion, the veterinarian uses this authorization [~~the privilege~~] to circumvent this rule. The veterinarian assumes full responsibility for such treatment. However, nothing in this rule requires a licensee to accept an animal treated under this rule as a patient [~~a case~~] under these circumstances.

(i) Care of Hospitalized Animals. [~~It is permissible for an~~] A non-licensee [~~unlicensed person~~] may, in the absence of direct supervision, [~~to~~] follow the oral or written treatment orders of a [~~licensed~~] veterinarian who is caring for a [~~in the care of~~] hospitalized animal(s); provided however, that the veterinarian has examined the animal(s) and that a valid veterinarian/client/patient relationship exists.

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

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

TRD-200103681

Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners
Proposed date of adoption: October 18, 2001
For further information, please call: (512) 305-7555

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SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.74

The Texas Board of Veterinary Medical Examiners proposes new §573.74 concerning Duty to Cooperate with Board. The section recognizes that the Board's staff occasionally encounters unnecessary delays in its investigations of complaints and inspections because of a veterinarian's inattention to requests for critical information or refusal to provide such information in a complaint against the veterinarian. The section directs that a veterinarian shall cooperate fully with any Board inspection or investigation and requires that a veterinarian respond within 14 days to requests for information regarding complaints or other requests for information from the Board.

Mr. Ron Allen, Executive Director, 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. Allen has also determined that for the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to encourage and expedite the settlement of complaints and investigations in a more efficient manner and better protect the public health and welfare. There will be no effect on small businesses. There will be no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the section may be submitted in writing to Judy Huppert, Texas State Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 2-330, Austin, Texas 78701-3998, phone (512) 305-7555, and must be received by September 1, 2001.

The section is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151 (a) which states that the Board may adopt rules necessary to administer the chapter. This section affects the Veterinary Licensing Act, Texas Occupations Code, Chapter 801.

§573.74. Duty To Cooperate With Board.

A veterinarian shall:

(1) cooperate fully with any Board inspection or investigation; and

(2) respond within fourteen (14) days to requests for information regarding complaints and other requests for information from the Board.

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

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

TRD-200103754
Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners
Proposed date of adoption: October 18, 2001
For further information, please call: (512) 305-7555

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CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.24

The Texas Board of Veterinary Medical Examiners proposes new §575.24 concerning Reprimands. Chapter 801 of the Texas Occupations Code authorizes the Board to issue reprimands in disciplinary proceedings. The section designates a reprimand as formal or informal. Both types of written reprimand are public documents and are available upon request as public information. Formal reprimands are for more serious violations and will be published in the Board's newsletter and routinely reported to the national reporting database of veterinarians. Informal reprimands are for less serious violations and will not be published in the Board's newsletter and will not be routinely reported to the national database, but will be available upon request by any member of the public or the national database. This distinction addresses the need for all Board disciplinary orders to be available to the public while preserving the Board's interest in assessing and publicizing less severe penalties for minor or technical violations.

Mr. Ron Allen, Executive Director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section. Mr. Allen has also determined that for the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be promote flexibility and fairness in assessing penalties depending on the severity of the violations. There will be no effect on small businesses. There will be no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the section may be submitted in writing to Judy Huppert, Texas State Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 2-330, Austin, Texas 78701-3998, phone (512) 305-7555, and must be received by September 1, 2001.

The section is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter. The section affects the Veterinary Licensing Act, Texas Occupations Code, §801.401 relating to Disciplinary Powers of the Board.

§575.24. Reprimands.

(a) A veterinarian subject to disciplinary action by the board may be reprimanded. A reprimand:

(1) may be formal or informal;

(2) is contained in a written order of the board; and

(3) is available upon request as public information.

(b) A formal reprimand will be:

(1) published in the board's newsletter; and

(2) routinely reported to the American Association of Veterinary State Boards (AAVSB) for inclusion in the national reporting database of veterinarians.

(c) An informal reprimand will not be published in the board's newsletter and will not be routinely reported to the AAVSB for inclusion in the national reporting database of veterinarians. A copy of an informal reprimand will be forwarded to the AAVSB if specifically requested by that organization.

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 July 2, 2001.

TRD-200103753
Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners
Proposed date of adoption: October 18, 2001
For further information, please call: (512) 305-7555

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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 34. WAIVER PROGRAM FOR MEDICALLY DEPENDENT CHILDREN

25 TAC §34.3

Subject to the approval of the State Medicaid director, the Texas Department of Health (department) proposes an amendment to §34.3, concerning the deinstitutionalization of children from nursing facilities into the Medically Dependent Children Program (MDCP). The purpose of the proposed amendment will redefine the population that may access existing MDCP services.

The proposed amendment will allow the department to move eligible children from institutions to home and community settings, if the parents choose this option. The proposed amendment to §34.3 refers to an agreement between the Texas Department of Human Services and the department to support the placement of current or prior resident children from Texas nursing facilities into permanent placement in their homes or community settings. The children targeted under this provision will have been in placement for continuous institutional long-term care purposes. The provision excludes institutional placements that are for respite purposes or the treatment of an acute condition.

The proposed amendment to §34.3(c) resulted from the recognition that current MDCP deinstitutionalization rules are constraining, due to the four-month residency requirement.

David Cook, Director of Programs, Administration and Management, Texas Department of Human Services (TDHS), has determined for the first five years this proposed section is in effect, there will be potential fiscal implications to the state government as a result of administering the sections as proposed. The effect on state government will mean projected costs to the state of $46,338, $47,848, $49,283, $50,762, and $52,285 in state fiscal years 2002, 2003, 2004, 2005, and 2006 respectively, for a total of $246,516 over these five years for approximately thirty children. This fiscal note was calculated and submitted by TDHS since the deinstitutionalization funding for the potential 30 slots will be provided by TDHS per the agreement between agencies.

Lee Johnson, Acting Director, Division of Financial Management, Associateship for Family Health, Texas Department of Health, has determined that for fiscal years 2002 through 2006, for each child who is deinstitutionalized, there may be a fiscal impact each year ranging from a cost of up to $17,155 in state general revenue per child per year to a savings of up to $8,846 per child per year. Mr. Johnson has determined that for the first five-year period the amended section is in effect, there will be no fiscal implications to local government as a result of administering the section as proposed.

Mr. Johnson has also determined that for each of the first five years the section is in effect, the public benefits as a result of enforcing this section will be that more families in Texas will be able to keep their children in their own home or community setting. There may be a positive economic effect on microbusinesses or small businesses in that nurses, home and community support agencies, and other qualifying providers of community-based care will gain revenue once a child is deinstitutionalized, up to an estimated $104,549 per child in a 12-month period. There may however be an adverse economic effect on microbusinesses or small businesses in that any nursing facility that qualifies as a small or microbusiness will lose revenue once a child is removed from the facility to a home or community setting. The adverse economic impact could reach an estimated $88,120 per child in a 12-month period. There are no economic costs to persons other than the families of the children who participate. There is no anticipated impact on local employment.

Comments on the proposal may be submitted in writing to Susan Penfield, M.D., Bureau of Children's Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, by FAX at (512) 458-7238, or by telephone at 1-800-252-8023 or (512) 458-7111, extension 3104. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The amendment is proposed under the Social Security Act, §1915(c) relating to Medicaid waiver programs for home or community based services; Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991), as amended by Chapter 747, Actions of the 73rd Legislature (1993) which authorizes the Texas Board of Health (board) to adopt rules necessary to administer the MDCP; and the 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 proposed amendment affects Chapter 32 of the Human Resources Code.

§34.3. Participant Eligibility Criteria.

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

(c) Deinstitutionalization.

(1) For purposes of this section, "deinstitutionalization" refers to an interagency agreement between the Texas Department of Human Services and the Texas Department of Health to support the permanent placement of current and previous resident children of Texas nursing facilities into their homes and community settings. The children targeted under this provision will have been in placement for continuous institutional long-term care purposes.

(2) "Placement for continuous institutional long term care purposes," refers to placement and subsequent residence in an institution for the purpose of meeting a registrant's ongoing needs when the child's needs cannot be met in the home on an ongoing basis. This excludes respite placements and placements for treatment of acute episodes.

(3) An MDCP interest/waiting list registrant may be considered for deinstitutionalization into MDCP at any time since September 1, 1995 if the registrant:

(A) has resided in a Texas nursing facility for continuous institutional long term care purposes; or

(B) has resided in another Texas institution, (i.e., an ICF-MR, hospital, long-term acute care setting), for continuous institutional long term care purposes, followed by residence in a Texas nursing facility.

[~~(1) Any MDCP registrant who has resided in a Texas nursing facility for at least four months since September 1, 1995, may be considered for deinstitutionalization into MDCP under §34.3; however, if, prior to residency in a Texas nursing facility, the child resided in another institution in Texas for long term care purposes, that time in the other institution may count towards the four months of residency in a Texas nursing facility for purposes of this section; and further, preference for access to these slots may be given to those children who were residing in a Texas nursing facility prior to the effective date of the rules, if:~~]

(C) [~~(A)~~] has been determined to be Medicaid eligible; and

(D) [~~(B)~~] has met all of the criteria in subsection (b) of this section.

(4) [~~(2)~~] The names of qualified individuals applying for nursing facility deinstitutionalization shall be maintained on a waiting list separate from that for other MDCP registrants.

(5) [~~(3)~~]An individual applying for nursing facility deinstitutionalization under MDCP shall become eligible for waiver services under this subsection if:

(A) a vacancy designated for qualified individuals under this subsection exists within the waiver; and

(B) the individual's Texas Index for Level of Effort (TILE) funding is available to be allocated for home and community-base services.

(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 June 29, 2001.

TRD-200103723
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: August 12, 2001
For further information, please call: (512) 458-7236

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TITLE 28. INSURANCE

PART 2. TEXAS WORKERS' COMPENSATION COMMISSION

CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

SUBCHAPTER A. MEDICAL POLICIES

28 TAC §134.1

The Texas Workers' Compensation Commission (the commission) proposes amendments to §134.1, concerning use of the medical fee guidelines. The amendment is proposed to make §134.1 consistent with other commission rules.

The *Texas Register* published text shows words proposed to be added to or deleted from the current text, and should be read to determine all proposed changes.

Since adoption of §134.1 a number of changes to the commission's fee guidelines have been adopted. As a result, the references in §134.1 to the Medical Fee Guidelines, the Pharmaceutical Fee Guidelines, and the Hospital and Ambulatory Surgical Center Fee Guidelines have become outdated. Subsections (c), (d), and (e) are proposed to be deleted to remove the outdated references. Because information regarding the applicability of the various fee guidelines is contained in the fee guidelines themselves, it is not necessary to include this information in §134.1.

In addition, it is proposed that the language "using the codes from" in subsection (b) be replaced with "in accordance with" because the fee guidelines will not necessarily contain coding information within the text of the guidelines. In subsection (f), the citation to the Workers' Compensation Act has been updated to reflect the appropriate Texas Labor Code citation.

Tom Hardy, Director of Medical Review has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Local government and state government as a covered regulated entity will be impacted in the same manner as described later in this preamble for persons required to comply with the rule as proposed.

Mr. Hardy has also determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule will be consistency in the rules under which all Texas worker's compensation system participants function.

There will be no anticipated economic costs to persons who are required to comply with the rule as proposed.

There will be no costs of compliance for small businesses or micro businesses. There will be no adverse economic impact on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses or micro businesses as compared to large businesses.

Comments on the proposal must be received by 5:00 p.m., August 15, 2001. You may comment via the Internet by accessing the commission's website at *www.twcc.state.tx.us* and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to *RuleComments@Twcc.state.tx.us* or by mailing or delivering your comments to Nell Cheslock at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The commission may not be able to respond to comments that cannot be linked to a particular proposed rule. Along with your comment, it is suggested that you include the reasoning for the comment in order for commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon the commissioners' action at the public meeting, the rule as adopted may be revised from the rule as proposed in whole or in part. Persons in support of the rule as proposed, in whole or in part, may wish to comment to that effect.

The amendment is proposed under the following statutes which are associated with the Medical Fee Guidelines: the Texas Labor Code § 402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code, §413.002, which requires that the commission's Medical Review Division monitor health care providers, insurance carriers and claimants to ensure compliance with commission rules; the Texas Labor Code, §413.007, which sets out information to be maintained by the commission's Medical Review Division; the Texas Labor Code, §413.011, which mandates that the commission by rule establish medical policies and guidelines; the Texas Labor Code, §413.012, which requires review and revision of the medical policies and fee guidelines at least every two years; the Texas Labor Code, §413.013, which requires the commission by rule to establish programs related to health care treatments and services for dispute resolution, monitoring, and review; the Texas Labor Code, §413.015, which requires insurance carriers to pay charges for medical services as provided in the statute and requires that the commission ensure compliance with the medical policies and fee guidelines through audit and review; the Texas Labor Code, §413.016, which provides for refund of payments made in violation of the medical policies and fee guidelines; the Texas Labor Code, §413.017, which provides a presumption of reasonableness for medical services fees which are consistent with the medical policies and fee guidelines; the Texas Labor Code, §413.019, which provides for payment of interest on delayed payments refunds or overpayments; the Texas Labor Code, §413.031, which provides a procedure for medical dispute resolution and ; the Texas Labor Code, §413.044, which provides for sanctions against designated doctors who are found to be out of compliance with the medical policies and fee guidelines. No other code, statute, or article is affected by this rule action.

§134.1. Use of the Fee Guidelines.

(a) The ground rules and the medical service standards and limitations as established by the fee guidelines shall be used to properly calculate the payments due to the health care providers.

(b) Health care providers shall bill the insurance carrier for all compensable injuries in accordance with[~~using the codes from~~] the fee guidelines established by the commission. The health care provider shall bill the insurance carrier for the health care treatments and services performed, and medically necessary to relieve the effects of the compensable injury and promote recovery.

(c) [~~Doctors of medicine, osteopathy, dentistry, chiropractic, podiatry, optometry, psychology, and registered nurses, physical therapists, occupational therapists, imaging or radiology centers, minor emergency centers, free-standing pathology centers, durable medical equipment suppliers, and orthotic and prosthetic suppliers shall bill the insurance carrier using the medical fee guideline described in §134.200 of this title (relating to Medical Fee Guideline).~~]

[~~(d) Pharmacists, in settings other than a hospital, shall bill according to the Pharmaceutical Fee Guideline described in §134.501 of this title (relating to Pharmaceutical Fee Guideline).~~]

[~~(e) Hospitals, licensed by Texas Department of Health or Texas Department of Mental Health and Mental Retardation, and ambulatory surgical centers, licensed by Texas Department of Health, shall bill according to the Hospital and Ambulatory Surgical Center Fee Guideline described in §134.400 of this title (relating to Hospital and Ambulatory Surgical Center Fee Guideline).~~]

[~~(f)~~] Reimbursement for services not identified in an established fee guideline shall be reimbursed at fair and reasonable rates as described in the Texas Workers' Compensation Act, §413.011 [~~§8.21(b)~~], until such period that specific fee guidelines are established by the commission.

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

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

TRD-200103676
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: August 12, 2001
For further information, please call: (512) 804-4287

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SUBCHAPTER C. MEDICAL FEE GUIDELINES

28 TAC §§134.202 - 134.208

The Texas Workers' Compensation Commission (the commission) proposes new §§134.202 - 134.208, concerning Medical Fee Guidelines.

These new rules are proposed to comply with statutory mandates in the Texas Labor Code. Prior to the 77th Texas Legislative Session, 2001, §413.011 of the Texas Labor Code required the commission to adopt rules to establish medical policies and guidelines relating to fees charged or paid for medical services, including guidelines relating to payment of fees for specific medical treatments or services. The statute requires that guidelines for medical services fees be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The commission must consider the increased security of payment afforded the Texas Workers' Compensation Act (the Act) in establishing the fee guidelines. Currently, reimbursements for medical treatments and services are established by §134.201 of this title (regarding Medical Fee Guideline for Medical Treatments and Services Provided Under the Texas Workers' Compensation Act) and §134.302 of this title (regarding Dental Fee Guideline). The Medical Fee Guideline (MFG) provides maximum allowable reimbursement (MAR) amounts for care providers (HCPs) treating injured workers in Texas.

House Bill (HB) 2600, adopted during the 2001 Texas Legislative Session, amended §413.011. In addition to the previous requirements, the revised statute also requires that the commission use health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health

care delivery systems with minimal modifications to those reimbursement methodologies as necessary to meet occupational injury requirements. To achieve standardization, the commission is to adopt the most current reimbursement methodologies, models, and values or weights used by the federal Health Care Financing Administration (HCFA), including applicable payment policies relating to coding, billing, and reporting, and may modify documentation requirements as necessary to meet the requirements of §413.053 of the Act (relating to Standards of Reporting and Billing). In determining appropriate fees, the commission must also develop conversion factors or other payment adjustment factors taking into account economic indicators in health care as well as the previous statutory requirements. The commission also must provide for reasonable fees for the evaluation and management of care. The statutory provisions explicitly state the statute does not adopt the Medicare fee schedule, and that the commission shall not adopt conversion factors or other payment adjustment factors based solely on those factors as developed by the HCFA.

Proposed new §§134.202 - 134.208 establish reimbursement for professional medical services (all health care except prescription drugs or medicines and services of health care facilities) provided on or after the effective date of the new rules. The proposed new rules revise, separate, and clarify the information and requirements of the reimbursement scheme into seven rules: applicability; professional service codes; relative value units; conversion factors; methodology; ground rules; and severability. This separation into different rules will allow separate revision and update of components of the reimbursement rules as needed. The current MFG rule contains copyrighted information that cannot be reproduced or distributed electronically. Copyrighted materials are adopted by reference in the proposed new rules. This will enable the commission to post the rules on the commission's website thus facilitating timely and less costly distribution of information to system participants and allowing the efficient and timely updating of necessary components.

The commission signed a professional services agreement with Milliman & Robertson, Inc., now Milliman USA (Milliman), a professional firm specializing in actuarial and health care services, to assist the commission in developing and implementing a new MFG. Milliman provided the commission with written reports of their findings and recommendations. The project required the following major activities:

* a market analysis of reimbursements from the 1996 MFG, commercial payers in Texas, workers' compensation systems from other states, and Medicare allowed fees in Texas, comparing the reimbursement level for corresponding services.

* recommendation of a reimbursement methodology for professional services using relative value units;

* recommendation of conversion factors to use with the relative value units to develop MAR amounts;

* evaluation of Texas regional reimbursement differences and recommendation of a basis to adjust MARs to reflect those differences;

* review of commission proposed ground rules and recommendation of any changes; and,

* recommendation of a methodology to provide reimbursement for supplies and other services, including Durable Medical Equipment (DME), Orthotics and Prosthetics, and Miscellaneous Supplies.

As part of the agreement, Milliman reviewed and analyzed the relative merits the St. Anthony's Relative Values for Physicians (RVP), and compared it with HCFA's Resource Based Relative Value System (RBRVS). Milliman recommended that the commission adopt relative value units from the RBRVS as the underlying basis for assigning payment to each professional medical service. These units are developed for the HCFA to reimburse providers treating Medicare enrollees. Milliman recommended adjustment of the relative value units by applying the HCFA Geographic Practice Cost Index (GPCI) to reflect geographic differences. Milliman also recommended using *St. Anthony's RBRVS* relative value units, published by Ingenix Publishing Group, to assign relative value units for professional medical services that are not valued by HCFA. Additionally, Milliman agreed with use of American Society of Anesthesiologists, *Relative Value Guide* for anesthesia procedures. The methodology established in proposed new §134.206 conforms to these recommendations.

Milliman drew the following conclusions as a result of the market analysis:

* commercial reimbursement rates in Texas show variations that are wider than can be explained by geographic differences, and current MFG reimbursement levels fall within this broad range;

* current MFG reimbursement levels tend to be high relative to other state workers' compensation systems, with the exception of Evaluation and Management services; and,

* current MFG MARs average approximately 130% of Medicare allowed fees.

Milliman also recommended the conversion factors established in proposed §134.205 and made recommendations with respect to ground rules in proposed §134.207.

These proposed rules adopt a methodology based on relative value units. In general, reimbursement for professional medical services is determined by:

* the relative value units which are assigned to the service by the documents adopted by reference; multiplied by

* the conversion factor assigned to convert relative value units into reimbursement payment amounts (the conversion factor is specific to the service category, as described in §134.205).

Materials to be adopted by reference in the proposed new rules are available for inspection but not duplication or sale at the commission offices, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491 and are also filed with the *Texas Register*. Some materials have also been published in and are available through the*Federal Register (http://www.access.gpo.gov/nara/index.html)*and some are available through HCFA *(http://www.hcfa.gov)* and may be downloaded at no cost.

Each document adopted by reference is also available for purchase from:

1. Ingenix Publishing Group, Medicode, St. Anthony's Publishing Group, P.O. Box 27116, Salt Lake City 84127, (800-999-4600), for American Medical Association's *Current Procedural Terminology 2001*, Fourth Edition Revised, copyright 2000 and *2001 RBRVS, A Comprehensive Listing of RBRVS Values For all CPT and HCPCS Codes*, copyright 2000.

2. American Society of Anesthesiologists, 520 North Northwest Highway, Park Ridge, Illinois, 60068-2573, 847-825-5586, for ASA's *Relative Value Guide 2001*, copyright 2001.

3. National Heritage Insurance Company (NHIC), P.O. Box 200555, Austin, Texas 78720-0555, 512-514-3000, for The Texas Medicaid Fee Schedule, May 2001, Durable Medical Equipment/Medical Supplies Report J, April 2001.

4. American Dental Association, 211 East Chicago Avenue, Chicago, Illinois, 60611, 312-440-2753 for ADA's *Current Dental Terminology*, Third Edition, copyright 1999.

5. United States Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954, 202-512-1800, order online from the U. S. Government Online Bookstore at *www.gpo.gov*, for the following:

Volume 65 *Federal Register* Number 212, November 1, 2000, Addendum B "Relative Value Units and Related Information," Addendum C "Codes with Interim Relative Value Units," and Addendum E "2001 Geographic Practice Cost Indices by Medicare Carrier and Locality."

Volume 62 *Federal Register* Number 211, October 31. 1997, Addendum G, "Counties Included in 1998 Localities (Alphabetically by State and Locality Name Within State)"

"Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) 2001 Fee Schedule" December 19, 2000.

DESCRIPTION OF THE RULES

§134.202. Applicability.

The proposed new rules are applicable to and establish guidelines for reimbursements for "professional medical services." This includes all health care as defined in §401.011(19) of the Act other than prescription drugs or medicines, and the services of a hospital or other health care facility. Current §134.201 and §134.302 would remain in effect for treatments and services provided prior to the effective dates of the proposed new rules and current §134.201 would remain in effect for pharmaceutical services. Reimbursement is determined in accordance with the rules in effect on the date that the professional medical service was provided. Specific provisions contained in these proposed new rules would take precedence over any conflicting provisions in the documents adopted by reference.

§134.203. Professional Services Codes.

Proposed §134.203 establishes required coding for reporting, billing, and reimbursement of professional medical services. This rule adopts by reference the definitions, descriptions, and guidelines for coding from several sources. This rule achieves standardization by using these recognized coding standards.

If a document adopted by reference is revised, the rule provides for the executive director of the commission to make an administrative determination regarding use of the revised document and to establish the date by which use of the revised document is required for compliance with commission rules, decision, and orders. In determining whether to use a revised document, the executive director shall consider whether such use is consistent with applicable statutory requirements and objectives including standardization, and with commission rules in effect on the date of the revision. The executive director shall inform the commissioners of the determination, and shall inform the public by issuing a commission advisory regarding the determination and filing the determination for publication in the *Texas Register*.

Adoption by reference and allowing incorporation of routine revisions of coding terminology enables system participants and the commission to maintain consistency with current industry standards. Adopting documents by reference will also allow the commission to post these rules on the commission's website without necessitating the publication of any copyrighted materials. Further, website publication will facilitate timely and less costly distribution of updated information to system participants. The documents adopted by reference are widely used and readily available to system participants.

§134.204. Relative Value Units.

The RBRVS system values services according to the relative costs required to provide them, recognizing skill, practice cost, and risk. These relative value units represent national standards assigned to medical treatments and services. The relative value units reflect the relationship between the resources necessary to provide a professional medical service relative to resources necessary to provide other professional medical services. Proposed §134.204 establishes relative value units by adopting by reference the relative value units from several sources.

The RBRVS uses three components, work, practice expense, and malpractice relative values to establish the total relative value units. RBRVS relative value units are also adjusted by Geographical Practice Cost Indices to reflect geographical differences. The proposed rules also use these components and adjustments of relative values, providing the statutory adjustment factors that take health care economic indicators into account. The proposed relative value units align the basis for workers' compensation reimbursement with nationally recognized standards of relative values used in other health care delivery systems, and take into account economic indicators in health care. This proposed rule contains the same provisions regarding incorporation of revised documents.

§134.205. Conversion Factors.

Proposed §134.205 establishes the conversion factors to be applied in the calculation of reimbursement for professional medical services that are assigned relative values. The conversion factors are specific to categories of services established in the CPT plus a category of services for Physical Medicine and Rehabilitation. Conversion factors apply only to the professional medical services for which HCFA, and in certain cases, Ingenix RBRVS have assigned a relative value unit. The service categories and conversion factors are:

Evaluation & Management--$39.75

General Medicine--$53.56

Physical Medicine and Rehabilitation--$43.43

Surgery--$65.51

Anesthesiology--$30.00

Radiology--$56.06

Pathology--$55.18

Milliman reviewed current reimbursement levels for Texas insurance carriers, ten other state workers' compensation fee schedules, and Texas Medicare allowed fees. In addition, Milliman analyzed historical billed and paid Texas workers' compensation claim data provided by the commission from its medical billing database. Milliman prepared written summary reports of their analyses, including fee schedule impact, and recommended conversion factors.

The Milliman market analysis revealed: in aggregate, the current MFG generally provides a reasonable level of reimbursement relative to commercial payers; commercial payers and other states' workers' compensation fees reimburse Evaluation and Management (E/M) services at a higher level than the current MFG; and the current MFG reimburses approximately 130% of Medicare.

The conversion factors recommended by Milliman are based on analyses of the relationship between the reimbursement levels in the current MFG and the reimbursement levels of each of these other payers and consideration of the statutory requirements and objectives discussed above.

Milliman recommended conversion factors that vary by service category in order to maintain a relationship with reimbursement levels in commercial and workers' compensation payer systems (i.e., non-Medicare market).

The current MFG MARs do not correlate with RBRVS unit values; within any service category, the percentages of Medicare fees that are paid for specific services within that category vary widely. Therefore, the reimbursement of some professional medical services under the proposed rules may be significantly different than the current MFG MAR.

The conversion factor recommendations for anesthesia and pathology were developed using the comparison to Medicare allowed fees. Commercial fee schedule amounts for anesthesia were difficult to obtain, in part because anesthesia is paid on a base plus time units system. Commercial fee schedule data relating to pathology are inconsistent, reflecting both differences in reimbursement methodology and wide variations in reimbursement amounts.

These conversion factors were chosen to provide fair and reasonable compensation to health care providers, to set fees that are not in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf, and to provide compensation that is reasonable when compared to the level paid by other states' workers' compensation systems.

§134.206. Methodology.

Proposed §134.206 describes the actual calculation process for determination of the MAR for professional medical services. The rule requires that the gross MAR be rounded to the nearest whole dollar amount. The proposed rule clarifies the actual calculation of reimbursement appropriate for professional medical services rendered. The methodology for professional medical services that have an assigned relative value unit is: (relative value units assigned to procedure adjusted by geographical variance) x (conversion factor), rounded to the nearest whole dollar amount. Examples of MAR calculations are presented for professional medical services that have assigned relative values.

The methodology for total anesthesia reimbursement (TAR) is: ((basic value + modifying factors + time units) x conversion factor), rounded to the nearest whole dollar amount.

For HCPCS Level II codes, the reimbursement level is set at 125% of the Texas Medicare allowed reimbursement. This reimbursement level is reasonable and comparable to the reimbursement levels provided by the conversion factors recommended in proposed §134.205 for professional medical services. For services and supplies lacking a Medicare reimbursement, the reimbursement level is set at 125% of the Texas Medicaid DME schedule. If the Medicare and Medicaid fee schedules do not apply, a reimbursement of 60% of usual, customary and reasonable charges is established.

For all other professional medical services, a reimbursement of 60% of usual, customary and reasonable charges is established.

The proposed rule additionally provides that the MAR for professional medical services is the least of the HCP's usual, customary and reasonable charge; any applicable contracted amount; and the MAR established by the proposed rules.

The proposed rule establishes standard methods of determining reimbursement, thereby potentially reducing the number of fee disputes related to fair and reasonable methodologies currently established by individual insurance carriers.

§134.207. Ground Rules.

Proposed §134.207 provides a workers' compensation framework appropriate for coding, reporting, billing and reimbursement by health care practitioners and insurance carriers. The rules provide standardized coding and methodologies for reimbursement, which should allow more efficient submission, administration, and reimbursement of bills. The rules also provide clarity and consistency and prevent fee disputes. In proposed §134.207 each of the service categories includes additional ground rules that modify the definitions, descriptions, and guidelines in the documents adopted by reference, to meet occupational injury and workers' compensation system requirements and needs. Ground rules duplicative of CPT are excluded.

The proposed rule also includes ground rules for professional medical services specific to the Texas workers' compensation system (e.g., impairment rating evaluations and required medical examinations). The rule also includes TWCC Modifiers applicable to certain professional medical services provided in the Texas workers' compensation system.

The coding, reporting, billing and reimbursement of professional medical services established in the proposed rules will assist the commission in tracking patterns of usual, customary and reasonable medical charges, payments and treatment protocols. Proposed §134.207 establishes documentation requirements to substantiate that professional medical services provided to an injured employee are medically appropriate and necessary. The documentation requirements in the proposed rule for professional medical services provided under the Texas Workers' Compensation Act, achieves the mandate of ensuring the quality of medical care provided to an injured employee. These are all statutory responsibilities of the commission.

Proposed §134.207, Ground Rules, utilizes health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems, with minimal modifications to those reimbursement methodologies as necessary to meet occupational injury requirements.

§134.208. Severability.

Proposed §134.208 provides that the invalidation of a section of this subchapter or its application or applications to any person or circumstance by a court of competent jurisdiction does not affect other provisions or applications of the subchapter that can be given effect without the invalidated provision or application.

Tom Hardy, Director of the Medical Review Division, has determined the following with respect to fiscal impact for the first five-year period the proposed rules are in effect.

With regard to enforcement and administration of the rule by state government, the commission will experience increased costs in some areas and decreased costs in others. Increased costs include purchase of documents that are adopted into the rules by reference, and some computer programming or software purchase costs.

Ultimately, the cost for the commission to administer and enforce these rules may decrease. The use of standardized coding, billing, and methodology should result in fewer disputes regarding medical reporting, billing and reimbursement.

* use of a standardized reimbursement structure found in other health care delivery systems should reduce the number of disputes, in part because of familiarity with other reimbursement systems, and in part because of the establishment of fair and reasonable reimbursement amounts. Establishment of appropriate conversion factors and other payment adjustors to take economic indicators in health care into account, should also reduce the number of disputes.

* use of the 2001 CPT code book should eliminate some disputes because changes in medical practice since the adoption of the current MFG will be reflected in the proposed new rules, eliminating the need for the commission to interpret the procedure and assign a reimbursement to those new procedures.

* the 2001 CPT Code book also clarifies the proper coding for some professional medical services about which there were uncertainties and disputes under the current MFG.

* updating the reimbursement amounts to reflect market analysis should also reduce disputes as to the amount of reimbursements.

* in addition, the cost and time required for the commission to update or renew the MFG should decrease because of the use of standardized components of a fee schedule.

There will be no loss or increase in revenue to the state as a result of enforcing or administering the rule.

There will be no fiscal impact on local government as a result of enforcing or administering the rule, as local governments do not have regulatory authority with respect to these rules. Local governments and state governmental entities as regulated entities will be impacted in the same manner as persons required to comply with the rules as proposed. In aggregate, medical costs should decrease for all participants in the system. Insurance carriers may or may not pass this savings on to their customers. Therefore, the commission cannot predict if local governments will experience a decrease in their premium costs if the local government's workers' compensation coverage is provided by an insurance company. Any local government that is self-insured will likely experience a cost decrease if utilization and injury experience remain unchanged. As a self-insured employer, the state is anticipated to experience the same decrease in costs using the same assumption. Using the State Office of Risk Management (SORM) data, the commission estimates that the cost savings for the state will be approximately $1 million.

Mr. Hardy has also determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule will be an improved system for delivery of quality medical care with effective cost control, that will provide positive benefits to all participants in the system: injured employees, employers, insurance carriers, and health care providers.

Milliman estimates that the proposed rules will result in an aggregate reduction of approximately 5%, if applied to historical workers' compensation system claim costs. Milliman projects a similar impact on future aggregate claim costs, assuming that there is not a significant shift in the distribution of claims. A number of other factors could affect the impact including frequency of injury, severity of injury, changes in the practice of medicine for injured workers in Texas, distribution of services provided, current billing practices, and random fluctuations. As discussed above, the differential between the current MFG MAR and the proposed MAR varies from service to service even within a category of services because of the adjustments made to the current MFG relative value unit MARs. Use of standardized coding, reporting, billing, and reimbursement methodologies in the rules as proposed should decrease fee disputes within the workers' compensation system.

The establishment of fair and reasonable reimbursements provides quality health care to injured workers. The proposed rules should improve access to care for injured workers because reimbursements under the proposed rules are more closely related to the resources required to provide the services. A decrease in medical costs may increase the number of employers who elect workers' compensation coverage, and injured workers will benefit from that coverage.

Milliman estimates the impact by category as follows:

Evaluation & Management: +10%

Medicine: +7%

Physical Medicine and Rehabilitation: -14%

Surgery: -5%

nesthesiology : -25%

Radiology: -13%

Pathology: -23%

The increase or decrease in the reimbursement for any procedure within a category can vary significantly, since the current MFG MARs do not correlate with RBRVS unit values. Some health care practitioners will receive more reimbursement than under the current MFG, while others will receive less, depending on the types of professional medical services they typically provide to patients.

Health care practitioners will benefit from the use of standardized and current methodologies, models, and value units, and use of standardized reporting, billing, and coding requirements. Clarity in the rules and reduction in the number of disputes should also benefit health care practitioners.

Insurance carriers will likewise benefit from use of standardized and current methodologies, models, and value units, and use of standardized reporting, billing, and coding requirements. Insurance carriers should also benefit from the reduction in medical costs that results from adoption of these rules. Clarity in the rules and reduction in the number of disputes should also benefit insurance carriers.

Employers will similarly benefit from the reduction in costs and disputes, which may be favorably reflected in the cost to employers to provide workers' compensation coverage.

There will be some anticipated economic costs to persons required to comply with the rules as proposed. There will be no

economic cost to injured workers, as these proposed rules do not impose any requirements on injured workers.

Health care practitioners will experience some increased costs in some areas and decreased costs in others. Increased costs include purchase of documents that are adopted into the rules by reference, and some computer programming or software purchase costs. Those who are already using those documents and methodologies will not experience these same increased costs. Decreased costs will result from the fact that the number of disputes should decrease for the reasons describes above.

Insurance carriers should experience the same increased costs in some areas and decreased costs in others. Increased costs include purchase of documents that are adopted into the rules by reference, and some computer programming or software purchase costs. Again, those who are already using those documents and methodologies will not experience these same increased costs. Decreased costs will result from the fact that the number of disputes should decrease for the reasons describes above.

There will be no adverse economic impact on small businesses or on micro-businesses as a result of the proposed new rules. Health care practitioners and insurance carriers who perform only a small amount of work in the workers' compensation system can comply with these rules without incurring purchasing or programming costs. Many health care practitioners and insurance carrier already use the standardized items adopted in these proposed rules, and cost savings explained previously should offset any increased costs.

There will be only a proportionate difference in the cost of compliance for small businesses and micro-businesses as compared to the largest businesses, including state and local government entities. The same basic processes and procedures apply, regardless of the size or volume of the business. The business size cost difference will be in direct proportion to the volume of business that falls under the purview of these proposed rules. Any increases in costs is expected to be offset by cost savings and time savings through the use of a standardized form and streamlined process, resulting in no adverse economic impact.

Comments on the proposal must be received by 5:00 p.m., August 15, 2001. You may comment via the Internet by accessing the commission's website at *www.twcc.state.tx.us* and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments. You may also comment by e-mailing your comments to *RuleComments@twcc.state.tx.us* or by mailing or delivering your comments to Nell Cheslock at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The commission may not be able to respond to comments that cannot be linked to a particular proposed rule. Along with your comment, it is suggested that you include the reasoning for the comment in order for commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon the commissioners' action at the public meeting, the rule as adopted may be revised from the rule as proposed in whole or in part. Persons in support of the rule as proposed, in whole or in part, may wish to comment to that effect.

A public hearing on this proposal will be held on August 15, 2001 at the Austin central office of the commission (Southfield Building, 4000 South IH-35, Austin, Texas). Those persons interested in attending the public hearing should contact the Commission's Office of Executive Communication at (512) 804-4430 to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the commission's website at *www.twcc.state.tx.us*.

The new rules are proposed under the Texas Labor Code §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code, §413.002, which requires the commission's Medical Review Division monitor health care providers, insurance carriers and claimants to ensure compliance with commission rules; the Texas Labor Code, §413.007, which sets out information to be maintained by the commission's Medical Review Division; the Texas Labor Code §413.011, which mandates that the commission by rule establish medical policies and guidelines; the Texas Labor Code, §413.012, which requires review and revision of the medical policies and fee guidelines at least every two years; the Texas Labor Code, §413.013, which requires the commission by rule to establish programs related to health care treatments and services for dispute resolution, monitoring, and review; the Texas Labor Code, §413.015, which requires insurance carriers to pay charges for medical services as provided in the statute and requires that the commission ensure compliance with the medical policies and fee guidelines through audit and review; the Texas Labor Code, §413.016, which provides for refund of payments made in violation of the medical policies and fee guidelines; the Texas Labor Code, §413.017, which provides a presumption of reasonableness for medical services fees which are consistent with the medical policies and fee guidelines; the Texas Labor Code, §413.019, which provides for payment of interest on delayed payments refunds or overpayments; and the Texas Labor Code, §413.031, which provides a procedure for medical dispute resolution; the Texas Labor Code, §413.044, which provides for sanctions against designated doctors who are found to be out of compliance with the medical policies and fee guidelines.

The proposed new rules affect the following statutes which are associated with the Medical Fee Guidelines: the Texas Labor Code §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code, §413.002, which requires that the commission's Medical Review Division monitor health care providers, insurance carriers and claimants to ensure compliance with commission rules; the Texas Labor Code, §413.007, which sets out information to be maintained by the commission's Medical Review Division; the Texas Labor Code, §413.011, which mandates that the commission by rule establish medical policies and guidelines; the Texas Labor Code, §413.012, which requires review and revision of the medical policies and fee guidelines at least every two years; the Texas Labor Code, §413.013, which requires the commission by rule to establish programs related to health care treatments and services for dispute resolution, monitoring, and review; the Texas Labor Code, §413.014, which requires express preauthorization by the insurance carrier for health care treatments and services; the Texas Labor Code, §413.015, which requires insurance carriers to pay charges for medical services as provided in the statute and requires that the commission ensure compliance with the medical policies and fee guidelines through audit and review; the Texas Labor Code, §413.016, which provides for refund of payments made

in violation of the medical policies and fee guidelines; the Texas Labor Code, §413.017, which provides a presumption of reasonableness for medical services fees which are consistent with the medical policies and fee guidelines; the Texas Labor Code, §413.019, which provides for payment of interest on delayed payments refunds or overpayments; and the Texas Labor Code, §413.031, which provides a procedure for medical dispute resolution; the Texas Labor Code, §413.044, which provides for sanctions against designated doctors who are found to be out of compliance with the medical policies and fee guidelines.

§134.202. Applicability.

(a) Sections 134.202 - 134.208 of this title apply to professional medical services (health care other than prescription drugs or medicine, and the services of a hospital or other health care facility). Reimbursement shall be determined in accordance with the rules in effect on the date the professional medical service was provided.

(1) For professional medical services provided on or after the effective date of this rule, §§134.202 - 134.208 of this title shall be applicable.

(2) For professional medical services provided prior to the effective date of this rule, §134.201 and §134.302 of this title shall be applicable.

(3) For all prescription drugs or medicines provided, the terms of §134.201 of this title shall be applicable until such time as the Commission adopts a pharmacy services guideline.

(b) Specific provisions contained in §§134.203 - 134.208 of this title shall take precedence over any conflicting provision in any document adopted by reference.

(c) If a section of this subchapter is declared invalid in a final judgment that is not subject to appeal, or is suspended by order of the court which is given immediate effect, §134.201 and §134.302 of this title shall remain in effect to the extent necessary.

§134.203. Professional Services Codes.

(a) The Texas Workers' Compensation Commission (the commission) adopts herein, by reference the following for use in coding professional medical services:

(1) American Medical Association's *Current Procedural Terminology 2001*, Fourth Edition Revised, copyright 2000, Current Procedural Terminology is also known as the Health Care Financing Administration Common Procedure Coding System (HCPCS) Level I codes.

(2) HCPCS Level II codes, limited to A, E, J, K, and L codes and the related modifiers. The J codes are published in Addendum B "Relative Value Units and Related Information," of Volume 65 *Federal Register* Number 212, November 1, 2000. The A, E, K and L codes are available from the Health Care Financing Administration's "Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) 2001 Fee Schedule" December 19, 2000.

(3) American Dental Association's *Current Dental Terminology*, Third Edition, copyright 1999.

(b) The definitions, descriptions and guidelines found in the documents adopted by reference in subsection (a) of this section shall govern the coding, reporting, billing and reimbursement of professional medical services with any additions or exceptions provided in §134.207 of this title (relating to Ground Rules).

(c) Whenever a document adopted by reference in this section is revised, the executive director of the commission shall make an administrative determination regarding use of the revised document and shall establish the date by which use of the revised document is required for compliance with commission rules, decision, and orders. In determining whether to incorporate a revised document, the executive director shall consider whether use is consistent with applicable statutory requirements and objectives including standardization, and with commission rules in effect on the date of the revision. The executive director shall inform the commissioners of the determination, and shall inform the public by issuing a commission advisory regarding the determination and by filing the determination for publication in the *Texas Register*.

(d) Information on how to purchase or obtain copies of the most current referenced documents is available by contacting the commission's Publications Department or accessing the commission's website: *www.twcc.state.tx.us.*.

§134.204. Relative Value Units.

(a) The Texas Workers' Compensation Commission (the commission) adopts herein, by reference the following for use in determining the total relative value units of professional medical services except as otherwise provided in §§134.202 - 134.208 of this title:

(1) The following portions of the Health Care Financing Administration's (HCFA) 2001 Medicare Resource-Based Relative Value System:

(A) Volume 65 *Federal Register* Number 212, November 1, 2000:

(i) Addendum B "Relative Value Units and Related Information;"

(i) Addendum C "Codes with Interim Relative Value Units;"

(iii) Addendum E "2001 Geographic Practice Cost Indices by Medicare Carrier and Locality."

(B) Volume 62 *Federal Register* Number 211, October 31, 1997, Addendum G, "Counties Included in 1998 Localities (Alphabetically by State and Locality Name Within State)"

(2) The American Society of Anesthesiologists, *Relative Value Guide 2001*, copyright 2001, for those anesthesia codes without an established HCFA relative value.

(3) The Ingenix *2001 RBRVS, A Comprehensive Listing of RBRVS Values For all CPT and HCPCS Codes*, copyright 2000, for procedure codes without an established HCFA relative value.

(4) The Texas Medicaid Fee Schedule, May 2001, Durable Medical Equipment/Medical Supplies Report J.

(b) Whenever a document adopted by reference in this section is revised, the executive director of the commission shall make an administrative determination regarding use of the revised document and shall establish the date by which use of the revised document is required for compliance with commission rules, decision, and orders. In determining whether to incorporate a revised document, the executive director shall consider whether use is consistent with applicable statutory requirements and objectives including standardization, and with commission rules in effect on the date of the revision. The executive director shall inform the commissioners of the determination, and shall inform the public by issuing a commission advisory regarding the determination and by filing the determination for publication in the *Texas Register*.

(c) Information on how to purchase or obtain copies of the most current referenced documents is available by contacting the commission's Publications Department or accessing the commission's website: *www.twcc.state.tx.us.*.

§134.205. Conversion Factors.

(a) The conversion factors shall be utilized as described in §134.206 of this title (relating to Methodology).

(b) The conversion factors for service categories are as follows:

(1) Evaluation & Management--$39.75

(2) General Medicine--$53.56

(3) Physical Medicine and Rehabilitation--$43.43

(4) Surgery--$65.51

(5) Anesthesiology--$30.00

(6) Radiology--$56.06

(7) Pathology--$55.18

§134.206. Methodology.

(a) Maximum Allowable Reimbursement (MAR) for codes with an assigned relative value shall be determined by multiplying the total relative value units (RVU) by the applicable conversion factor (CF) and then rounding to the nearest whole dollar. For instructions on the use of modifiers, refer to the documents adopted by reference in §134.203 of this title (relating to Professional Services Codes) and to §134.207 of this title (relating to Ground Rules).

(1) To determine the Total RVU:

(A) Locate the applicable RVUs for a Current Procedural Terminology (CPT) code, in accordance with §134.204 of this title (relating to Relative Value Units).

(i) Identify the appropriate CPT code in the Health Care Financing Administration (HCFA) Resource Based Relative Value System (RBRVS) list for the RVU, or in the Ingenix 2001 list if a HCFA RVU is not established.

(ii) Identify the RVUs by using the following columns:

(I) Work RVU Column

(II) Transitioned Non-facility Practice Expense (PE) RVU Column

(III) Malpractice (MP) RVU Column

(B) Refer to HCFA Addendum E and Addendum G adopted in §134.204(a) of this title (relating to Relative Value Units) to determine the applicable Geographical Practice Cost Indices (GPCIs) and counties.

(C) Apply the following formula for Total RVUs: ((Work RVU x Work GCPI) + (PE RVU x PE GCPI) + (MP RVU x MP GCPI)) = Total RVUs

(2) To determine the applicable CF refer to §134.205 of this title (relating to Conversion Factors).

(3) Apply the following formula to determine a MAR: (Total Relative Value Units x CF) Rounded to the nearest whole dollar = MAR. Example: CPT: RVU x CF = Gross MAR = MAR; 99XXX: 1.32 x $40.12 = $52.96 = $53.00; 99XX1: 1.38 x $40.12 = $55.37 = $55.00; 99XX2: 2.00 x $27.75 = $55.50 = $56.00

(4) The following applies in determining MARs:

(A) For surgical global period follow-up days (FUD), use the global days column from the HCFA RBRVS list, or use the FUD column from the Ingenix 2001 list if the procedure is not listed in the HCFA RBRVS list; and

(B) HCFA RBRVS columns not referenced in this rule do not apply.

(b) MARs for Texas Workers' Compensation Commission (the commission) specific codes, services and programs (e.g. Functional Capacity Evaluations, Impairment Rating evaluations, Work Hardening, Work Conditioning, etc.) are designated in §134.207 of this title (relating to Ground Rules). Subsection (a) of this section does not apply to these codes.

(c) MARs for anesthesia services shall be determined as follows:

(1) The Total Anesthesia Reimbursement (TAR) for each procedure is the sum of the basic value, any modifying factors (i.e., physical status modifiers and qualifying circumstances), and the time units, multiplied by the CF and then rounded to the nearest whole dollar. TAR = ((basic value + modifying factors + time units) x CF) rounded to the nearest whole dollar.

(A) Basic value: The relative value of all usual anesthesia services.

(B) Time units: The anesthesia time units shall be calculated in fifteen minute intervals, or portion thereof, with each interval equal to one time unit.

(C) Modifying Factors:

(i) Physical Status Modifiers

(ii) Qualifying Circumstances

(D) Conversion Factor: To determine the applicable CF refer to §134.205 of this title (relating to Conversion Factors).

(2) Modes of Anesthesia Practice and Reimbursement

(A) Anesthesiologist or Certified Registered Nurse Anesthetist (CRNA): When an anesthesiologist or CRNA is conducting a total and individual anesthesia service, the anesthesiologist/CRNA shall bill and be reimbursed at 100% of the TAR.

(B) Concurrent Supervision: When an anesthesiologist is directing the services of a CRNA, including pre- and post-operative evaluation and care, but is not personally administering the anesthesia, the CRNA shall not bill or be reimbursed. The following shall apply for the anesthesiologist's reimbursement:

(i) One directed anesthetic procedure 100% of the TAR

(ii) Two directed anesthetic procedures 90% of the TAR for each procedure

(iii) Three directed anesthetic procedures 80% of the TAR for each procedure

(iv) Four directed anesthetic procedures 70% of the TAR for each procedure.

(d) Reimbursement for HCPCS Level II codes A, E, J, K, and L shall be:

(1) 125% of the published Medicare Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Fee Schedule;

(2) 125% of the published Texas Medicaid Fee Schedule Durable Medical Equipment/Medical Supplies Report J, for HCPCS without a published Medicare rate; or,

(3) as stated in subsection (f) of this section if paragraphs (1) and (2) of this subsection do not apply.

(e) Reimbursement of dental treatments and services shall be based on the use of CDT codes, and shall be reimbursed 60% of the health care provider's usual, customary and reasonable charge.

(f) Reimbursement of any CPT or HCPCS codes not addressed in subsections (a) - (e) of this section shall be 60% of the health care provider's usual, customary and reasonable charge.

(g) In all cases, reimbursement shall be the least of the:

(1) commission's fair and reasonable amount as established by this rule;

(2) health care provider's usual, customary and reasonable charge; or,

(3) health care provider's negotiated and/or contracted amount.

§134.207. Ground Rules.

(a) General Instructions. All participants coding, reporting, billing and reimbursing in the workers' compensation system shall be responsible for correctly applying the ground rules contained in this section, in addition to the guidelines in the documents adopted by reference in §134.203 of this title (relating to Professional Services Codes).

(1) Application of Ground Rules. Ground rules, specific to a particular group of codes, provide definitions and instructions necessary to correctly interpret, report, and reimburse the professional medical services contained in that group of codes.

(2) Billing. Health care providers (HCPs) shall bill their usual, customary, and reasonable charges. HCPs shall submit medical bills in accordance with the Texas Workers' Compensation Act (the Act) and commission rules Chapter 133 of this title. Disputes regarding reimbursement shall be resolved in accordance with the Act and commission rules and procedures.

(3) Scope of Practice. This section does not supersede the scope of practice limitations of the licensed HCP.

(A) The HCP shall comply with the ground rules outlined in the pertinent section for the procedure(s) performed. Any HCP, regardless of type of licensure, may use any section containing the procedure(s) performed as long as the procedure(s) is within the HCP's scope of practice or license as defined by Texas law.

(B) The maximum allowable reimbursement (MAR) only applies when a licensed HCP is performing those services within the scope of practice for which the HCP is licensed, or when a non-licensed individual is rendering care under the supervision of a licensed HCP.

(C) For the purposes of these guidelines, supervision is as defined in the HCP's licensing or practice act.

(4) Modifiers. Modifying circumstance shall be identified by use of the appropriate modifier, including the hyphen, following the appropriate code. In addition to the documents adopted by reference in §134.203 of this title, Texas Workers' Compensation Commission (TWCC) specific modifiers are identified in subsection (l) of this section. When two modifiers are applicable to a single code, indicate each modifier, including the hyphen, on the bill. When using AMA CPT modifiers, provide documentation of procedure.

(5) Documentation of Procedure (DOP). When DOP is required, the value of the procedure shall be determined by written documentation attached to or included in the bill. The required documentation may vary based on the complexity of the procedure. No additional reimbursement shall be allowed for the submission of documentation to substantiate the procedure or service. DOP shall include pertinent information about the procedure, including:

(A) description of procedure provided;

(B) nature, extent, and need (e.g., complexity of symptoms, diagnosis, and rationale) for the service or procedure;

(C) time required to perform the service or procedure (include start and end times);

(D) skill level necessary for performance of the service or procedure;

(E) equipment used (if applicable); and

(F) other information as necessary.

(6) Materials Supplied by the HCP. When the cumulative total charge for the provision of supplies and materials that are not usually included in the office visit exceeds $10 for a date of service, the supplies and materials may be billed separately using HCPCS codes. If no HCPCS code is available, then the "Supplies and materials..." CPT code shall be used and a description shall be included. DOP for supplies is also required for any single supply item that is billed at $50 or greater.

(A) Supplies that are usually included in the office visit include, but are not limited to:

(i) injection or debridement trays;

(ii) needles;

(iii) steristrips;

(iv) syringes;

(v) eye/ear trays;

(vi) drapes;

(vii) sterile gloves;

(viii) applied eye wash or drops;

(ix) creams (massage);

(x) fluorescein;

(xi) ultrasound pads and gel;

(xii) tissues;

(xiii) urine collection kits;

(xiv) gauze;

(xv) cotton balls/fluff;

(xvi) sterile water;

(xvii) head sheet;

(xviii) aspiration trays;

(xix) tape for dressing; and,

(xx) bandaids and dressings for simple wound occlusion.

(B) Supplies that are not usually included in the office visit include, but are not limited to:

(i) sterile trays for laceration repair and more complex surgeries;

(ii) applied dressings beyond simple wound occlusion;

(iii) taping supplies for sprains;

(iv) iontophoresis electrodes;

(v) casting and strapping materials;

(vi) reusable patient specific electrodes; and,

(vii) dispensed items (hot/cold packs, canes, braces, slings, ace wraps, TENS electrodes, crutches, splints, back supports, dressings, etc).

(7) Preauthorization of Specific Treatments/Services. The HCP is required to obtain preauthorization from the insurance carrier prior to rendering certain services or procedures. To determine whether a treatment or service requires reauthorization, the HCP shall refer to the act and commission rule(s) regarding preauthorization.

(b) Evaluation and Management (E/M) Ground Rules. HCPs billing professional medical services in the Evaluation and Management section of the AMA CPT shall utilize the following for correct coding, reporting, billing, and reimbursement of the E/M CPT codes.

(1) E/M services initiated by the referral doctor shall be billed and reimbursed using office visit codes, not consultation codes.

(2) E/M services provided by a Physician Assistant (PA) or Nurse Practitioner (NP), under the supervision of a doctor, shall be billed by the doctor using the appropriate E/M code with either modifier "-PA" or "-NP." Reimbursement shall be 80% of the MAR.

(3) Neonatal Intensive Care shall only be billed and reimbursed if the documented condition of the infant is directly related to the consequences of the injured employee's compensable injury. Neonatal intensive care shall be assessed on a case-by-case basis and appropriate documentation shall be provided to support level(s) of service rendered. Neonatal intensive care shall occur in a Neonatal Intensive Care Unit (NICU) and shall be billed and reimbursed once per day per patient. DOP is required.

(4) Nursing Facility Services shall only be billed and reimbursed if the documented condition is directly related to or is the consequence of the compensable injury. Nursing facility services shall be assessed on a case-by-case basis. DOP is required.

(5) Domiciliary, Rest Home, Boarding Home, and Custodial Care services shall only be billed and reimbursed if the documented condition is directly related to or is the consequence of the compensable injury. Such services shall be assessed on a case-by-case basis. DOP is required.

(6) Home Services shall only be billed and reimbursed if the documented condition is directly related to or is the consequence of the compensable injury. Such services shall be assessed on a case-by-case basis. DOP is required.

(A) E/M services provided in a private residence by a doctor shall be billed and reimbursed using the "New Patient Home Services" and "Established Patient Home Services" CPT codes.

(B) Home health services provided by a home health agency shall be billed and reimbursed using the "Unlisted special service, procedure, or report" CPT code with one of the following modifiers:

(i) "-H1," for home health services provided by a Registered Nurse (RN).

(ii) "-H2," for home health services provided by a Licensed Vocational Nurse (LVN).

(iii) "-H3," for home health services provided by a Certified Nurse Assistant (CNA).

(iv) "-H4," for home health services provided by an Occupational Therapist, Physical Therapist, Speech Therapist, or other HCP, if a specific CPT code is not available for the service provided (otherwise, the appropriate CPT code(s) which describes the service provided should be used).

(v) "-H5," for home health services rendered by a Home Health Aide.

(7) Case Management is the responsibility of the treating doctor and includes the direct health care of the patient, coordination and control of access to health care, and initiation and/or supervision of other health care services needed by the injured employee.

(A) Case management services may include team conferences and telephone calls. For reimbursement, these services shall be initiated and/or coordinated by the treating doctor or another HCP (with approval from the treating doctor). Only the initiating HCP shall bill and be reimbursed for team conferences and telephone calls. DOP is required.

(i) Team conferences shall include coordination with an interdisciplinary team (outside of an interdisciplinary program) to assist in the development of treatment plans and coordinate activities of patient care.

(ii) Telephone calls shall be to the patient or other HCPs for consultation, medical management, or coordination of medical management.

(B) Any counseling and/or coordination of care involving team conferences or telephone calls (when provided as a part of or a result of the patient encounter) that occurs the same day as a patient encounter, is considered to be part of the E/M service for that session and shall not be billed or reimbursed separately.

(8) Preventive Medicine Services are not reimbursed as part of the Texas Workers' Compensation system.

(9) Newborn Care services shall only be billed and reimbursed if the treatment rendered is directly related to the injured employee's compensable injury. Newborn care shall be assessed on a case-by-case basis. DOP is required.

(10) Telemedicine is the method of delivering medical care and information over distance using computer-based telecommunications networks. Only E/M services provided by interactive modes of telemedicine (i.e., interactive video teleconferencing) shall be reimbursed. Interactive video teleconferencing refers to live, two-way video connections between two or more HCPs and the injured employee. All HCPs participating, and whose presence is required, in the video teleconferencing shall be reimbursed. The HCPs shall use the appropriate E/M CPT code with modifier "-TM," DOP is required. For reimbursement, the telemedicine service must be necessary to:

(A) the injured employee because of limited access to HCPs; or,

(B) a HCP because of limited access to other HCPs (i.e., specialists).

(c) General Medicine Ground Rules. HCPs billing professional medical services in the Medicine section of the AMA CPT shall utilize the following for correct coding, reporting, billing, and reimbursement of the Medicine CPT codes.

(1) Osteopathic Manipulation. When manipulation is provided by a Doctor of Osteopathy, Osteopathic Manipulative Treatment CPT codes shall be billed and reimbursed. If significant separately identifiable E/M services, above and beyond the usual pre-service and post-service work associated with the procedure, are provided, the HCP

shall bill using the appropriate E/M CPT code with CPT modifier "-25," and DOP is required.

(2) Chiropractic Manipulation. When manipulation is provided by a Doctor of Chiropractic, Chiropractic Manipulative Treatment CPT codes shall be billed and reimbursed. If significant separately identifiable E/M services, above and beyond the usual pre-service and post-service work associated with the procedure, are provided, the HCP shall bill using the appropriate E/M CPT code with CPT modifier "-25," and DOP is required.

(3) Nerve Studies. The following provisions apply to Nerve Studies.

(A) CPT codes relating to nerve studies shall be billed and reimbursed using the CPT code for the appropriate study with one of the following modifiers:

(i) WP: This modifier shall be used if performing both the technical and professional components of the study.

(ii) -26: This modifier shall be used if performing only the professional component of the study. The professional component reimbursement shall be 30% of the MAR.

(iii) -TC: This modifier shall be used if performing only the technical component of the study. The technical component reimbursement shall be 70% of the MAR.

(B) Surface electromyography (EMG) studies shall be billed and reimbursed using the "Unlisted physical medicine/rehabilitation service or procedure" CPT code with modifier "-EM" added.

(4) Conscious Sedation. Doctors other than anesthesiologists or nurse anesthetists shall bill and be reimbursed for conscious sedation CPT codes.

(A) Conscious Sedation (with or without analgesia) CPT codes shall be billed and reimbursed when administered by a doctor also performing a simultaneous procedure.

(B) If Conscious Sedation is administered by a HCP, other than the doctor performing the procedure, then the HCP shall apply the ground rules as stated within subsection (f) of this section.

(d) Physical Medicine and Rehabilitation. HCPs billing professional medical services in the Physical Medicine and Rehabilitation subsection of the AMA CPT shall utilize the following for correct coding, reporting, billing, and reimbursement of the Physical Medicine and Rehabilitation CPT codes.

(1) Modalities and Therapeutic Procedures (Physical Medicine). The following provisions apply to physical medicine services.

(A) Physical medicine treatment performed on the same day as an initial evaluation shall be billed and reimbursed separately.

(B) Range of motion measurements and muscle testing are included in re-evaluations performed by the physical or occupational therapist and shall not be billed or reimbursed separately. Re-evaluation of the patient by the HCP can occur for any of the following reasons:

(i) a definitive change in the patient's condition;

(ii) failure to respond to treatment;

(iii) attainment of MMI; or

(iv) need for an extensive evaluation of the patient which is over and above what would be routinely provided at a therapy session.

(C) The treating doctor shall re-examine the patient as appropriate, but not less than once a month, while physical medicine treatment is being provided by the HCP.

(D) A physical medicine session is defined as any combination of up to three different physical medicine CPT codes and up to one and one-half hours of physical medicine CPT codes with time units.

(i) Multiple uses of the same CPT code count as one of the three physical medicine CPT codes per session limit.

(ii) Two sessions are allowed per day for the first week of the injury. Thereafter, only one session per day is allowed.

(iii) Time spent on Modalities with no time units does not apply toward the one and one-half hour per session time limit.

(iv) The maximum amount of time to be billed or reimbursed for physical medicine CPT codes with time units is one and one-half hours per session. Time shall be measured by billing increments.

(v) For reimbursement, the Multiple Procedure Rule found in subsection (e) of this section shall be applied to the three different physical medicine CPT codes used in each session.

(E) Therapeutic Procedures require the HCP to maintain direct patient contact during provision of the procedure. If any of the Therapeutic Procedures are performed with two or more patients then the "Therapeutic procedure, group" CPT code shall be billed rather than the code for the specific type of therapy.

(F) The exclusive use of Modalities is limited to a maximum of one week. DOP is required to substantiate the need for continued use of only these modalities.

(G) The use of Modalities in conjunction with therapeutic and other procedures shall be as described in the commission treatment guidelines. DOP is required to substantiate the need to provide treatment that is not contained in the commission treatment guidelines.

(H) Sterile whirlpool shall be billed using the "whirlpool" modality CPT code with modifier "-SW" and shall be reimbursed at $40.00. This type of treatment shall be prescribed by the doctor. There shall be no additional reimbursement for sterilizing the whirlpool or for supplies for the sterilization. DOP is required.

(I) Patient education is billed for a group setting using the "Physician educational services rendered to patients in a group setting" CPT code. If the patient education is provided in a one-on-one setting, bill using the same CPT code with modifier "-OP," DOP is required.

(J) Required or requested documentation for any physical medicine CPT code with time units shall include start and end times.

(K) Specific physical medicine services shall be billed as follows.

(i) The following services shall be billed using the "Unlisted modality" CPT code and the appropriate modifier as indicated.

(I) Continuous Passive Motion--Modifier "-CM"

(II) Fluidotherapy--Modifier "-FT"

(III) HE-NE Laser--Modifier "-HE"

(ii) The following services shall be billed using the "Unlisted therapeutic procedure" CPT code and the appropriate modifier as indicated.

(I) Autotraction--Modifier "-AT"

(II) Dressing changes--Modifier "-DC"

(III) Taping to stabilize or align joint--Modifier "-EC"

(IV) Simultaneous Electrical Stimulation/Ultrasound--Modifier "-EU"

(V) Muscle Energy Technique--Modifier "-ME"

(VI) Phonophoresis--Modifier "-PH"

(VII) Positional Release--Modifier "-PO"

(VIII) Spray and Stretch--Modifier "-SS"

(IX) TENS application for trial basis (includes supplies/training)--Modifier "-TN"

(X) Tilt table (standing frame)--Modifier "-TT"

(XI) Vertebral Axial Decompression (Vax-D)--Modifier "-VX"

(iii) External compression/taping to reduce or control edema and swelling shall be billed using the "vasopneumatic devices" modality code. External compression/taping to provide support or protection and limit motion in acute trauma and chronic circulatory conditions or to provide stabilization and joint alignment shall be billed using the "Unlisted therapeutic procedure" CPT code with modifier "-EC."

(iv) Phonophoresis supplies shall be billed using CPT code 99070 and shall be reimbursed at $7.00; iontophoresis supplies shall be billed using CPT code 99070 and shall be reimbursed at $15.00. Phonophoresis and iontophoresis shall not be reimbursed for the same area on the same day.

(L) An injury resulting in physical medicine treatment to more than one body area or region shall be substantiated by the appropriate diagnosis for the CPT codes. The following body areas are recognized for the provision of physical medicine (billing may be by region, if present, or by area):

(i) Head

(ii) Lower extremity (which is divided into two regions):

(I) Hip/Knee

(II) Ankle/Foot

(iii) Upper extremity (which is divided into two regions):

(I) Shoulder/Elbow

(II) Wrist/Hand

(iv) Trunk (Including rib cage, and abdomen)

(v) Spine (which is divided into four regions):

(I) Cervical spine

(II) Thoracic spine

(III) Lumbar spine

(IV) Sacral spine

(2) Tests and Measurements. The following provisions apply to Tests and Measurements services.

(A) Tests and Measurements CPT codes require a report of the results, and no additional reimbursement shall be allowed for this report.

(B) Job site visit/assessment shall be billed using the "Unlisted physical medicine/rehabilitation service or procedure" CPT code with modifier "-JA". A report is required and shall not be reimbursed separately. Job site visit/assessments shall be reimbursed at $25.00 per 15 minutes.

(C) A maximum of three Functional Capacity Evaluations (FCEs) for each compensable injury shall be billed and reimbursed. FCEs shall be billed using the "Physical performance test or measurement..." CPT code with modifier "-FC." FCEs shall be reimbursed at $25 per 15-minute increment up to a maximum of five hours ($500) for the first test and a maximum of two hours ($200) for a second and/or third test. A summary report for each FCE is required and shall not be billed or reimbursed separately. Required documentation includes the start and end time for the FCE. FCEs shall include the following elements:

(i) A physical examination and neurological evaluation, which include the following:

(I) appearance (observational and palpation)

(II) flexibility of the extremity joint or spinal region (usually observational)

(III) posture and deformities;

(IV) vascular integrity;

(V) neurological tests to detect sensory deficit;

(VI) myotomal strength to detect gross motor deficit; and

(VII) reflexes to detect neurological reflex symmetry.

(ii) A physical capacity evaluation of the injured area, which includes the following:

(I) range of motion (quantitative measurements using appropriate devices) of the injured joint or region; and

(II) strength/endurance (quantitative measures using accurate devices) with comparison to contralateral side or normative data base. This testing may include isometric, isokinetic, or isoinertial devices in one or more planes.

(iii) Functional abilities tests, which include the following:

(I) activities of daily living (standardized tests of generic functional tasks such as pushing, pulling, kneeling, squatting, carrying, and climbing);

(II) hand function tests which measure fine and gross motor coordination, grip strength, pinch strength, and manipulation tests using measuring devices;

(III) submaximal cardiovascular endurance tests which measure aerobic capacity using stationary bicycle or treadmill; and

(IV) static positional tolerance (observational determination of tolerance for sitting or standing).

(D) Muscle testing shall be billed using the "Physical performance test or measurement..." CPT code with modifier "-MT." Muscle testing requires a report to be submitted with the bill, identifying the service provided, results, and interpretation of the test and

shall be reimbursed per body area. If two or more contiguous areas are injured and if testing requires no additional tasks, then reimbursement shall be allowed for only one body area. Muscle testing shall not be reimbursed in addition to a FCE. Muscle testing may be used to replace any six components of the functional abilities test required in a FCE and shall be reimbursed as a component of the FCE.

(i) Isometric measurements (testing for strength deficits) are reimbursed as follows:

(I) Single area: testing one injured area of the body. This includes multiple tasks and/or multiple planes.

(II) Two areas: testing two injured areas of the body. Each area requires multiple tasks and/or multiple planes. DOP is required supporting the need for testing of two areas.

(III) Multiple areas: testing more than two injured areas of the body. Each area requires multiple tasks and/or multiple planes. DOP is required supporting the need for testing of multiple body areas.

(ii) Isokinetic measurements (testing for strength deficits) are reimbursed as follows:

(I) Single area: testing one injured area of the body. This includes multiple tasks and multiple planes.

(II) Two areas: testing two injured areas of the body. Each area requires multiple tasks and multiple planes. DOP is required supporting the need for testing of two body areas.

(III) Multiple areas: testing more than two injured areas of the body. Each area requires multiple tasks and multiple planes. DOP is required supporting the need for testing of multiple body areas.

(E) When performing manual muscle testing and/or range of motion testing, reimbursement includes testing with comparison to normal side, which shall not be billed or reimbursed separately.

(3) Return To Work Rehabilitation Programs. The following shall be applied for billing and reimbursement of Work Conditioning/General Occupational Rehabilitation Programs, Work Hardening/Comprehensive Occupational Rehabilitation Programs, Chronic Pain Management/Interdisciplinary Pain Rehabilitation Programs, and Outpatient Medical Rehabilitation Programs.

(A) Accreditation by the Commission for Accreditation of Rehabilitation Facilities (CARF) is recommended, but not required.

(i) If the program is CARF accredited, modifier "-CA" shall follow the appropriate program modifier as designated for the specific programs listed below. The hourly reimbursement for a CARF accredited program shall be 100% of the MAR.

(ii) If the program is not CARF accredited, the only modifier required is the appropriate program modifier. The hourly reimbursement for a non-CARF accredited program shall be 70% of the MAR.

(B) Work Conditioning/General Occupational Rehabilitation Programs (for TWCC purposes, CARF accredited General Occupational Rehabilitation Programs are considered Work Conditioning.)

(i) The first two hours of each session shall be billed and reimbursed as one unit, using code 97545 with "-WC" modifier. Each additional hour shall be billed as 97546 with "-WC modifier." CARF accredited Programs shall add "-CA" as a second modifier.

(ii) Reimbursement shall be $36.00 per hour. Units of less than 31 minutes shall not be billed or reimbursed.

(C) Work Hardening/Comprehensive Occupational Rehabilitation Programs (for TWCC purposes, CARF accredited Comprehensive Occupational Rehabilitation Programs are considered Work Hardening.)

(i) The first two hours of each session shall be billed and reimbursed as one unit, using code 97545 with "-WH" modifier. Each additional hour shall be billed as 97546 with "-WH" modifier. CARF accredited Programs shall add "-CA" as a second modifier.

(ii) Reimbursement shall be $64.00 per hour. Units of less than 31 minutes shall not be billed or reimbursed.

(D) Outpatient Medical Rehabilitation Programs

(i) Program shall be billed and reimbursed using code 97799 with modifier "-MR" for each hour. The number of hours shall be indicated in the units column on the bill. CARF accredited Programs shall add "-CA" as a second modifier.

(ii) Reimbursement shall be $90.00 per hour. Units of less than 31 minutes shall not be billed or reimbursed.

(E) Chronic Pain Management/Interdisciplinary Pain Rehabilitation Programs

(i) Program shall be billed and reimbursed using code 97799 with modifier "-CP" for each hour. The number of hours shall be indicated in the units column on the bill. CARF accredited Programs shall add "-CA" as a second modifier.

(ii) Reimbursement shall be $100.00 per hour. Units of less than 31 minutes shall not be billed or reimbursed.

(e) Surgery Ground Rules. HCPs billing professional medical services in the Surgery section of the AMA CPT shall utilize the following for correct coding, reporting, billing, and reimbursement of the Surgery CPT codes.

(1) Global Fee Concept. The concept of a global fee for surgical procedures is a long established concept under which a single fee (i.e., bundled service) is billed and reimbursed for services that are necessary and integral in accomplishing the surgical procedure. The surgeon normally performs these necessary services before, during, and after the surgical procedure.

(A) The global reimbursement includes the pre-operative care necessary for the specific surgical procedure, completion of hospital records, initiation of treatment, local anesthesia (including local infiltration, metacarpal/digital block, or topical anesthesia), the surgical procedure, and uncomplicated post-operative care that normally follows the specific surgical procedure. Integral parts of a surgical procedure shall not be billed with a separate charge for each service (unbundled) or reimbursed separately.

(B) If the management of a surgical procedure (pre-operative care and/or post-operative care) and the surgical procedure are performed by two or more doctors, the global fee concept shall still be applied and the appropriate CPT code shall be billed with either CPT modifier "-54," "-55," or "-56." (For additional information on these modifiers see paragraph (3) of this subsection).

(C) Included in the global period for surgery is all preoperative care, beginning with the day prior to surgery. If the HCP needs to report a preoperative visit for documentation purposes only, the HCP shall bill the appropriate CPT code with modifier "-GS."

(D) Post-operative follow-up care is included in the global period for surgery and the following shall apply.

(i) The number of consecutive post-operative follow-up days allowed is for the primary procedure.

(ii) When an additional surgical procedure is carried out within the listed period of follow-up care for a previous surgery, the follow-up periods shall continue concurrently to their normal termination.

(iii) Routine operative pain management provided by the surgeon is included in the global fee

(E) HCPs billing surgical services shall use the most current edition of the American Academy of Orthopaedic Surgeons' Complete Global Services Data for Orthopaedic Surgery in determining whether and how surgical services should be bundled.

(F) The following pre-operative services are exempt from the global fee concept and additional charges and reimbursements shall be warranted for these:

(i) Evaluation and management services unrelated to the primary procedure;

(ii) Services required to stabilize the patient for the primary procedure; and

(iii) Procedures not usually part of the basic surgical procedure (eg., bronchoscopy prior to chest surgery) provided during the immediate pre-operative period.

(G) Surgical procedures that are identified as starred procedures in the AMA CPT are not subject to the global fee concept.

(2) Multiple Procedures. Procedures performed at the same operative setting which significantly increase time and skill requirements are subject to the Multiple Procedure Rule (MPR) reimbursement and are identified by adding CPT modifier "-51" to the appropriate CPT code.

(A) The MPR reimbursement shall be as follows:

(i) 100% of the MAR for the major procedure. For MFG reimbursement purposes the major procedure is the procedure reflecting the greatest MAR value. Modifier "-51" shall not be added to the major procedure code.

(ii) 50% of the MAR for the secondary procedure. CPT modifier "-51" shall be added to the secondary procedure code.

(iii) 25% of the MAR for each subsequent procedure. CPT modifier "-51" shall be added to subsequent procedure code(s).

(B) Secondary or subsequent procedures are reimbursed when:

(i) the secondary or subsequent procedures are performed through the same incision and related to the major procedure;

(ii) the secondary or subsequent procedures are not performed through the same incision but are related to the major procedure;

(iii) the secondary or subsequent procedures are performed through the same incision and consume significant time or are due to a complication unless the additional procedure(s) is an integral part of the major procedure (in that case no additional fee shall be reimbursed); or

(iv) the secondary or subsequent procedures are performed in a remote area, but are related to the major procedure.

(C) The MPR shall not be applied to secondary or subsequent procedures performed in remote areas that are unrelated to the major procedure and require additional preparation.

(3) Surgical Modifiers. The following provisions apply to the billing and reimbursement of surgical CPT codes with the listed modifiers.

(A) Surgical Care Only, CPT modifier "-54": When one doctor performs a surgical procedure and another doctor provides pre-operative and/or postoperative management, surgical services are identified by adding CPT modifier "-54" to the CPT code. Reimbursement shall reflect a reduction to allow for services provided by the other (non-operating) doctor. DOP is required.

(i) When coordinating with another doctor to provide the postoperative management, reimbursement shall be 70% of the MAR of the surgical procedure.

(ii) When coordinating with another doctor to provide the preoperative management, reimbursement shall be 90% of the MAR.

(iii) When coordinating with another doctor(s) to provide both the preoperative and postoperative management, reimbursement shall be 60% of the MAR.

(B) Postoperative Management Only, CPT modifier "-55": When one doctor performs the postoperative management and another doctor has performed the surgical procedure, the postoperative component is identified by adding CPT modifier "-55" to the CPT code. Reimbursement to the surgeon shall reflect a reduction to allow for services provided by the subsequent doctor. Reimbursement shall be 30% of the MAR of the surgical procedure. DOP is required.

(C) Preoperative Management Only, CPT modifier "-56": When one doctor performs the preoperative care and evaluation and another doctor performs the surgical procedure, the preoperative component is identified by adding CPT modifier "-56" to the CPT code. Reimbursement to the surgeon shall reflect a reduction to allow for services provided by the preceding doctor. Reimbursement shall be 10% of the MAR of the surgical procedure. DOP is required.

(D) Two Surgeons, CPT modifier "-62": When the skills of two surgeons are required in the management of a specific procedure the modifier "-62" shall be added to the CPT procedure code. Reimbursement shall be in accordance with the MPR. For an exception to this reimbursement methodology, see paragraph (5)(C) of this subsection. DOP is required.

(i) The total reimbursement for each procedure performed by the two surgeons shall not exceed 125% of the reimbursement amount for each surgical procedure.

(ii) The total reimbursement shall be apportioned according to prior agreement between both surgeons. Each surgeon shall indicate the percentage of total reimbursement agreed upon on the submitted bill.

(iii) If subsequent procedure(s) are solely performed by either surgeon during the same surgical session, these separate CPT code(s) shall be billed without the "-62" CPT modifier. Reimbursement shall be the MAR of the surgical procedure and the MPR shall be applied.

(iv) If one of the surgeons assists the other in the performance of any subsequent procedure(s) during the same surgical session, the surgeon assisting shall bill using CPT modifier "-80" for only those procedures in which the assistance rendered is medically

necessary. Reimbursement shall be as specified by subparagraph (F) of this subsection. DOP is required.

(E) Surgical Team, CPT modifier "66": The total reimbursement of team doctors shall not be greater than 100% of the MAR for the surgical procedure(s). The MPR reimbursement applies. DOP is required

(F) Assistant Surgeon, CPT modifier "-80": When using this modifier, documentation shall indicate the amount of time spent by the assistant surgeon in the operative session and the need for an assistant surgeon. Documentation shall substantiate the attendance of the assistant surgeon 70% of the time during the performance of one operative session. The reimbursement shall be 25% of the MAR of the surgical procedure(s).

(G) Minimum assistant surgeon, CPT modifier "-81": When using this modifier, documentation shall indicate the amount of time spent by the assistant surgeon in the operative session and the need for an assistant surgeon. The reimbursement shall be 20% of the MAR of the surgical procedure(s).

(H) Assistant Surgeon (when qualified resident surgeon not available), CPT modifier "-82": When using this modifier, documentation shall indicate the amount of time spent by the assistant surgeon in the operative session and the need for an assistant surgeon. The reimbursement shall be 20% of the MAR of the surgical procedure(s).

(I) Surgical Assistant, modifier "-SA": For services provided by a Certified Physician Assistant (PA) or a Certified Surgical Technologist/Certified First Assistant (CST/CFA) in lieu of an Assistant Surgeon, the Certified PA and the CST/CFA shall bill using the appropriate CPT code with modifier "-SA." The following shall apply to Certified PAs and CST/CFAs:

(i) Only individuals who satisfy the certification requirements for Certified PA or CST/CFA are eligible for reimbursement.

(I) A PA is defined as a graduate of a physician assistant or surgeon assistant training program accredited by the American Medical Association's Committee on Allied Health, Education, and Accreditation; or, a person who has passed the certifying examination administered by the National Commission on the Certification of Physician Assistants, and who is licensed as a physician assistant by the Physician Assistant Advisory Council.

(II) A CST/CFA is defined as a graduate from a surgical technology program accredited by the Committee on Allied Health Education and Accreditation or from a program acceptable to the Liaison Council on Certification for the Surgical Technologist. A CST/CFA is certified as a Certified Surgical Technologist and as a Certified First Assistant.

(ii) The services of a Certified PA or CST/CFA (in lieu of an Assistant Surgeon) requires documentation that supports the specific need for a surgical assistant. The documentation shall identify the appropriateness of the services of the Certified PA or CST/CFA in lieu of the services of an Assistant Surgeon.

(iii) The Certified PA or CST/CFA, when acting as an assistant to the surgeon during the operation does so under the direction and supervision of that surgeon and in accordance with hospital policy and appropriate laws and regulations.

(iv) An Assistant Surgeon and a Certified PA or CST/CFA cannot both bill or be reimbursed for the same surgical case.

(v) Total reimbursement shall be 10% of the listed MAR of the surgical procedure.

(4) Spinal Instrumentation/Prosthetics. The following provisions apply to the billing and reimbursement of spinal instrumentation/prosthetics.

(A) Reimbursement shall be allowed posteriorly and/or anteriorly for the placement of the fixation devices.

(B) When billing and reimbursing the "Application of intervertebral biomechanical device(s) ...to vertebral defect or interspace" CPT code, the following shall apply:

(i) The "Application of intervertebral biomechanical device(s) ...to vertebral defect or interspace" CPT code shall only be billed and reimbursed one time if one or more synthetic cages are placed in the intervertebral space at the same level.

(ii) If synthetic cages are placed at two or more different levels (e.g., synthetic cage placed at L3-4 interspace and L5-S1 interspace), then the "Application of intervertebral biomechanical device(s) ...to vertebral defect or interspace" CPT code shall be billed and reimbursed per level.

(iii) If a single synthetic cage can cover a defect of several vertebral levels (e.g., a single synthetic cage may replace three entire vertebrae), then the "Application of intervertebral biomechanical device(s) ...to vertebral defect or interspace" CPT code shall only be billed and reimbursed one time.

(5) Arthrodesis. The following provisions apply to the billing and reimbursement of arthrodesis services.

(A) All vertebral arthrodesis procedures include vertebral graft preparations, such as:

(i) minimal diskectomy, other than for decompression, necessary to accomplish the arthrodesis;

(ii) perforation or resection of vertebral end plates;

(iii) graft preparation with autologus blood components and bone marrow products; and

(iv) preparation and insertion of synthetic bone substitutes (e.g., hydroxyapatite, coral, methylmethacrylate, demineralized bone matrix, gels and putty).

(B) Combination anterior/posterior spinal procedures shall be billed using the CPT codes for both anterior and posterior arthrodesis with modifier "-AP" added to both CPT codes. If no other vertebral procedure, other than the arthrodesis, is performed the MPR does not apply.

(C) When the approach for arthrodesis of the anterior spine is performed by a different surgeon, both surgeons shall bill using the CPT code for the anterior arthrodesis performed, with CPT modifier "-62."

(i) Reimbursement, in this case, for each surgeon shall be 75% of the anterior arthrodesis CPT code MAR.

(ii) When two surgeons bill for an anterior arthrodesis procedure, then an Assistant Surgeon and/or a Surgical Assistant shall not bill or be reimbursed for the anterior arthrodesis procedure.

(6) Bilateral Procedures. Certain CPT codes for bilateral procedures identify both sides of the procedure, whereas other CPT codes identify only half of the bilateral procedure. Bilateral procedures are reimbursed according to the MPR.

(A) When a CPT code identifies half of a bilateral procedure, the second half of the bilateral procedure shall be billed using the appropriate CPT code with CPT modifier "-50." The MPR shall apply.

(B) A CPT code which identifies both portions of a bilateral procedure (e.g., spinal procedures: fusions, instrumentations, and/or nerve decompression procedures) shall only be billed and reimbursed once

(7) Surgical Injections. The following provisions apply to the billing and reimbursement of surgical injection services.

(A) Surgical injections delineated as "per injection" by CPT descriptor and nomenclature warrant additional reimbursement per injection subject to the MPR within the same body area.

(B) Injections delineated as "per level" by CPT descriptor and nomenclature are considered bilateral.

(C) When introducing additional materials through the same puncture site, reimbursement shall be allowed for the materials only. Materials shall be billed using the appropriate HCPCS code, when possible, or the "Supplies and materials..." CPT code. DOP is required. The surgical procedure code shall be billed and reimbursed only once.

(D) When therapeutic injection procedures are performed at an established patient office visit, an office visit charge is indicated only if a significant re-evaluation was necessary. The HCP shall bill and be reimbursed a "minimal" office visit E/M CPT code. DOP is required.

(E) Botulinum toxin (BOTOX) injections shall be billed and reimbursed using the "Unlisted procedure, nervous system" CPT code with modifier "-BX."

(8) Replantation CPT codes shall be reimbursed 100% of the MAR for each replantation procedure. Each digit is considered one replantation procedure. When extensive complications necessitate additional procedures, the MPR shall apply and DOP is required.

(9) Manipulation Under Anesthesia. The following provisions apply to the billing and reimbursement of Manipulation Under Anesthesia (MUA)

(A) MUAs shall be reimbursed only once per body region per session. Appropriate body regions are listed in AMA CPT.

(B) Manipulation of a joint under anesthesia preceded or followed by a surgical procedure on the same joint on the same day shall not be billed or reimbursed separately from the surgical procedure

(10) Neurostimulators (Spinal). Placement of any additional electrode catheter(s)/array(s) or plate(s)/paddle(s) shall be billed and reimbursed separately by adding CPT modifier "-51" to the appropriate CPT code.

(11) Incidental Procedure. An incidental procedure is defined as a surgery performed through the same incision at the same operative session by the same doctor and which is not related to the diagnosis or disorder the operative session was intended for. An incidental procedure (e.g., an appendectomy during a cholecystectomy) shall not be billed or reimbursed separately.

(12) Services Necessary to Stabilize Patient. If an injured employee has a medical condition (e.g., diabetes), then all services necessary to stabilize the injured employee so that surgery or other treatment may be performed safely and/or effectively shall be billed and reimbursed separately. DOP is required.

(13) Surgical Procedures Performed in a Doctor's Office. The following provisions apply to the billing and reimbursement of surgical procedures performed in a doctor's office.

(A) In order for the doctor's office to qualify for facility reimbursement for surgical procedures performed in a doctor's office, the office shall meet all of the following requirements:

(i) a complete and routinely checked crash cart; either a registered nurse, CRNA, or a doctor dedicated to the "facility" room;

(ii) a separate observation or recovery room;

(iii) patient monitoring equipment, including EKG and pulse oximetry equipment; and

(iv) support staff and equipment to ensure that the care received by the patient is the same as that, which would have been in an ambulatory surgical center or in the outpatient surgical ward of a hospital.

(B) If the above listed requirements are met, the only billing and reimbursements allowed for facility charges shall be the following:

(i) Sterile trays (which include all supplies, gloves, utensils, needles, suture material, etc., needed to perform the procedure). These shall be billed using the "Supplies and materials..." CPT code with modifier "-ST". DOP is required if charges billed are $50.00 or greater.

(ii) Anesthesia supplies (which include the administration of the sedative, the IV solution, the catheter/tubing, and drugs.): No additional billing or reimbursement shall be allowed for equipment or staffing. (If the services require the use of complex or prolonged anesthesia or the need for an anesthesiologist or CRNA, the service shall be performed in a hospital or ambulatory surgical center.) This service shall be billed using the "Supplies and materials..." CPT code with modifier "-AS". DOP is required if charges billed are $50.00 or greater.

(iii) Postoperative monitoring (includes the facility, staffing and monitoring equipment): This service shall be billed using the "Unlisted evaluation and management service" code with modifier "-RO". No separate billing or reimbursement shall be allowed for HCP stand-by. Reimbursement shall be per hour and the maximum amount of time allowed shall be four hours. DOP is required.

(14) Operating Microscope. The "Operating Microscope" CPT code shall not be billed or reimbursed in addition to CPT codes that state use of the operating microscope is an inclusive component of the procedure (i.e., the procedure description specifies microsurgical techniques are used), or if another CPT code describes the same procedure being done with an operating microscope. DOP is required.

(15) Intra Discal Electro Thermal (IDET). IDET shall be billed and reimbursed using the "Unlisted procedure, nervous system" CPT code with modifier "-ID."

(f) Anesthesia Ground Rules. HCPs billing Anesthesia professional medical services in the Anesthesia section of the AMA CPT shall utilize the following for correct coding, reporting, billing, and reimbursement of the Anesthesia CPT codes.

(1) General Information and Instructions. The following general provisions apply.

(A) The anesthesiologist providing the medical direction shall remain on-site in the operating suite, and shall extend medical direction to no more than four concurrent anesthetic procedures.

(B) Medical direction excludes simultaneous administration of anesthesia and performance of surgical services by the directing anesthesiologist.

(C) Only the anesthesiologist providing concurrent supervision shall bill and be reimbursed the Total Anesthesia Reimbursement (TAR) of the procedure.

(D) Independent Certified Registered Nurse Anesthetists (CRNAs) may bill and shall be reimbursed when providing anesthesia care within the CRNA scope of practice as defined by state law.

(E) Local infiltration, metacarpal/digital block, or topical anesthesia administered by the surgeon is included in the MAR for the surgical procedure, and shall not be billed or reimbursed separately.

(F) Major regional anesthesia, such as spinal epidural and major peripheral nerve blocks, administered by the surgeon shall be reimbursed according to the basic anesthesia value. Time shall not be billed or reimbursed separately. The appropriate surgical CPT code shall be billed with CPT modifier "-47."

(G) If the major regional anesthesia is provided by the anesthesiologist or CRNA, then reimbursement shall be the basic value, plus any modifying factors, plus time units.

(H) Regional anesthesia excludes the administration of sedatives, tranquilizers, analgesics and other hypnotics, and the oral administration of these shall not be billed or reimbursed separately.

(I) Only the surgeon, anesthesiologist, or CRNA administering diagnostic or therapeutic nerve block(s) shall bill and be reimbursed for the surgical procedure(s). Anesthesia time units shall not be billed or reimbursed in addition to the surgical procedure.

(J) When an anesthesiologist or CRNA bills for a procedure found in another section, then the ground rules of that section shall apply to the CPT code (e.g., injections).

(K) Provisions regarding Conscious Sedation CPT codes are contained in subsection (c) of this section.

(2) Separate or Multiple Procedures. No additional basic value shall be reimbursed for anesthesia provided during additional surgical procedures (other than the major procedure) performed on the same day during the same operative setting. Anesthesia reimbursement for multiple procedures is based on the procedure with the highest basic value, plus modifying factors, plus total time units for all combined surgical procedures.

(3) Billing. The following provisions apply to the billing of Anesthesia services.

(A) Total units shall appear in the units column of the bill (base value + time + modifying units).

(B) Total anesthesia time (in minutes) shall be listed on the bill.

(C) When billing for daily hospital management of intravenous patient-controlled analgesia by an anesthesiologist, the "Unlisted anesthesia procedure(s)" CPT code shall be billed and reimbursed. The TAR shall be calculated using a basic value of 2 units, and neither time units nor modifying factors shall be billed or reimbursed additionally. DOP is required.

(D) Anesthesia for Manipulation Under Anesthesia (MUA), shall be billed and reimbursed using the "Unlisted anesthesia procedure(s)" CPT code. The TAR shall be calculated by using a basic value of 5 units, and neither time units nor modifying factors shall be billed or reimbursed additionally.

(E) Anesthesia services that necessitate the skills and time of the anesthesiologist or CRNA beyond what is usually required (e.g., unusual forms of monitoring, severe multiple injuries, or other factors requiring extended pre- and/or post-operative care), shall be billed using the appropriate anesthesia CPT code with CPT modifier "-22." DOP is required.

(F) Any procedure around the head, neck or shoulder girdle that requires field avoidance; or any procedure compromising the anesthesia administration (e.g., requiring a position other than supine or lithotomy) shall have a minimum basic value of 5.0 units regardless of any lesser basic value assigned to such procedure. The appropriate anesthesia CPT code shall be billed with CPT modifier "-22." DOP is required.

(g) Radiology Ground Rules. HCPs billing professional medical services in the Radiology section of the AMA CPT shall utilize the following for correct coding, reporting, billing, and reimbursement of the Radiology CPT codes.

(1) Imaging centers and radiologic centers (not covered by a hospital's license) shall bill on the HCFA-1500 form.

(2) A complete radiological examination includes all of the necessary views for optimal examination of the body part. Single views comprising a complete examination shall not be billed or reimbursed separately. If the reimbursement of multiple single view CPT codes exceeds the reimbursement of a complete examination CPT code, reimbursement shall be the complete examination CPT code MAR.

(3) When procedures found in another section are performed, then the Ground Rules of that section shall apply to the CPT code (e.g., injections).

(4) The following provisions apply to the billing and reimbursement of the components of radiological services.

(A) To identify a charge for only the professional component of a radiological service, the appropriate CPT code shall be billed with CPT modifier "-26." A written report, signed by the interpreting doctor, shall be considered an integral part of a radiologic procedure or interpretation and shall not be billed or reimbursed separately. The professional component MAR represents the total reimbursement for the professional radiological services of the doctor. The professional component includes:

(i) examination of the patient, when indicated;

(ii) performance and/or supervision of the procedure;

(iii) interpretation, and written report of the examination; and,

(iv) consultation with the referring doctor.

(B) To identify a charge for only the technical component of a radiological service, the appropriate CPT code shall be billed with modifier "-TC." The technical component MAR represents the total reimbursement for the technical services associated with the radiological procedure (with the exception of the cost of radioisotopes, which are reimbursed separately). The technical component includes:

(i) personnel services;

(ii) materials (including ionic contrast media and drugs);

(iii) film or xerograph;

(iv) office space;

(v) equipment; and,

(vi) other facility resources.

(C) To identify a charge for the whole procedure, the appropriate CPT code shall be billed with modifier "-WP." The whole procedure MAR represents the total reimbursement for the professional component and the technical component of the radiological service. Whole procedure MARs are applicable in any situation in which a single charge is made to include both professional services and the technical cost of providing radiological services.

(5) The MARs for injection procedures performed in conjunction with radiological procedures include:

(A) all usual pre-injection and post-injection care specifically related to the injection procedure;

(B) necessary local anesthesia;

(C) placement of needle or catheter; and,

(D) injection of contrast material (with or without auto power injection).

(6) The following provisions apply to the billing and reimbursement of fluoroscopic assistance.

(A) If fluoroscopic assistance (fluoroscopy) is medically necessary when performing an injection, and it is not included in the injection procedure, the HCP shall bill the appropriate injection CPT code and the appropriate fluoroscopy CPT code. DOP is required.

(B) If a videotape of the fluoroscopic assistance (videofluoroscopy) is medically necessary when performing an injection, the HCP shall bill the appropriate injection CPT code and the appropriate fluoroscopy CPT code with modifier "-VT" (for the videotape). DOP is required.

(C) Fluoroscopic assistance is considered part of a myelogram or discogram and shall not be billed or reimbursed separately for those procedures.

(7) The following provisions apply to the billing and reimbursement of contrast materials.

(A) Ionic contrast material for radiological procedure(s) is considered part of the procedure and shall not be billed or reimbursed separately.

(B) Non-ionic contrast material for radiological procedure(s) (excluding material for MRIs) shall be billed and reimbursed using the "Supply of low osmolar contrast material" HCPCS codes.

(C) Contrast material for MRI procedures shall be billed using the "Supply of paramagnetic contrast material" HCPCS code when use of contrast material is medically necessary.

(h) Pathology Ground Rules. HCPs billing professional medical services in the Pathology section of the AMA CPT shall utilize the following for correct coding, reporting, billing, and reimbursement of the Pathology CPT codes.

(1) The MARs for Pathology CPT codes include recording the specimen, performance of the test, and reporting the result. The Pathology MARs do not include specimen collection/transfer or individual patient administrative services.

(2) The following provisions apply to the billing and reimbursement of the components of pathology services.

(A) To identify a charge for the professional component only, the appropriate CPT code shall be billed with CPT modifier "-26." The professional component MAR represents the total reimbursement for the professional pathology services of the doctor. The professional component includes:

(i) examination of the patient, when indicated;

(ii) performance and/or supervision of the procedure, or lab test;

(iii) interpretation and/or written report of the examination, or lab test; and,

(iv) consultation with the referring doctor.

(B) To identify a charge for the technical component only, the appropriate CPT code shall be billed with modifier "TC." The technical component MAR represents the total reimbursement for the technical services associated with the pathology procedure. The technical component includes:

(i) personnel services;

(ii) materials;

(iii) office space;

(iv) equipment; and,

(v) other facility resources normally included in providing the service.

(C) To identify a charge for the whole procedure, the appropriate CPT code shall be billed with modifier "-WP." The whole procedure MAR represents the total reimbursement for the professional component and the technical component of the pathology service. Whole procedure MARs are applicable in any situation in which a single charge is made to include both professional services and the technical cost of providing such services.

(3) Billing for pathology services may be done by the office that collected the specimen or by the laboratory that performed the testing on the specimen.

(A) If the billing for the laboratory testing is done by the office collecting the specimen (e.g., the doctor's office), then the appropriate CPT code with CPT modifier "-90" shall be billed. Billing for those CPT codes shall only be what is charged to the collecting office by the reference laboratory (i.e., the laboratory performing the tests). In addition, the collecting office shall bill for a "handling" charge using CPT codes from the Medicine section.

(B) If the billing for the laboratory testing is done by the reference laboratory, not the collecting office, then the appropriate CPT code shall be billed and CPT modifier "-90" shall not be added. The collecting office (e.g., the doctor's office) shall only bill for a "handling" charge using CPT codes from the Medicine section.

(4) When billing for panel tests, the CPT code corresponding to the appropriate panel test shall be billed and reimbursed. Tests comprising the panel shall not be billed or reimbursed separately. Tests performed in addition to a particular panel or a second panel of tests shall be billed and reimbursed separately.

(i) TWCC Specific Services. HCPs billing TWCC Specific Services shall utilize the following for correct coding, reporting, billing, and reimbursement of these services.

(1) Spinal Surgery Second Opinions pursuant to §133.206 of this title (relating to Spinal Surgery Second Opinion Process) shall be billed and reimbursed as follows.

(A) The following codes shall be billed for spinal surgery second opinion services:

(i) WC001--for spinal surgery second opinion examinations;

(ii) WC002--if the injured employee fails to show up for a scheduled spinal surgery second opinion examination or if a spinal surgery second opinion examination is canceled by the injured employee with less than twenty four hours notice; and,

(iii) WC003--for reconsideration of an earlier decision, which will include a review of an injured employee's case regardless of whether a change of condition exists.

(B) The MARs for Spinal Surgery Second Opinions are:

(i) WC001--$350.00

(ii) WC002--$100.00

(iii) WC003--$150.00

(2) Maximum Medical Improvement and/or Impairment Rating (MMI/IR) shall be billed and reimbursed as follows.

(A) The total MAR for an MMI/IR examination shall be equal to the MMI examination reimbursement plus the reimbursement for the body area(s) rated for the assignment of an IR. The total MAR for determination of MMI/IR shall include:

(i) the examination;

(ii) consultation with the injured employee;

(iii) review of the records and films;

(iv) the preparation and submission of reports (including TWCC required forms, narrative report, and responding to the need for further clarification, explanation, or reconsideration), calculation tables, figures, and worksheets;

(v) range of motion, strength and sensory testing, and measurements; and,

(vi) other tests used to validate the IR.

(B) For IR testing, the HCP shall indicate the number of body areas rated in the units column of the billing form. Body areas shall be billed and reimbursed as follows:

(i) The examining doctor may bill for a maximum of three musculoskeletal body areas.

(I) Musculoskeletal body areas are defined as follows:

(-a-) spine and pelvis;
(-b-) upper extremities and hands; and,
(-c-) lower extremities (including feet).

(II) The MAR for musculoskeletal body areas shall be:

(-a-) one musculoskeletal body area: $300.00; and,

(-b-) each additional musculoskeletal body area: $150.00.

(III) When the examining doctor conducts the MMI examination and the IR testing, the examining doctor shall bill using the appropriate MMI/IR code with modifier "-WP." Reimbursement shall be 100% of the total MAR.

(IV) If the examining doctor conducts the MMI examination and determines the assignment of IR, excluding the testing, then the examining doctor shall bill using the appropriate MMI/IR code with CPT modifier "-26." Reimbursement shall be 80% of the total MAR.

(V) If testing is performed by a HCP other than the examining doctor, then the HCP shall bill using the appropriate MMI/IR code with modifier "-TC." Reimbursement shall be 20% of the total MAR.

(ii) Other body areas shall be billed and reimbursed using the appropriate CPT code(s) for the tests required for the assignment of IR.

(I) Other body areas are follows:

(-a-) body systems;
(-b-) body structures (including skin); and,
(-c-) mental and behavioral disorders.

(II) For a complete list of these body areas refer to the AMA Guides to the Evaluation of Permanent Impairment, as stated in the commission Act and Rules Chapter 130 relating to Impairment and Supplemental Income Benefits.

(C) When testing is required for the assignment of IR and the examining doctor refers the testing to a specialist, then the following shall apply:

(i) The examining doctor (e.g., the referring doctor) shall bill specialist referred testing as one unit on the billing form using the appropriate MMI/IR code. Reimbursement shall be $50.00 for incorporating one or more specialists' report information into the final IR. This reimbursement shall be allowed only once per examination.

(ii) The referral specialist shall bill and be reimbursed for the appropriate CPT code(s) for the tests required for the assignment of IR. DOP is required.

(D) The treating doctor shall bill for an MMI/IR examination using the "Work related or medical disability examination by the treating physician..." CPT code with the appropriate modifier.

(i) Reimbursement for the determination of MMI shall be the applicable established patient office visit level associated with the examination. Modifiers "-T1", "-T2", "-T3", "-T4", or "-T5" shall be added to the "Work related or medical disability examination by the treating physician..." CPT code to correspond with the last digit of the applicable office visit.

(ii) Reimbursement for the determination of an IR shall be according to the areas rated.

(iii) If the treating doctor refers the injured employee to another doctor for the certification of MMI and assignment of IR and the referral doctor has:

(I) not previously treated the injured employee, then the referral doctor shall bill using the "Unlisted evaluation and management service" CPT code and the reimbursement shall be as outlined for Required Medical Examinations (RME); or,

(II) previously been treating the injured employee, then the billing and reimbursement shall be as outlined for the treating doctor.

(iv) The treating doctor is required to review the certification of MMI and assignment of IR performed by another doctor (other than the designated doctor) as required by Chapter 130 of this title. The treating doctor shall bill using the "Work related or medical disability examination by the treating physician..." CPT code with modifier "-RP" to indicate a review of the report only, and shall be reimbursed $50.00.

(E) A designated doctor shall bill for an MMI/IR examination using the "Work related or medical disability examination

by other than the treating physician..." CPT code with the appropriate modifier.

(i) Reimbursement for the determination of MMI shall be based on the amount of time that has elapsed since the date of injury (DOI). One of the following modifiers shall be added to the "Work related or medical disability examination by other than the treating physician..." CPT code:

(I) D1 (less than one year since the DOI)--$200.00

(II) D2 (greater than or equal to one year and less than two years since the DOI)--$300.00

(III) D3 (greater than or equal to two years since the DOI)--$400.00

(ii) Reimbursement for the determination of an IR shall be according to the areas rated. If the testing is performed by a HCP other than the designated doctor, then to qualify for reimbursement, the testing HCP shall:

(I) not have previously examined or treated the injured employee within the past 12 months, or with regard to the medical condition being evaluated by the designated doctor; and,

(II) must have successfully completed commission-approved training in the proper use of the AMA Guides.

(iii) When the result of the evaluation is that MMI has not been reached, the total reimbursement shall be $350.00. This reimbursement shall include all services required for an MMI/IR examination excluding those services unique to assigning an IR. The designated doctor shall bill using the "Work related or medical disability examination by other than the treating physician..." CPT code with modifier "-NM."

(iv) Appointments canceled or not attended by the injured employee, with less than 24 hours notice to the designated doctor, shall be billed using the "Work related or medical disability examination by other than the treating physician..." CPT code with modifier "-BA" and the reimbursement shall be $100.00.

(F) A doctor performing a Required Medical Examination (RME) for the purpose of certifying MMI and assigning an IR shall bill using the "Unlisted evaluation and management service" CPT code with the appropriate modifier.

(i) Reimbursement for the determination of MMI shall be based on the amount of time that has elapsed since the date of injury (DOI). One of the following modifiers shall be added to the "Unlisted evaluation and management service" CPT code:

(I) R1 (first RME if less than one year from DOI or any subsequent RMEs)--$100.00

(II) R2 (first RME if greater than or equal to one year and less than two years since the DOI)--$200.00

(III) R3 (first RME if greater than or equal to two years since the DOI)--$300.00

(ii) Reimbursement for the determination of an IR shall be according to the areas rated.

(iii) When the result of the evaluation is that MMI has not been reached, the total reimbursement shall be $350.00. This reimbursement shall include all services required for an MMI/IR excluding those services unique to assigning an IR. The RME doctor shall bill using the "Unlisted evaluation and management service" CPT code with modifier "-NM."

(iv) Appointments scheduled by the commission or the insurance carrier and canceled or not attended by the injured employee, with less than 24 hours notice to the doctor, shall be billed using the "Unlisted evaluation and management service" CPT code with modifier "-BA" and the reimbursement shall be $100.00.

(v) An injured employee's treating doctor attending an RME shall bill using the "Unlisted evaluation and management service" CPT code with modifier "-AR." Reimbursement shall be $25.00 per 15-minute increment (any amount over ten minutes shall be considered an additional 15 minute increment). A maximum of four hours shall be allowed, unless the insurance carrier previously approved extended time.

(vi) When conducting a commission or insurance carrier requested RME that is not for the purpose of certifying MMI/IR (e.g. evaluation of medical care), the RME doctor shall bill using the appropriate consultation CPT code with modifier "-RM." Appointments canceled or not attended by the injured employee with less than 24 hours notice to the HCP shall be billed using the "Unlisted evaluation and management service" CPT code with modifier "-BA," and reimbursement shall be $50.00.

(3) When a designated doctor is appointed by the commission to perform an examination to resolve a return to work dispute, the designated doctor shall bill using the "Unlisted evaluation and management service" CPT code with modifier "-RW." The reimbursement shall be $500.00 and shall include commission-required reports. Appointments scheduled by the commission and canceled or not attended by the injured employee, with less than 24 hours notice to the designated doctor, shall be billed using the "Unlisted evaluation and management service" CPT code with modifier "-BA" and the reimbursement shall be $100.00

(4) When billing for a Work Status Report refer to the commission Act and Rules Chapter 129 relating to Income Benefits--Temporary Income Benefits.

(j) HCPCS Level II. HCPs billing HCPCS Level II codes shall utilize the following for correct coding, reporting, billing, and reimbursement of HCPCS codes A, E, J, K, L and modifiers.

(1) Orthotics/Prosthetics. Orthotics/Prosthetics services shall be billed using the appropriate HCPCS code (K and/or L codes). CPT codes shall only be used when the service rendered does not fit the descriptions/codes provided in the HCPCS system.

(2) Durable Medical Equipment (DME). DME refers to those items that can withstand repeated use, are primarily used to serve a medical purpose, are generally not useful to a person in the absence of illness, injury, or disease; and, are appropriate for use in the injured employee's home.

(A) The insurance carrier and/or HCP may recommend DME providers, but the injured employee shall have the right to choose the DME provider.

(B) Reimbursement shall be based upon the presumption that the injured employee is being provided high quality equipment/supplies for the treatment of the compensable work-related injury/illness.

(i) A written order/prescription shall accompany initial bills submitted to the insurance carrier for the rental or purchase of DME. Any verbal order given by the doctor to the DME provider shall be followed by a written order/prescription prior to billing for the DME equipment/supplies. DOP is required (including prognosis and the expected duration the equipment or supplies will be required).

(ii) The purchase and/or rental of DME shall be billed using the appropriate HCPCS code with a modifier.

(iii) When no HCPCS code is available for the DME and/or supplies provided to the injured employee, the DME provider shall bill using the "Durable medical equipment, miscellaneous" HCPCS code. DOP is required.

(iv) Storage, shipping, handling, taxes, etc. are included in the DME provider's usual and customary charge and shall not be billed or reimbursed separately.

(C) Supplies shall be provided on a monthly basis and only at the request of, or on behalf of, the injured employee. Documentation for distribution of supplies shall be provided when requested by the commission.

(D) Rental charges shall be based on a monthly rate unless otherwise specified.

(i) Rental charges are applicable for short-term utilization up to 60 days, unless the treating/referral doctor provides medical justification for an extension beyond the initial 60 days.

(ii) The rental payment(s) shall apply toward the purchase of the rental item.

(iii) When cumulative rental totals per item exceeds $500 (e.g. $100/month for 6 months) continued rental of the item shall be subject to the commission preauthorization rules.

(iv) The return of rented equipment is the dual responsibility of the injured employee and the DME HCP. The insurance carrier shall not be responsible for the return of rented equipment and shall not reimburse for additional rental periods solely because of a delay in equipment return.

(E) The cost of repair or maintenance of DME shall be:

(i) the responsibility of the DME provider at no additional charge, if the DME is rented; or,

(ii) the responsibility of the insurance carrier, subject to warranty provisions, if the DME is purchased from the DME provider.

(F) The DME provider shall provide a warranty agreement for those items purchased or reimbursed by the insurance carrier. The starting date of the warranty is deemed to be the date of purchase.

(i) For the purchase of a new DME item, the DME provider shall inform the injured employee and the insurance carrier of any warranty provided by the DME manufacturer.

(ii) For the purchase of a used DME item the DME provider shall provide a 90-day warranty agreement to the injured employee and the insurance carrier.

(G) Transcutaneous Electrical Nerve Stimulator (TENS) and/or Neuromuscular Electrical Nerve Stimulators (NENS) units shall meet the standards established by the American National Standard Association for the Advancement of Medical Instrumentation.

(i) The purchase price shall include:

(I) unit lead wires for a channel unit;

(II) instruction booklet;

(III) warranty information;

(IV) two (2) batteries (either replaceable or rechargeable); and,

(V) a battery charger (for rechargeable batteries).

(ii) All TENS supplies shall be itemized and billed using the "Durable medical equipment, miscellaneous" code. Reimbursement shall not exceed $85.00 per month except in those unusual cases where additional supplies are medically necessary (DOP is required). No additional supply codes shall be billed or reimbursed in addition to the "Durable medical equipment, miscellaneous" code.

(H) Continuous Passive Motion (CPM) Equipment is rented on a daily basis and shall be billed using the "Passive motion exercise device" HCPCS code. Only one set of soft goods shall be reimbursed per injured employee.

(k) Dental Services. HCPs billing dental services shall utilize the following for the correct coding, reporting, billing, and reimbursement of services.

(1) Dental services provided under the Texas Workers' Compensation Act shall include the repair or replacement of those teeth and oral structures related to the compensable injury. Examples of services that are not covered by workers' compensation insurance include:

(A) all preventative services;

(B) multiple units of fixed prosthetics exceeding the number of teeth involved in the original injury, except necessary abutments and/or implants;

(C) hair and tissue analysis;

(D) treatments based on mercury toxicity;

(E) silent period durations;

(F) jaw tracking not induced by trauma; and,

(G) mandibular kinesiography not induced by trauma.

(2) Reimbursement is allowed only when a licensed dentist is performing services within the dentist's scope of practice or when a nonlicensed individual is providing care under the direct supervision of a licensed dentist.

(3) Prefix "DS" shall be listed before each Current Dental Terminology (CDT) code.

(4) Reimbursement for laboratory procedures performed in dental laboratories are included in the reimbursement for the CDT code(s).

(5) For reimbursement of multiple procedures, the Multiple Procedure Rule in subsection (d) of this section shall be applied.

(l) TWCC Modifiers. HCPs billing professional medical services shall utilize the following modifiers, in addition to the modifiers in the documents adopted by reference in §134.203 of this title (relating to Professional Services Codes), for correct coding, reporting, billing, and reimbursement of the procedure codes.

(1) -73, Work Status Report--This modifier shall be used by doctors billing for Work Status Reports. For additional billing information refer to Chapter 129 of this title (relating to Income Benefits--Temporary Income Benefits).

(2) -AC, Anesthesia by Certified Registered Nurse Anesthetist (CRNA)--This modifier shall be added to the anesthesia CPT code(s) when the CRNA works independently of the anesthesiologist's supervision to provide the total anesthesia care.

(3) -AP, Combination Anterior/Posterior Spinal Procedures--This modifier shall be added to all surgical CPT codes

performed to complete the combination anterior/posterior surgical procedure.

(4) -AR, Treating Doctor Attendance at RME--This modifier shall be added to the "Unlisted evaluation and management service" CPT code to indicate an injured employee's treating doctor attended an RME.

(5) -AS, Anesthesia Supplies--This modifier shall be added to the "Supplies and materials..." CPT code for anesthesia supplies when surgical procedures requiring anesthesia are performed in a doctor's office.

(6) -AT, Autotraction--This modifier shall be used with the "Unlisted therapeutic procedure" CPT code when autotraction is used for treatment.

(7) -A1, Supervision of a CRNA by an Anesthesiologist--This modifier shall be added to the anesthesia CPT code(s) when the Anesthesiologist is directing one anesthetic procedure. The anesthesiologist shall be reimbursed 100% of the total anesthesia reimbursement (TAR).

(8) -A2, Concurrent Supervision of Two CRNAs by an Anesthesiologist--This modifier shall be added to the anesthesia CPT code(s) when the Anesthesiologist is directing two concurrent anesthetic procedures. The reimbursement shall be at 90% of the TAR.

(9) -A3, Concurrent Supervision of Three CRNAs by an Anesthesiologist--This modifier shall be added to the anesthesia CPT code(s) when the Anesthesiologist is directing three concurrent anesthetic procedures. The reimbursement shall be at 80% of the TAR.

(10) -A4, Concurrent Supervision of Four CRNAs by an Anesthesiologist--This modifier shall be added to the anesthesia CPT code(s) when the Anesthesiologist is directing four concurrent anesthetic procedures. The reimbursement shall be at 70% of the TAR.

(11) -BA, Broken Appointment--Appointments scheduled by the commission or the insurance carrier and canceled or not attended by the injured employee, with less than 24 hours notice to the HCP, shall be billed adding modifier "-BA" to the appropriate CPT code.

(12) -BX, Botulinum toxin (BOTOX)--This modifier shall be used with the "Unlisted procedure, nervous system" CPT code when BOTOX treatment is performed.

(13) -CA, Commission of Accreditation of Rehabilitation Facilities (CARF) Accredited programs--This modifier shall be used when an HCP bills for a Return To Work Rehabilitation Program that is CARF accredited.

(14) -CM, Continuous Passive Motion--This modifier shall be used with the "Unlisted modality" CPT code when a continuous passive motion device is used for treatment.

(15) -CP, Chronic Pain Management--This modifier shall be used with the "Unlisted physical medicine/rehabilitation service or procedure" CPT code for chronic pain management.

(16) -DC, Dressing Changes--This modifier shall be used with the "Unlisted therapeutic procedure" CPT code for dressing changes.

(17) -D1, Time of MMI/IR for Designated Doctor--This modifier shall be added to the "Work related or medical disability examination by other than the treating physician..." CPT code when the amount of time that has elapsed since the date of injury is less than one year.

(18) -D2, Time of MMI/IR for Designated Doctor--This modifier shall be added to the "Work related or medical disability examination by other than the treating physician..." CPT code when the amount of time that has elapsed since the date of injury is greater than or equal to one year and less than two years.

(19) -D3, Time of MMI/IR for Designated Doctor--This modifier shall be added to the "Work related or medical disability examination by other than the treating physician..." CPT code when the amount of time that has elapsed since the date of injury is greater than or equal to two years.

(20) -EC, Taping to Stabilize or Align--This modifier shall be used with the "Unlisted therapeutic procedure" CPT code when taping is used to stabilize or align the joint.

(21) -EM, Surface EMG--This modifier shall be used with the "Unlisted physical medicine/rehabilitation service or procedure" CPT code when a surface EMG is performed.

(22) -EU, Simultaneous Electrical Stimulation/Ultrasound--This modifier shall be used with the "Unlisted therapeutic procedure" CPT code when simultaneous electrical stimulation/ultrasound is performed.

(23) -FC, Functional Capacity--This modifier shall be used with the "Physical performance test or measurement..." CPT code when a functional capacity evaluation is performed.

(24) -FT, Fluidotherapy--This modifier shall be used with the "Unlisted modality" CPT code when fluidotherapy is performed.

(25) -GS, Global Service--This modifier shall be used to denote a service that is included in a surgical procedure and is not reimbursed separately but is being documented separately.

(26) -H1, Home Health Agency Services--This modifier shall be used to indicate home health services rendered by a Registered Nurse.

(27) -H2, Home Health Agency Services--This modifier shall be used to indicate home health services rendered by a Licensed Vocational Nurse.

(28) -H3, Home Health Agency Services--This modifier shall be used to indicate home health services rendered by a Certified Nurse Assistant.

(29) -H4, Home Health Agency Services--This modifier shall be used to indicate home health services rendered by other HCPs (e.g., Occupational Therapist, Physical Therapist, Speech Therapist) when the service does not match any other CPT code.

(30) -H5, Home Health Agency Services--This modifier shall be used to indicate home health services rendered by a Home Health Aide

(31) -HE, HE-NE Laser--This modifier shall be used with the "Unlisted modality" CPT code for HE-NE laser treatment.

(32) -ID, Intra Discal Electro Thermal (IDET)--This modifier shall be used with the "Unlisted procedure, nervous system" CPT code when IDET treatment is performed.

(33) -JA, Job Site Analysis/Assessment--This modifier shall be used with the "Unlisted physical medicine/rehabilitation service or procedure" CPT code when a job site visit/assessment is performed.

(34) -ME, Muscle Energy Technique--This modifier shall be used with the "Unlisted therapeutic procedure" CPT code when the muscle energy technique is used for treatment.

(35) -MR, Outpatient Medical Rehabilitation--This modifier shall be used with the "Unlisted physical medicine/rehabilitation service or procedure" CPT code for outpatient medical rehabilitation.

(36) -MT, Muscle Testing--This modifier shall be used with the "Physical performance test or measurement..." CPT code when muscle testing is performed.

(37) -NM, Not at Maximum Medical Improvement (MMI)--This modifier shall be used to indicate that the injured employee has not reached MMI when the purpose of the exam was to determine MMI.

(38) -NP, Nurse Practitioner--This modifier shall be used to indicate a Nurse Practitioner performed an E/M service under the supervision of a doctor. Reimbursement shall be 80% of the MAR.

(39) -OP, One Patient--This modifier shall be used with "physician educational services rendered to patients in a group setting " CPT code to indicate patient education in a one-on-one setting. DOP is required.

(40) -PA, Certified Physician Assistant (PA)--This modifier shall be used to indicate a Certified Physician Assistant performed an E/M service under the supervision of a doctor. Reimbursement shall be 80% of the MAR.

(41) -PH, Phonophoresis--This modifier shall be used with the "Unlisted therapeutic procedure" CPT code when phonophoresis is used for treatment.

(42) -PO, Positional Release--This modifier shall be used with the "Unlisted therapeutic procedure" CPT code when positional release is used for treatment.

(43) -RM, Required Medical Examination--RME not for the purpose of certifying MMI or assessing an impairment rating (IR). This examination is established at the request of the commission or the insurance carrier, modifier "-RM" shall be added to the appropriate consultation CPT code.

(44) -RO, Recovery Room in a Doctor's Office--This modifier shall be added to the "Unlisted evaluation and management service" CPT code for postoperative monitoring services when surgical procedures are performed in the doctor's office.

(45) -RP, Review Report--This modifier shall be added to the "Work related or medical disability examination by the treating physician..." CPT code to indicate that the service was the treating doctor's review of report(s) only.

(46) -RW, Required Return-to-Work Exam--This modifier shall be added to the "Unlisted evaluation and management service" CPT code when a designated doctor is appointed by the commission to perform an examination to resolve return to work disputes.

(47) -R1, Time of MMI/IR for RME Doctor--This modifier shall be added to the "Unlisted evaluation and management service" CPT code when the amount of time that has elapsed since the date of injury is less than one year; or, for any subsequent RMEs.

(48) -R2, Time of MMI/IR for RME Doctor--This modifier shall be added to the "Unlisted evaluation and management service" CPT code when the amount of time that has elapsed since the date of injury is greater than or equal to one year and less than two years.

(49) -R3, Time of MMI/IR for RME Doctor--This modifier shall be added to the "Unlisted evaluation and management service" CPT code when the amount of time that has elapsed since the date of injury is greater than or equal to two years.

(50) -SA, Surgical Assistant--This modifier shall be used when a Certified Physician Assistant (PA) or Certified Surgical Technologist/Certified First Assistant (CST/CFA) perform as the surgical assistant (in lieu of an Assistant Surgeon).

(51) -SS, Spray and Stretch--This modifier shall be used with the "Unlisted therapeutic procedure" CPT code when spraying and stretching is performed.

(52) -ST, Sterile Trays--This modifier shall be added to the "Supplies and materials..." CPT code for sterile trays when surgical procedures are performed in a doctor's office.

(53) -TC, Technical Component--This modifier shall be added to the CPT code when the technical component of a procedure is billed separately.

(54) -TM, Telemedicine--This modifier shall be used with the appropriate E/M CPT code to identify a telemedicine service. Only interactive video teleconferencing shall be reimbursed.

(55) -TN, TENS Application for Trial Basis--This modifier shall be used with the "Unlisted therapeutic procedure" CPT code when TENS application is being performed on a trial basis. This service includes supplies and training.

(56) -TT, Tilt Table--This modifier shall be used with the "Unlisted therapeutic procedure" CPT code when a standing frame tilt table is used for treatment.

(57) -T1, Level of MMI for Treating Doctor--This modifier shall be added to the "Work related or medical disability examination by the treating physician..." CPT code when the office visit level of service is equal to a "minimal" level.

(58) -T2, Level of MMI for Treating Doctor--This modifier shall be added to the "Work related or medical disability examination by the treating physician..." CPT code when the office visit level of service is equal to "self limited or minor" level.

(59) -T3, Level of MMI for Treating Doctor--This modifier shall be added to the "Work related or medical disability examination by the treating physician..." CPT code when the office visit level of service is equal to "low to moderate" level.

(60) -T4, Level of MMI for Treating Doctor--This modifier shall be added to the "Work related or medical disability examination by the treating physician..." CPT code when the office visit level of service is equal to "moderate to high severity" level and of at least 25 minutes duration.

(61) -T5, Level of MMI for Treating Doctor--This modifier shall be added to the "Work related or medical disability examination by the treating physician..." CPT code when the office visit level of service is equal to "moderate to high severity" level and of at least 45 minutes duration.

(62) -VT, Video Tape--This modifier shall be used when a videotape of the fluoroscopic assistance was medically necessary when performing an injection.

(63) -VX, Vertebral Axial Decompression (VAX-D)--This modifier shall be used with the "Unlisted therapeutic procedure" CPT code when performing VAX-D treatment.

(64) -WC, Work Conditioning--This modifier shall be used with the "Work hardening/conditioning" CPT code when work conditioning is performed.

(65) -WH, Work Hardening--This modifier shall be used with the "Work hardening/conditioning" CPT code when work hardening is performed.

(66) -WP, Whole Procedure--This modifier shall be added to the CPT code when both the professional and technical components of a procedure are performed by a single HCP.

§134.208. Severability.

Where any terms or sections of this subchapter or its application to any person or circumstance are determined by a court of competent jurisdiction to be invalid, the invalidity does not affect other provisions or applications of this subchapter that can be given effect without the invalidated provision or application.

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

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

TRD-200103677
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: August 12, 2001
For further information, please call: (512) 804-4287

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

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

CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code §217.1 concerning the minimum standards for initial licensure. In §217.1 subsection (g)(1)(C) of this section has been changed to be consistent with Commission practice. The amendment proposes the elimination of some of the language in subsection (g)(1)(C) of this section concerning the requirement of at least one-year paid full-time employment as a law enforcement officer. This amendment also proposes a change to the effective date in subsection (n) of this section.

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

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

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

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

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

§217.1. Minimum Standards for Initial Licensure.

(a) The commission shall issue a peace officer, jailer, temporary jailer, or public security officer license to an applicant who meets the following standards:

(1) minimum educational requirements:

(A) have passed a general educational development (GED) test indicating high school graduation level;

(B) be a high school graduate; or

(C) have 12 semester hours credit from an accredited college or university.

(2) for peace officers and armed public security officers, be 21 years of age, or 18 years of age if the applicant has received an associate's degree or 60 semester hours of credit from an accredited college or university or has received an honorable discharge from the armed forces of the United States after at least two years of active service; for jailers be 18 years of age;

(3) be fingerprinted and be subjected to a search of local, state and national records and fingerprint files to disclose any criminal record;

(4) not ever have been or currently on court-ordered community supervision or probation for any criminal offense above the grade of Class B misdemeanor or a Class B misdemeanor within the last ten years;

(5) not currently under indictment for any criminal offense;

(6) not ever have been convicted of an offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years;

(7) never have been convicted of any family violence offense;

(8) is not prohibited by state or federal law from operating a motor vehicle;

(9) is not prohibited by state or federal law from possessing firearms or ammunition;

(10) be subjected to a background investigation and be interviewed prior to appointment by representatives of the appointing authority;

(11) be examined by a physician, selected by the appointing or employing agency, who is licensed by the Texas State Board of Medical Examiners. The physician must be familiar with the duties appropriate to the type of license sought and appointment to be made. The appointee must be declared in writing by that professional within 180 days before the date of appointment by the agency to be:

(A) physically sound and free from any defect which may adversely affect the performance of duty appropriate to the type of license sought; and

(B) show no trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test;

(12) be examined by a psychologist, selected by the appointing or employing agency, who is licensed by the Texas State Board of Examiners of Psychologists. The psychologist must be familiar with the duties appropriate to the type of license sought and appointment to be made. This examination may also be conducted by a psychiatrist. The appointee must be declared in writing by that professional to be in satisfactory psychological and emotional health to serve as the type of officer for which the license is sought within 180 days before the date of appointment by the agency. The examination must be conducted pursuant to professionally recognized standards and methods:

(A) the commission may allow for exceptional circumstances where a licensed physician performs the evaluation of psychological and emotional health. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; and

(B) the examination may be conducted by a qualified psychologist exempt from licensure by the Psychologist Certification and Licensing Act, Section 22, who is recognized under exceptional circumstances;

(13) not have been discharged from any military service under less than honorable conditions including, specifically;

(A) under other than honorable conditions;

(B) bad conduct;

(C) dishonorable; or

(D) any other characterization of service indicating bad character;

(14) not have had a commission license denied by final order or revoked, or have a voluntary surrender of license currently in effect;

(15) meet the minimum training standards and pass the commission licensing examination for each license sought;

(16) not violate any commission rule or provision of Occupations Code, Chapter 1701.

(b) A person who fails to comply with the standards set forth in this section shall not accept the issuance of a license and shall not accept any appointment. If an application for licensure is found to be false or untrue, it is subject to cancellation or recall.

(c) For the purposes of this section, the commission will construe any court-ordered community supervision, probation or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

(1) another penal provision of Texas law; or

(2) a penal provision of any other state, federal, military or foreign jurisdiction.

(d) A classification of an offense as a felony at the time of conviction will never be changed because Texas law has changed or because the offense would not be a felony under current Texas laws.

(e) An agency must retain records required under this section for a minimum of five years after the licensee's termination date with that agency. These records must be maintained in a format readily accessible to the commission.

(f) An agency must report to the commission any failure to appoint an individual in the reported capacity within 30 days of the reported date of appointment. Such report must be made in the currently prescribed commission format for termination.

(g) A person must successfully complete the minimum training required for the license sought;

(1) training for the peace officer license consists of:

(A) the current basic peace officer course; or

(B) the criminal justice transfer curriculum, the Texas peace officer sequence identified and approved by the commission, and at least an associate's degree; or

(C) out of state licensure or certification, submission of the current eligibility application and fee, [~~at least one year paid full time employment as a law enforcement officer,~~] and successful completion of a POST commission recognized, developed basic law enforcement training course;

(2) training for the jailer license consists of the current basic county corrections course(s);

(3) training for the public security officer license consists of the current basic peace officer course;

(4) have passed any examination required for the license sought, within two years of commission receipt of the licensing application; and

(5) the licensing application must be submitted to the commission by a law enforcement or other appointing agency on the completed application format currently prescribed by the commission for the license sought.

(h) The commission shall issue a peace officer or jailer license to any person who is otherwise qualified for that license, even if that person is not subject to the licensing law or rules by virtue of election or appointment to office under the Texas Constitution.

(i) A sheriff who first took office on or after January 1, 1994, must be licensed by the commission not later than two years after taking office.

(j) A constable who first took office on or after January 1, 1985, must be licensed by the commission not later than two years after taking office. A constable taking office after August 30, 1999, must be licensed by the commission not later than 270 days after taking office.

(k) The commission may issue a provisional license, consistent with Occupations Code 1701.311, to an agency for a person to be appointed by that agency upon a written request to the executive director. The request should state the reasons that the agency desires a provisional license and must be signed and dated by the chief administrator. This request must be approved by the executive director before the individual is appointed.

(l) A provisional license is issued in the name of the applicant; however, it is issued to and shall remain in the possession of the agency. Such a license may neither be transferred by the applicant to another agency, nor by the agency to another applicant.

(m) A provisional license or temporary jailer license may not be reissued and expires:

(1) 12 months from the original appointment date; or

(2) on leaving the appointing agency.

(n) The effective date of this section is <u>November</u> [~~March~~] 1, 2001.

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

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

TRD-200103748
Edward T. Laine
Chief, Professional Standards and Administrative Operations
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: November 1, 2001
For further information, please call: (512) 936-7700

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37 TAC §217.7

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code §217.7 concerning the reporting of the appointment and termination of a licensee. In §217.7, subsection (d) of this section, has been amended to be consistent with Commission practice. In addition, §217.7 is being changed to be consistent with the philosophy of the rules committee. It was not the intent of the committee to require all persons transferring from one agency to another to meet the current minimum standards for licensure. The committee did discuss the issue and felt that it would be appropriate to require those with at least a two year break in service to meet the current minimum standards for licensure. This amendment also proposes a change to the effective date in subsection (i) of this section.

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

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

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

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

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

§217.7. Reporting the Appointment and Termination of a Licensee.

(a) Before hiring or appointing a person who already holds a commission license, an agency shall contact the commission, electronically or in writing, to determine whether the commission has employment history records on that person. If employment history records exist, then the agency shall contact the previous employing agency(ies) in writing to request employment information.

(b) In order to receive information from employment history records regarding the reasons for resignation or termination submitted by a former appointing agency, the inquiring agency must request the information in writing on the agency's letterhead. The request must be signed by the agency chief administrator or designee. The request must be accompanied by a commission form that authorizes release of that information. This form must be signed and sworn to by the person who is the subject of the report.

(c) An agency that appoints a person who already holds a valid, active license appropriate to that position must notify the commission of such appointment not later than 30 days after the date of appointment. This notification must be made in the currently prescribed commission format that reports appointment. This format must be completed, and filed with the commission by the agency's chief administrator.

(d) Before appointing a person who<u>has had a break in service of at least two years, [</u>~~already holds a commission license~~] an agency shall ensure <u>that</u> the person meets the current minimum standards for licensure.

(e) If the appointment is made after a 180-day break in appointment, the agency must have the following on file and readily accessible to the commission:

(1) a new criminal history check by name, sex, race and date of birth from both TCIC and NCIC;

(2) a new declaration of psychological and emotional health;

(3) a new declaration of lack of any drug dependency or illegal drug use; and

(4) two completed applicant fingerprint cards or, pending receipt of such cards, an original sworn, notarized statement by the applicant:

(A) of his or her complete criminal history, or

(B) that he or she meets the current academy enrollment standards. Such affidavit may be maintained by the agency while awaiting the return of completed applicant fingerprint card.

(f) An agency must retain records kept under this section for a minimum of five years after the licensee's termination date with that agency. The records must be maintained in a format readily accessible to the commission.

(g) When a person licensed by the commission resigns from appointment or employment with an agency or if a person's appointment or employment is terminated for any reason, the agency shall submit a report to the commission in the currently prescribed commission format that reports resignation or termination, including all emergency telecommunicators. The report shall be submitted within 30 days following the date of resignation or termination. The report shall include an explanation of the circumstances under which the person resigned or was terminated. The agency shall provide the person who is the subject of the report a copy of the report. The person may submit a written statement to the commission to contest or explain any matters contained in the report.

(h) A report or statement submitted under this section is exempt from disclosure under the Public Information Act, Chapter 552, Government Code and is subject to subpoena only in a judicial proceeding.

(i) The effective date of this section is <u>November</u> [~~March~~] 1, 2001.

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

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

TRD-200103749
Edward T. Laine
Chief, Professional Standards and Administrative Operations
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: November 1, 2001
For further information, please call: (512) 936-7700

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PART 8. PRIVATE SECTOR PRISON INDUSTRIES OVERSIGHT AUTHORITY

CHAPTER 245. GENERAL PROVISIONS

37 TAC §§245.11, 245.22, 245.30, 245.47

The Private Sector Prison Industries Oversight Authority Board proposes amendments to §§245.11, 245.22, 245.30, and 245.47 concerning the establishment of the Private Sector Prison Industries Expansion Account, eliminating the requirement for participating agencies or private industry partners from paying an equivalent amount to unemployment insurance taxes. The change also provides an avenue for the Private Sector Oversight Authority Board to direct where Victims Compensation funds are donated and several administrative changes. Proposed §245.11 defines requirements set out in House Bill (HB) 1617, 77th Legislature, 2001.

Robert F. Carter, Program Specialist for the Prison Industries Enhancement Program, and Joe H. Thrash, Assistant Attorney General representing the Board, have determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government.

Mr. Carter and Mr. Thrash have also determined that the public benefit anticipated as a result of enforcing the sections as proposed is that the amendments conform the Board rules with the changes in the law made by House Bill 1617, 77th Legislature, 2001.

There will be no effect on small businesses or micro-businesses as a result of enforcing the amendments. 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 Robert F. Carter, Texas Department of Criminal Justice, 8610 Shoal Creek Boulevard, Austin, Texas 78757. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Government Code, §§497.051 - 497.062, which provides the Oversight Authority with the authority to promulgate rules; 18 United States Code 1761; 42 United States Code, §§4321 - 4347; and 40 Code of Federal Regulations Part 1500.

Cross Reference to Statute: 18 United States Code 1761; 42 United States Code, §§4321 - 4347; and 40 Code of Federal Regulations Part 1500.

§245.11. Payments by Industries to the Private Sector Prison Industries Expansion [~~Oversight~~] Account.

[~~(a) The participating agency/entity, facility or private industry partner(s) shall calculate the equivalent amount of unemployment insurance taxes owed for each inmate participating in the Prison Industries Program utilizing the formula established annually by the Texas Workforce Commission for calculating the payment of unemployment insurance taxes.~~]

(a) [~~(b)~~] The department [~~participating agency/entity, facility or private industry partner(s)~~] shall forward money collected under Texas Government Code, §497.0581 [~~the amount of moneys calculated under subsection (a) of this section to the Oversight Authority. The Oversight Authority shall forward the moneys~~] to the State Comptrollers office for deposit in the General Revenue Fund [~~in the Private Sector Prison Industries Oversight Account. Moneys shall be forwarded on a quarterly basis. A copy of the deposit shall be forwarded to the Oversight Authority or Designee~~].

(b) To construct more facilities and increase the number of participants, the private sector prison industry expansion account is created as an account in the general revenue fund. Money in the account may be appropriated only to construct work facilities, recruit corporations to participate as private sector industries programs, and pay costs of the authority and department in implementing this subchapter, including the cost to the department in reimbursing authority members and the employer liaison for expenses.

(c) On each certification by the department that an amount has been deposited to the credit of the general revenue fund from deductions from participants' wages under Texas Government Code, §497.0581, the comptroller shall transfer an equivalent amount from the general revenue fund to the private sector prison industry expansion account, until the balance in the account is $2 million. On a certification occurring when the balance in the account is more than $2 million, the comptroller shall transfer to the account an amount equal to one-half of the amount deposited to the credit of the general revenue fund from deductions from participants' wages.

(d) The authority staff during each calendar quarter shall make a certification of the amount deposited during the previous calendar quarter to the credit of the general revenue fund from deductions from participants' wages under Texas Government Code, §497.0581.

§245.22. Consultation with Labor and Business Organizations.

(a) (No change.)

(b) Participating agencies/entities shall provide the required consultations (by outgoing mail or fax) with business and labor organizations prior to designation [~~within three working days from the date of receipt of complete and accurate prevailing wage and non-displacement of workers information~~] . Failure to provide timely consultation with business and labor [~~organizations in a timely manner~~] may result in a delay in industry project designation by the Private Sector Prison Industries Oversight Authority.

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

§245.30. Distribution of Wages of Work Program Participants.

(a) Participating agencies/entities, facilities and industry partners shall collect and disburse earned funds according to Federal Guidelines and the specific legislation authorizing their participation in the Private Sector Prison Industry Enhancement Program (PIE).

(1) Allowable disbursements under Federal Guidelines are:

(A) payroll taxes;

(B) reasonable charges for room and board;

(C) allocations for support of family pursuant to State statute, court order, or agreement by the offender; and

(D) contributions to any fund established by law to compensate the victims of crime of not more than 20% but not less than 5.0% of gross wages. Those funds collected will be distributed as follows:

(i) Wardens, Superintendents or other Supervising authorities at each facility operating a PIE program may nominate three deserving victim's organizations to the Authority by the first day of June each year.

(ii) Private Sector Prison Industries Oversight Authority Members and staff may nominate other deserving victim's organizations.

(iii) The Authority will review all nominations and select the organizations by a majority vote.

(2) The participating agency/entity, facility and industry partner shall collect deductions in accordance with the State law or proper authority authorizing such deductions.

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

§245.47. Removal Provisions

(a) It is ground for removal from the Authority that a member:

(1) does not have, at the time of taking office, the qualifications required by Texas Government Code, §497.052 (a);

(2) does not maintain. during service on the Authority, the qualifications required by Texas Government Code, §497.052 (a);

(3) is ineligible for membership under Texas Government Code, §497.052 (d) or §497.0521 (b) or (c);

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent for more than half of the regularly scheduled Authority meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the Authority.

(b) If the management staff of the Authority has knowledge that a potential ground for removal exists, the Authority [~~management~~] staff [~~of the Authority~~] shall notify the Presiding Officer, in writing, of the potential ground. The Presiding Officer shall then notify the Governor and the Attorney General that a potential ground for removal exists.

(1) If the potential ground for removal involves the Presiding Officer, the Authority [~~management~~] staff [~~of the Authority~~] shall notify the next highest ranking Officer of the Authority who shall notify the Governor and the Attorney General that a potential ground for removal exists.

(2) Members, absent for more than one half of the scheduled meetings shall submit in writing the reason for their absence to the Presiding Officer.

(3) The Presiding Officer shall submit the member's excuse to the Authority for a vote either to excuse or not excuse the absences.

(c) The Authority [~~management~~] staff [~~of the Authority~~] shall provide to members of the Authority and to Agency employees, as often as necessary, information regarding the requirements for office or employment under this subchapter including, information regarding a person's responsibilities under applicable laws relating to standards of conduct for State Officers and employees.

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 July 2, 2001.

TRD-200103741

Joe Thrash
Attorney
Private Sector Prison Industries Oversight Authority
Earliest possible date of adoption: August 12, 2001
For further information, please call: (512) 406-5750

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PART 12. TEXAS MILITARY FACILITIES COMMISSION

CHAPTER 377. PREVAILING WAGE RATE DETERMINATION

The Texas Military Facilities Commission (Commission) proposes an amendment to §377.1, relating to Prevailing Wage Rates and the repeal of §§377.2-377.4, relating to Data Gathering Procedures, Ascertaining Prevailing Wage Rates, and Use of Determinations.

The amendment and repeals are proposed to conform the Commission's prevailing wage rate determinations and procedures with the requirements of Government Code, Chapter 2258.

Lydia Cruz, Director of Accounting and Administration, has determined that for each year of the first five years that the amendment and repeals will be in effect there will be no fiscal implications to the state or to local governments. No economic cost is anticipated to persons as a result of the amendment and repeals.

Ms. Cruz has also determined that for each year of the first five years the amendment and repeals are in effect the public benefit anticipated will be certainty on the part of the Commission's contractors and subcontractors regarding the manner by which prevailing wages are determined and the procedures to be followed for the resolution of disputes. There will be no effect on small businesses. No economic costs are anticipated to persons who are required to comply with the proposed amendment and repeals.

Comments on the proposal may be submitted to Tina Burford, Texas Military Facilities Commission, P.O. Box 5426, Austin, Texas 78763-5426, or by e-mail to for thirty (30) days after notice of the proposed amendment and repeals are published in the *Texas Register*.

37 TAC §377.1

The amendment is proposed pursuant to Government Code, §435.011 and Chapter 2258. The Commission interprets §435.011 as authorizing it to adopt rules and interprets Chapter 2258 as requiring the payment of prevailing wage rates on Commission construction and repair projects and creating a procedure for the resolution for disputes regarding prevailing wage rates.

The following sections of the Government Code are affected by the proposed rules: §435.013.

§377.1. Prevailing Wage Rates.

(a) The Commission shall determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and overtime work by:

(1) conducting a survey of the wages received by classes of workers employed on projects of a character similar to the contract

work in the locality of the state in which the public work is to be performed; or

(2) using the prevailing wage rates as determined by the United States Department of Labor under the Davis-Bacon Act for the construction locality, if the survey used to determine that rate was conducted within a three-year period preceding the project bid date.

(b) The Commission shall determine the general prevailing rate of per diem wages as a sum certain, expressed in dollars and cents.

(c) The Commission shall specify in the contract documents the wage rates determined under this section.

(d) The Commission's determination of the general prevailing rate of per diem wages is final.

(e) Issues arising under Government Code, section 2258.023 shall be submitted to binding arbitration under the Texas General Arbitration Act if the contractor, subcontractor or affected worker do not resolve the issue by agreement before the 15th day after the date the Commission makes its initial determination under Section 2258.052.

(f) The Commission is not a party in the arbitration.

~~[(a) The specifications and the contract for each project administered by the board shall include a schedule of wages to be paid on the project.]~~

~~[(b) The wage scale will reflect the rates ascertained by the board as prevailing in the locality of the project for each craft or type of workman required thereon and not less than this rate shall be paid by any contractor on the project.]~~

~~[(c) The determination made by the board shall be final and will not be changed except as provided in this chapter.]~~

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

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

TRD-200103736
Jerry D. Malcolm
Executive Director
Texas Military Facilities Commission
Earliest possible date of adoption: August 12, 2001
For further information, please call: (512) 406-6971

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37 TAC §§377.2 - 377.4

(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 Military Facilities Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed pursuant to Government Code, §435.011 and Chapter 2258. The Commission interprets §435.011 as authorizing it to adopt rules and interprets Chapter 2258 as requiring the payment of prevailing wage rates on Commission construction and repair projects and creating a procedure for the resolution for disputes regarding prevailing wage rates .

The following sections of the Government Code are affected by the proposed rules: §435.013.

§377.2. Data Gathering Procedures.

§377.3. Ascertaining Prevailing Wage Rates.

§377.4. Use of Determination.

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 July 2, 2001.

TRD-200103737
Jerry D. Malcolm
Executive Director
Texas Military Facilities Commission
Earliest possible date of adoption: August 12, 2001
For further information, please call: (512) 406-6971

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 15. TRANSPORTATION PLANNING AND PROGRAMMING

SUBCHAPTER E. FEDERAL, STATE, AND LOCAL PARTICIPATION

43 TAC §15.52

The Texas Department of Transportation proposes amendments to §15.52, Agreements, concerning federal, state, and local participation in highway improvement projects.

Transportation Code, Chapters 201-203 and 221-224 provide that the Texas Transportation Commission is responsible for the construction, maintenance, and operation of the state highway system, and that money in the state highway fund, including federal funds, that is available for highway improvement projects may be spent only by and under the supervision of the department. The department is required to ensure that all applicable federal and state laws, regulations, standards, and specifications are complied with in the use of those funds.

Those chapters also authorize local governments to finance the development and construction of highway improvement projects, and authorize counties and municipalities to carry out an improvement to the state highway system. Pursuant to this authority, the commission has adopted §§15.50-15.56, to specify the roles of federal, state, and local entities in the development of highway improvement projects.

Due to scarce state highway funding, a limited percentage of highway improvement needs of the state are currently being met. Cost participation in highway improvement projects is required of local governments in order to make the most efficient use of scarce state highway funding. Limited department resources may also affect the ability of the department to perform or manage a highway improvement project in an efficient and timely manner.

Allowing local governments that are authorized to finance and construct highway improvement projects to use employees under the control of the local government to perform highway improvement projects ("force account"), and to locally award a contract for and manage the construction of highway improvement projects will provide alternate funding for these projects, allowing scarce state highway funding to be used more efficiently, and will

allow a number of projects to be completed more expeditiously. The conditions placed on a local government's performance of these acts are necessary in order to ensure that local performance is timely and cost effective, and to ensure that all applicable federal and state laws, regulations, standards, and specifications are complied with by the local government.

The amendments to §15.52 allow local governments to assume responsibility for using force account to perform work on a highway improvement project, or to award a contract for and manage the construction of a highway improvement project, except for a project to improve freeway mainlanes on the state highway system. The local government must agree to comply with all federal, state, and department requirements, standards, and specifications in carrying out that work, and to forfeit any claim to federal and/or state reimbursement if they fail to comply. The project must be authorized by the commission in the current Unified Transportation Program or by a specific minute order. A project on the state highway system must be operationally beneficial to the state and, if a contract is awarded and managed by the local government for such a project, must be funded with at least 50% of the funds not coming from federal or state highway funding. The department must review and approve all plans, contract awards, and change orders related to a highway improvement project.

In approving the project, the department will consider the previous experience and capability of the local government in performing the type of work proposed, the need for expeditious project completion, department resources available to perform or manage the highway improvement project in an efficient and timely manner, the cost effectiveness of local performance of the work as compared to awarding the highway improvement project through the competitive bidding process, and any other considerations relating to the benefit of the state, the traveling public, and the operations of the department.

James Bass, Director, Finance Division, has determined that for the first five-year period the amendments are in effect, there will be fiscal implications for state government as a result of enforcing or administering the amendments. The additional costs and reductions in costs resulting from local performance of a highway improvement project cannot be determined with any specificity because it depends upon the number and type of projects that local governments choose to finance and construct. There will be fiscal implications for local governments as a result of enforcing or administering the amendments. The additional cost to local governments cannot be determined with any specificity because it depends upon the number and type of projects that a local government chooses to finance and construct. There are no anticipated economic costs for persons required to comply with the amendments as proposed.

Robert Wilson, Director, Design Division, has certified that there will be no significant impact on local economies and overall employment as a result of enforcing or administering the amendments.

Mr. Wilson has also determined that for each year of the first five years that the amendments are in effect, the public benefit anticipated as a result of the amendments will be to further the department's mission to provide an efficient and effective process to move people and goods through an increased efficiency in the use of highway funding and more expeditious development of highway improvement projects. Any effect on small or micro businesses will be positive because of the completion of an increased number of highway improvement projects.

Written comments on the proposed amendments may be submitted to Robert Wilson, Director, Design Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on August 13, 2001.

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

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

§15.52. Agreements.

When a local government or reservoir agency is responsible for providing financial assistance for a highway improvement project, the department and the local government or reservoir agency shall enter into an agreement before any work is performed. The agreement will include, but not be limited to, the following provisions of this section.

(1) Right of entry. If the local government or reservoir agency is the owner of the project site, it shall permit the department or its authorized representative access to occupy the site to perform all activities required to execute the work.

(2) Right of way and/or utility relocation/adjustments. The local government will provide all necessary right of way and utility relocation/adjustments, whether publicly or privately owned, in accordance with §15.55 of this subchapter (relating to Construction Cost Participation). When specified, the reservoir agency will provide all necessary right of way and utility/relocation adjustments, whether publicly or privately owned. Existing utilities will be relocated and/or adjusted with respect to location and type of installation in accordance with the requirements of the department as specified in §21.21 of this title (relating to State Participation in Relocation, Adjustment, and/or Removal) and §21.31 et seq. of this title (relating to Utility Accommodation).

(3) Funding arrangement. The agreement will specify the type of funding share arrangement agreed upon by the department and the local government. The funding share arrangement shall include any adjustments required by §15.55 of this subchapter. The funding arrangement agreed upon by the department and the reservoir agency will be as specified under §15.54(f) of this subchapter.

(A) Standard. The local government is responsible for all, or a specified percentage as shown in Appendix A of §15.55 of this title (relating to Construction Cost Participation), of the direct costs incurred by the department for preliminary engineering, construction engineering, construction, and right of way as well as the direct cost for any work included which is ineligible for federal or state participation. When specified, the reservoir agency is responsible for all of the direct costs incurred by the department for preliminary engineering, construction engineering, construction, and right of way as well as the direct cost for any work included which is ineligible for federal or state participation.

(B) Alternate. A fixed price funding arrangement may be used if requested by the local government and approved by the executive director.

(i) Definition. Under this arrangement, a local government is responsible for a firm fixed price which is a lump sum price not subject to adjustment except:

(I) in the event of changed site conditions;

(II) if work requested by the local government is ineligible for federal participation; or

(III) as mutually agreed upon by the department and the local government.

(ii) Conditions. The department may enter into a firm fixed price agreement only:

(I) for projects that include state participation, as shown in Appendix A of §15.55 of this subchapter; and

(II) if the fixed price is based on the estimated cost of the work for which the funds are received.

(iii) Approval. In approving a request for an alternate funding arrangement, the executive director will consider:

(I) requests by the local government to include work which is ineligible for federal or state participation;

(II) need for expeditious project completion;

(III) type of work proposed and the ability to accurately estimate its cost; and

(IV) any other considerations relating to the benefit of the state, the traveling public, and the operations of the department.

(C) Off State Highway System Bridge Program. For projects funded in the Off State Highway System Bridge Program, the local government is responsible for the specified percentage, as shown in Appendix A to §15.55 of this subchapter, of the estimated direct costs for preliminary engineering, construction engineering, and construction, and the actual direct costs for right of way and eligible utilities. The estimated direct costs are based on the department's estimate of the eligible work at the time of the agreement. The local government is responsible for the direct cost of any project cost item or portion of a cost item that is not eligible for federal participation under the Federal Highway Bridge Replacement and Rehabilitation Program under 23 U.S.C. §144 and 23 C.F.R. §650 Subpart D. The local government is also responsible for any cost resulting from changes made at the request of the local government, either during preliminary engineering or construction.

(4) Interest. The department will not pay interest on funds provided by the local government or the reservoir agency. Funds provided by the local government or the reservoir agency will be deposited into, and retained in, the state treasury.

(5) Amendments. In the case of significantly changed site conditions or other mutually agreed upon changes in the scope of work authorized in the agreement, the department and the local government or reservoir agency will amend the funding agreement, setting forth the reason for the change and establishing the revised participation to be provided by the local government or reservoir agency.

(6) Payment provision. The agreement will establish the conditions for payment by the local government or reservoir agency, including, but not limited to, the method of payment and the time of payment.

(A) Standard. Following execution of the agreement, the local government or reservoir agency will pay, as a minimum, its funding share for the estimated cost of preliminary engineering for the project. Prior to the department's scheduled date for contract letting, the local government or reservoir agency will remit to the department an amount equal to the remainder of the local government's or reservoir agency's funding share for the project.

(i) When the standard funding arrangement is used, after the project is completed the final cost will be determined by the department, based on its standard accounting procedures. If it is found that the amount received is insufficient to pay the local government's or reservoir agency's funding share, then the department shall notify the local government or reservoir agency which shall transmit the required amount to the department. If it is found that the amount received is in excess of the local government's or reservoir agency's funding share, the excess funds paid by the local government or reservoir agency shall be returned.

(ii) When a fixed price funding arrangement is used, the lump sum price is not subject to adjustment except as provided for in paragraph (3)(B) of this section.

(iii) For projects funded in the Off State Highway System Bridge Program, the department will determine the final cost after the project is completed, based on its standard accounting procedures. The department will notify the local government of any amount due for payment of costs related to any ineligible items and for changes made at the request of the local government. The local government shall promptly transmit the required amount to the department. The department will return excess funds paid by the local government if the amount received is in excess of the local government's funding share required by §15.55(c) of this subchapter.

(B) Alternate. Incremental payments may be made if requested by the local government and approved by the executive director. When the standard funding arrangement is used, after the project is completed, the final cost will be determined by the department based on its standard accounting procedures. If it is found that the amount received is insufficient to pay the local government's funding share, then the department shall notify the local government which shall transmit the required amount to the department. If it is found that the amount received is in excess of the local government's funding share, the excess funds paid by the local government shall be returned. When a fixed price funding arrangement is used, the lump sum price is not subject to adjustment except as provided for in paragraph (3)(B) of this section. For projects funded in the Off State Highway System Bridge Program, the department will determine the final cost after the project is completed, based on its standard accounting procedures. The department will notify the local government of any amount due for payment of costs related to any ineligible items and for changes made at the request of the local government. The local government shall promptly transmit the required amount to the department. The department will return excess funds paid by the local government if it is found that the amount received is in excess of the local government's funding share required by §15.55(c) of this subchapter.

(i) Conditions. The department may approve incremental payments only if:

(I) the incremental payments sought are based on the estimated cost for the work for which the funds are received and payment is made in accordance with the schedule established in the funding agreement; and

(II) the local government does not have a delinquent obligation to the department, as defined in §5.10 of this title (relating to Collection of Debts).

(ii) Approval. In approving a request for incremental payments, the executive director will consider:

(I) inability of the local government to pay its total funding share prior to the department's scheduled date for contract letting, based upon population level, bonded indebtedness, tax base, and tax rate;

(II) past payment performance;

(III) need for expeditious project completion;

(IV) whether the project is located in a local government that consists of all or a portion of an economically disadvantaged county; and

(V) any other considerations relating to the benefit of the state, the public, and the operations of the department.

(7) Termination. If the local government or reservoir agency withdraws from the project after the agreement is executed, it shall be responsible for all direct and indirect project costs incurred by the department for the items of work in which the local government or reservoir agency is participating.

(8) Responsibilities of the parties.

(A) Agreement. The agreement shall identify the responsibilities of each party, including, but not limited to, preparing or providing construction plans, construction performance, advertising for bids, awarding a construction contract, and construction supervision.

(B) Local performance and management of highway improvement projects.

(i) Request. If requested by a local government and approved by the department, an agreement with the governing body of a local government may provide for:

(I) the performance by employees under the direct control of the local government of a highway improvement project, other than a project to improve freeway mainlanes on the state highway system; or

(II) the bid opening, award of construction, and construction management by the local government of a highway improvement project, other than a project to improve freeway mainlanes on the state highway system.

(ii) Approval authority. The executive director may authorize a local government to perform an act described in clause (i) of this subparagraph. The executive director may delegate the authority to approve:

(I) the performance by employees of the local government of work on a metropolitan highway not maintained by the department; and

(II) the performance by employees of the local government of projects or activities appurtenant to a state highway, including drainage facilities, surveying, traffic counts, driveway construction, landscaping, signs, lighting, guardrails and other items incidental to the roadway itself on facilities for which the department is responsible for maintenance.

(iii) Conditions. A local government may perform an act described in clause (i) of this subparagraph only if:

(I) the local government commits in the agreement to comply with all federal, state, and department requirements, standards, and specifications, and agrees to forfeit any claim to federal and/or state reimbursement if they fail to comply;

(II) the project is authorized by the commission in the current Unified Transportation Program or by a specific minute order;

(III) a project on the state highway system performed or managed by a local government is operationally beneficial to the state;

(IV) a project on the state highway system for which a contract is awarded and managed by a local government is funded with at least 50% of the funds not coming from federal or state highway funding; and

(V) the department reviews and approves all plans, contract awards, and change orders.

(iv) Approval. In approving a request, the executive director or designee will consider:

(I) previous experience of the local government in performing the type of work proposed;

(II) the capability of the local government to perform the type of work proposed or to award and manage a contract for that work in a timely manner, consistent with federal, state, and department regulations, standards, and specifications;

(III) need for expeditious project completion;

(IV) department resources available to perform or manage the highway improvement project in an efficient and timely manner;

(V) cost effectiveness of local performance of the work as compared to awarding the highway improvement project through the competitive bidding process; and

(VI) any other considerations relating to the benefit of the state, the traveling public, and the operations of the department.

~~[(8) Responsibilities of the parties. The agreement shall identify the responsibilities of each party, including, but not limited to, preparing or providing construction plans, advertising for bids, awarding a construction contract, and construction supervision.]~~

~~[(A) Local performance of construction work.]~~

~~*[(i)* Request. If requested by a county or municipality and approved by the executive director or designee, an agreement with the commissioners court of a county or the governing body of a municipality may provide for minor improvement of the state highway system by county or municipal employees under direct county or municipal control, where minor improvements are to include:]~~

~~*[(I)* projects on a metropolitan highway not maintained by the department and not contained in the off-state highway system bridge program; or]~~

~~*[(II)* projects or activities appurtenant to a state highway and including drainage facilities, surveying, traffic counts, driveway construction, landscaping, signs, lighting, guardrails and other items incidental to the roadway itself on facilities for which the department is responsible for maintenance.]~~

~~*[(ii)* Approval. The executive director or designee may authorize a county or municipality to perform minor improvement of the state highway system, if the county or municipality commits in the agreement to comply with all federal, state and department requirements and agrees to forfeit any claim to federal and/or state reimbursement if they fail to comply. In approving a request from a county or municipality for minor improvement of the state highway system, the executive director or designee will consider:]~~

~~*[(I)* previous experience of the county or municipality in performing the type of work proposed;]~~

~~*[(II)* need for expeditious project completion;]~~

~~*[(III)* cost effectiveness of the proposal as compared to awarding the project through the competitive bidding process; and]~~

~~*[(IV)* any other considerations relating to the benefit of the state, the traveling public, and the operations of the department.]~~

~~*[(iii)* Exceptions. The commission may authorize a county or municipality to perform other than minor improvement of the state highway system, if those improvements are determined to be in the best interest of the state, and the county or municipality commits in the agreement to comply with all federal, state and department requirements and agrees to forfeit any claim to federal and/or state reimbursement if they fail to comply. In approving a request, the commission will consider the criteria prescribed in clause (ii) of this subparagraph.]~~

~~[(B) Local letting and management of construction projects.]~~

~~*[(i)* Request. A local government may submit a written request to the department to assume the responsibility for letting, construction, and construction management of a specific project.]~~

~~*[(ii)* Approval. The executive director may authorize a local government to award and manage a construction contract if:]~~

~~*[(I)* the improvement is for a project not on the state highway system or is for a project on a metropolitan highway not maintained by the department;]~~

~~*[(II)* the project is not in the off-state highway system bridge program;]~~

~~*[(III)* the department lacks the expertise or resources necessary to award a construction contract in an efficient and timely manner;]~~

~~*[(IV)* the local government is found to be capable of awarding and managing the construction contract in a timely manner consistent with federal, state and department regulations; and]~~

~~*[(V)* the local government commits in the agreement to comply with all federal, state and department requirements and agrees to forfeit any claim to federal and/or state reimbursement if they fail to comply.]~~

(9) [~~(C)~~] Acknowledgment. The local government or reservoir agency must acknowledge in the agreement that while not an agent, servant, nor employee of the state, it is responsible for its own acts and deeds and for those of its agents or employees during the performance of the work authorized in the contract.

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

Filed with the Office of the Secretary of State, on June 29, 2001.

TRD-200103716
Richard Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: August 12, 2001
For further information, please call: (512) 463-8630

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WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register.***

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 105. FOUNDATION SCHOOL PROGRAM

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SEVERANCE PAYMENTS

19 TAC §105.1021

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed new section, submitted by the Texas Education Agency has been automatically withdrawn. The new section as proposed appeared in the January 5, 2001 issue of the *Texas Register* (26 TexReg 55).

Filed with the Office of the Secretary of State on June 29, 2001.

TRD-200103726

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TITLE 22. EXAMINING BOARDS

PART 19. POLYGRAPH EXAMINERS BOARD

CHAPTER 391. POLYGRAPH EXAMINER INTERNSHIP

22 TAC §391.3

The Polygraph Examiners Board has withdrawn from consideration the amendment to §391.3, concerning Polygraph Examiner Internship, which appeared in the March 9, 2001, issue of the *Texas Register* (26 TexReg 1964).

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

TRD-200103755
Frank DiTucci
Executive Officer
Polygraph Examiners Board
Effective date: July 2, 2001
For further information, please call: (512) 424-2058

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CHAPTER 395. CODE OF OPERATING PROCEDURE OF POLYGRAPH EXAMINERS

22 TAC §395.2

The Polygraph Examiners Board has withdrawn from consideration the amendment to §395.2, concerning Code of Operating Procedure of Polygraph Examiners, which appeared in the March 9, 2001, issue of the *Texas Register* (26 TexReg 1965).

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

TRD-200103757
Frank DiTucci
Executive Officer
Polygraph Examiners Board
Effective date: July 2, 2001
For further information, please call: (512) 424-2058

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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 daysafter the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federalstatute or regula tion requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 69. CENTRAL PURCHASING SUBCHAPTER C. MANAGEMENT OF VEHICLES

1 TAC §69.35, §69.36

The Office of the Attorney General adopts new Subchapter C, relating to the management of vehicles, and new §69.35 and §69.36, relating to State Vehicle Management Plan and Restrictions on Assignment of Vehicles, without changes to the proposed text as published in the May 18, 2001, issue of the *Texas Register* (26 TexReg 3575).

House Bill 3125, 76th Texas Legislature, mandated the Office of Vehicle Fleet Management, under the direction of the Council on Competitive Government, to develop and implement a vehicle management plan to improve the administration and operation of the state's fleet. The management plan was adopted by the Council of Competitive Government on October 11, 2000. House Bill 3125, now codified in Government Code §2171, requires state agencies to adopt rules consistent with the plan.

No comments were received regarding the adoption of these new sections.

The new subchapter is adopted pursuant to Government Code §2171.1045, which requires agencies to adopt rules relating to the assignment and use of their vehicles.

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

Filed with the Office of the Secretary of State on June 26, 2001.

TRD-200103621
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Effective date: July 16, 2001
Proposal publication date: May 18, 2001
For further information, please contact A.G. Younger at (512) 463-2110.

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 4. COOPERATIVE MARKETING ASSOCIATIONS

4 TAC §4.5

The Texas Department of Agriculture (the department) adopts the repeal of §4.5, concerning an expiration date for Chapter 4, relating to Cooperative Marketing Associations, without changes to the proposal published in the May 18, 2001, issue of the *Texas Register* (26 TexReg 3668). The repeal of §4.5 is adopted because the establishment of an expiration date for Chapter 4 is no longer necessary due to the enactment of legislation establishing a timeframe for review of agency rules. The repeal of §4.5 eliminates the expiration date for Chapter 4.

No comments were received on the proposal.

The repeal is adopted under the Texas Agriculture Code, §12.016 which provides the Department with the authority to adopt rules to administer the Code.

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

Filed with the Office of the Secretary of State on June 29, 2001.

TRD-200103730
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: July 19, 2001
Proposal publication date: May 18, 2001
For further information, please call: (512) 463-4075

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CHAPTER 6. SEED ARBITRATION

4 TAC §6.5

The Texas Department of Agriculture (the Department) adopts the repeal of §6.5, concerning an expiration date for Chapter 6, relating to Seed Arbitration, without changes to the proposal published in May 18, 2001, issue of the *Texas Register* (26 TexReg 3586). The repeal of §6.5 is adopted because the establishment of an expiration date for Chapter 6 is no longer necessary due to the enactment of legislation establishing a timeframe for review

of agency rules. The repeal of §6.5 eliminates the expiration date for Chapter 6.

No comments were received on the proposal.

The repeal is adopted under the Texas Agriculture code, §12.016 which provides the Department with the authority to adopt rules to administer the Texas Agriculture Code.

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

Filed with the Office of the Secretary of State on June 29, 2001.

TRD-200103731
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: July 19, 2001
Proposal publication date: May 18, 2001
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 303. GENERAL PROVISIONS

SUBCHAPTER D. TEXAS BRED INCENTIVE PROGRAMS

DIVISION 2. PROGRAM FOR HORSES

16 TAC §303.94

The Texas Racing Commission adopts an amendment to §303.94, relating to Arabian horse rules without changes to the proposed text as published in the May 18, 2001 issue of the *Texas Register* (26 TexReg 3592) and will not be republished.

The amendment adopts by reference the latest rules of the Texas Arabian Breeders Association ("TABA"), the official breed registry for Arabian horses in accordance with the Racing Act. In an effort to encourage and promote Arabian Accredited Texas-bred racing, the TABA has changed it rules to clarify the standards for Texas-bred accreditation. These rules establish a program for accredited grandfather runners. Additionally, the TABA amended rules establish a fee schedule for the new accredited horses.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse or greyhound racing;§6.08, which authorizes the Commission to adopt rules relating to the accounting, audit, and distribution of all amounts set aside for the Texas-bred program.

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

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

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

TRD-200103665
Judith L. Kennison
General Counsel
Texas Racing Commission
Effective date: July 17, 2001
Proposal publication date: May 18, 2001
For further information, please call: (512) 833-6699

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CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING

SUBCHAPTER E. TRAINING FACILITIES

16 TAC §313.507

The Texas Racing Commission adopts an amendment to §313.507 relating to employees at training facilities without changes to the proposed text as published in the May 18, 2001 issue of the *Texas Register* (26 TexReg 3592) and will not be republished.

The amendment reflects the current licensing fee of $15.00 from the previously charged $20.00 for employees of training facilities. This reduction has been in effect for over a year and was listed in the fee schedule, however it had been inadvertently omitted from this rule.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to regulate every race meeting in this state involving wagering on the result of greyhound or horse racing; §7.02, which authorizes the Commission to adopt categories of occupational licenses; and §7.05, which authorizes the Commission to set the amount of occupational fees by rule.

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

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

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Judith L. Kennison
General Counsel
Texas Racing Commission
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For further information, please call: (512) 833-6699

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CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING

SUBCHAPTER B. TREATMENT OF HORSES

16 TAC §319.111

The Texas Racing Commission adopts an amendment to § 319.111, relating to bleeders and the Furosemide (Lasix) program without changes to the proposed text as published in the May 18, 2001 issue of the *Texas Register* (26 TexReg 3593) and will not be republished. The amendment clarifies an ambiguity in the definition of a "bleeder". The amendment makes plain that a diagnosis of exercise induced pulmonary hemorrhage (EIPH) made in another pari-mutuel racing jurisdiction will also be considered a valid diagnosis in Texas.

Written comment was received from representatives of Texas owners and trainer in support of the adoption. This comment also included suggestions for other subsections of the rule. These suggestions or similar language will be proposed to the Commission at its next meeting.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to regulate every race meeting in this state involving wagering on the result of greyhound or horse racing;§6.06 which authorizes the Commission to adopt rules relating to the operation of racetracks.

The amendment implements Texas Civil Statutes, Article 179e.

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

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Judith L. Kennison
General Counsel
Texas Racing Commission
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For further information, please call: (512) 833-6699

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CHAPTER 321. PARI-MUTUEL WAGERING
SUBCHAPTER D. SIMULCAST WAGERING
DIVISION 3. SIMULCASTING AT HORSE RACETRACKS

16 TAC §321.507

The Texas Racing Commission adopts an amendment to §321.507, concerning priority of signals without changes to the proposed text as published in the May 18, 2001 issue of the *Texas Register* (26 TexReg 3593) and will not be republished.

The amendment authorizes the Commission, instead of the executive secretary, to approve or disapprove an application by a licensed Class 3 or 4 racetrack for simulcasting. In addition, the amendment deletes the requirement that a licensed Class 3 or 4 racetrack must be in continuing operation for 25 years before it may be permitted to offer simulcasting. This modification will broaden the opportunity for future racetracks to meet the criteria for simulcasting.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting horse or greyhound racing and for administering the Texas Racing Act;§3.021, which authorizes the Commission to regulate all aspects of horse or greyhound racing in this state with or without wagering; §6.06, which authorizes the Commission to adopt rules relating to all aspects of pari-mutuel tracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering; and §11.011, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on simulcast racing.

The amendment implements Texas Civil Statutes, Article 179e.

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

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Judith L. Kennison
General Counsel
Texas Racing Commission
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For further information, please call: (512) 833-6699

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 176. DRIVER TRAINING SCHOOLS
SUBCHAPTER AA. COMMISSIONER'S RULES ON MINIMUM STANDARDS FOR OPERATION OF LICENSED TEXAS DRIVER EDUCATION SCHOOLS

19 TAC §§176.1007, 176.1010, 176.1016, 176.1017, 176.1019

The Texas Education Agency (TEA) adopts amendments to §§176.1007, 176.1010, 176.1016, 176.1017, and 176.1019, concerning driver training schools. The sections establish minimum standards for operating a licensed driver education school in Texas. The sections specify definitions, requirements, and procedures relating to exemptions; driver education school licensure and instructor license; responsibility for employees; school and assistant directors and administrative staff members; courses of instruction; student enrollment contracts; attendance and makeup; conduct policy; cancellation and refund policy; facilities and equipment; motor vehicles; student complaints; records; names and advertising; driver education certificates; and application fees and other charges. The amendments to §§176.1007, 176.1016, 176.1017, and 176.1019 are adopted without changes to the proposed text as published in the February 16, 2001, issue of the *Texas Register* (26 TexReg 1453) and will not be published. The amendment to §176.1010 is adopted with changes to the proposed text as published in the February 16, 2001, issue of the *Texas Register* (26 TexReg 1453).

In response to public comments, the following changes were made to §176.1010 since published as proposed.

Language was modified in subsection (c) and a new subsection (c)(3) was added to limit the amount of in-car observation for teen driver education to four hours or less per day.

Language was added to subsection (f)(2) to require that makeup work completed away from the school's classroom must be maintained as part of the student's file.

The following comments were received regarding adoption of the amendments.

Comment. Texas Driving School opposed retaining the daily four-hour limit for training of driver's education students found in §176.1010(c). Texas Driving School proposed a five-hour daily limit to include two hours of actual driving instruction per day. In addition, Texas Driving School commented that, "A seven hour observation day cannot be educationally sound, but it is allowed."

Agency Response. Current educational theory and research indicates that students learn best when given the opportunity to practice what has been taught. Consequently, a rule that results in fewer behind-the-wheel lessons, as proposed by Texas Driving School's comment, is not educationally sound and cannot be supported by the Agency. The Agency agrees that a seven-hour observation day is excessive and has made appropriate changes to limit in-car observation to four hours or less per day.

Comment. Texas Driving School commented that the proposed rule in §176.1010(f)(2) places an unnecessary burden on driver education schools for maintaining evidence of completed make-up lessons in the student file.

Agency Response. The Agency agrees and has made appropriate changes to specify that only make-up work completed at home or away from the school's classroom be maintained as part of the student's file.

The amendments are adopted under the Texas Civil Statutes, Article 4413(29c), §6, as amended by Senate Bill 777, 76th Texas Legislature, 1999, which authorizes the commissioner of education to adopt rules necessary to implement the Texas Driver and Traffic Safety Education Act.

§176.1010. Attendance and Makeup.

(a) Appropriate standards, which include positive records of student attendance, shall be implemented to ascertain the attendance of the students.

(b) A student must make up any time missed of the approved program of organized instruction. Schools are allowed five minutes of break per instructional hour.

(c) Driver education training is limited to four hours per day (excluding classroom make-up lessons), which can consist of any combination of the following:

(1) two hours or less of scheduled classroom instruction;

(2) one hour or less of behind-the-wheel instruction;

(3) four hours or less of in-car observation;

(4) three hours or less of simulation instruction; and/or

(5) two hours or less of multicar range driving.

(d) The attendance policy shall stipulate that students who accumulate absences of more than 25% of the scheduled classroom hours for teenage driver education shall be terminated, and a refund shall be totally consummated within 30 days. The student whose enrollment is terminated for violations of the attendance policy may not reenter before the start of the next new class. If the student enters the next new class and completes the scheduled classroom hours within the timeline specified in the original student enrollment contract, refunds that were due may be transferred to the new contract.

(e) The student may receive credit for previous training if the student reenters and completes the applicable portion of the course within the timeline specified in the original student enrollment contract, starting from the first scheduled day of class on the original contract.

(f) Schools shall submit a make-up policy to the division director for approval. The make-up policy shall be developed by the school and shall ensure that all instructional hours and minimum course content required for the classroom and in-car phases are completed within the timelines specified in the original student enrollment contract. All absences are subject to the attendance policy regardless of whether the student attends make-up lessons. Students may be allowed to complete classroom make-up assignments at home. Schools shall not initiate nor encourage absences. Make-up policies shall adhere to the following requirements:

(1) For a policy that allows a student to attend a missed lesson at a later date at a regularly scheduled class, the class shall be engaged in the same lesson the student missed previously.

(2) For a policy that allows a student to perform an individual make-up lesson, a sample of each make-up lesson, clearly labeled as "makeup for the driver education course," shall be available for review by the Texas Education Agency at the school. Each lesson shall be clearly identified as a make-up lesson and identified as to the units of instruction to be covered. Evidence of completed take- home makeup shall be placed in the student file.

(g) A school may allow a student to attend an alternative class on the same calendar day as the class the student was previously scheduled to attend. The school may provide alternative scheduling only if the sequence of instruction will be maintained by the identical lesson being offered in the alternative class time. In addition to all other requirements, the student instruction record shall reflect the time of day the alternative class was attended. A student selecting alternative scheduling shall not be considered absent.

(h) The enrollment of students who do not complete all required instructional hours within the timelines specified in the original student enrollment contract will be terminated.

(i) Variances to the timelines for completion of the driver education instruction stated in the original student enrollment contract may be made at the discretion of the school owner and must be agreed to in writing by the parent or guardian.

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

Filed with the Office of the Secretary of State on June 29, 2001.

TRD-200103724
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Effective date: July 19, 2001
Proposal publication date: February 16, 2001
For further information, please call: (512) 463-9701

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SUBCHAPTER BB. COMMISSIONER'S RULES ON MINIMUM STANDARDS FOR OPERATION OF LICENSED TEXAS DRIVING SAFETY SCHOOLS AND COURSE PROVIDERS

19 TAC §§176.1101, 176.1103, 176.1105, 176.1108, 176.1111, 176.1113, 176.1114, 176.1116

The Texas Education Agency (TEA) adopts amendments to §§176.1101, 176.1103, 176.1105, 176.1108, 176,1111, 176.1113, 176.1114, and 176.1116, concerning driver training schools. The sections establish minimum standards for operating a licensed driving safety school or course provider in Texas. The sections specify definitions, requirements, and procedures relating to exemptions; driving safety school licensure; course provider licensure; driving safety school and course provider responsibilities; administrative staff members; driving safety instructor license; courses of instruction; student enrollment contracts; cancellation and refund policy; facilities and equipment; student complaints; records; names and advertising; uniform certificate of course completion for driving safety course; and application fees and other charges. The amendments to §§176.1103, 176.1105, 176.1111, 176.1113, 176.1114, and 176.1116 are adopted without changes to the proposed text as published in the February 16, 2001, issue of the *Texas Register* (26 TexReg 1455) and will not be republished. The amendments to §176.1101 and §176.1108 are adopted with changes to the proposed text as published in the February 16, 2001, issue of the *Texas Register* (26 TexReg 1455).

In response to public comments, to clarify existing rule language, or to comply with Texas Register formatting requirements, the following revisions were made to §176.1101 and §176.1108 since published as proposed.

In §176.1101(1), language was added to the definition of "advertising" to clarify that Meta tags and search engine listings constitute advertising.

In §176.1101(2), language was added to the definition of "break" to clarify when a break may be taken.

In §176.1101(5), (8), and (14), new definitions were added for a course validation question, a final exam question, and a personal validation question, respectively. These definitions were adopted to provide clarification of terms used in 19 TAC §176.1108(a)(1)(I). Subsequent definitions have been renumbered accordingly.

In §176.1108(a), a cross-reference citation was revised to correspond to newly amended paragraph (1)(I) of the subsection.

In §176.1108(a)(1)(B)(iii)(I) and (V), revisions were made to adhere to Texas Register cross-reference and section structure formatting.

In §176.1108(a)(1)(C)(vi), language was added to clarify the definition of break.

Section 176.1108(a)(1)(H) relating to performance report was deleted in response to public comment and subsequent subparagraphs were reordered accordingly.

Based on public comment, language was added to newly reordered §176.1108(a)(1)(I) to specify in rule the requirements for driving safety courses taught by an alternative delivery method (ADM). Throughout §176.1108(a)(1)(I), the acronym "ADM" was added.

In §176.1108(a)(1)(I)(i)(I), the following language relating to ADMs was added: Items (-a-), (-b-), (-c-), and (-e-) incorporate language regarding course design that outlines basic course and design requirements for ADMs. Item (-d-) contains language regarding course navigation. Item (-f-) contains language to clarify when course editing shall take place. Item (-g-)(-1-) through (-7-) contains language to clarify multimedia requirements and verify that students are viewing and comprehending video material.

In §176.1108(a)(1)(I)(i)(III), language was added to specify that a student shall have access to telephonic technical assistance (help desk), on average, within two minutes throughout the course.

In §176.1108(a)(1)(I)(i)(IV), language was added to clarify course owner responsibility regarding TEA notification.

In §176.1108(a)(1)(I)(i)(V), language was added to clarify course security requirements.

In §176.1108(a)(1)(I)(i)(VI), language relating to a personal validation process was added to verify student identity and participation.

In §176.1108(a)(1)(I)(i)(VII), language relating to a course validation process was added to verify student participation and comprehension of material.

In §176.1108(a)(1)(I)(i)(VIII), language was added that revises the minimum number of final examination questions required in an ADM test bank and establishes the level of difficulty required.

In §176.1108(a)(1)(I)(i)(IX), language relating to failure criteria was added to establish personal, course, and final examination failure criteria.

In §176.1108(a)(1)(I)(i)(X), language outlining the requirements for enrollment contracts and individual student records (footprints) was added.

In §176.1108(a)(1)(I)(i)(XI), language relating to data security was added.

Section 176.1108(a)(1)(J)(ii) and (iv), as proposed, were deleted. Clause (ii) was deleted because it is no longer applicable since all critical elements of the standards document have been adopted in rule. Clause (iv) was deleted based on public comment. Course owners are no longer required to submit a performance report to the TEA one year after course or ADM approval.

Section 176.1108(a)(1)(J)(iii) was modified based on public comment and reorganized as subparagraph (I)(ii). The modified language removes the requirement of demonstrating compliance with the most current version of the "Technical Standards for Driving Safety Courses Taught By An Alternative Delivery Method" document because all the critical elements contained in this document are now adopted in rule, with the same deadline date of December 31, 2001.

The following comments were received from the driving safety school industry and other interested parties regarding adoption of the amendments. All comments referenced §176.1108.

Comment. An attorney representing Driver Training Associates commented that TEA is exceeding its authority in establishing rules for ADMs and that the technical standards are not needed. He further stated that the proposed rules are fundamentally unfair and legally flawed because they are being adopted by reference and have not been subject to public comment. Also, he stated that the actions of TEA are in conflict with the functions delegated by the legislature.

Comment. An attorney representing All-Pro Defensive Driver Course commented that she supports and reiterates all the comments made by Driver Training Associates in regard to the proposed rules and technical standards.

Comment. An individual representing The Safe Driver Centre Course commented that the ADM approval process has been a constantly moving target that is arbitrary and capricious.

Comment. An individual representing A Cool Defensive Driving Course said that he supports comments made by Driver Training Associates.

Comment. An individual representing International Driver Training, Inc., aka Bureaucracy Online, stated he supported comments by Driver Training Associates.

Comment. An individual representing National Traffic Safety Institute of Texas, Inc. stated that he wants TEA to develop fair rules and standards so the industry is not trying to hit a moving target.

Agency Response. The Agency disagrees with the comment that the proposed ADM rules exceed TEA's authority. The law authorizing ADMs is found in Vernon's Texas Civil Statute (VTCS), Article 4413(29c), Section 11, and is further defined in 19 TAC §176.1108(a)(1). The critical elements required of ADMs have been incorporated into §176.1108. In addition, technical standards adopted in rule will provide clear guidance and specificity for TEA staff and the industry regarding the requirements for ADM approval. The purpose for this specificity is consistency and fairness. In the future, all requirements will continue to be reflected in rule and any change in the rules regarding ADMs will also be reflected in the technical standards document.

Comment. Individuals representing Driver Training Associates; All-Pro Defensive Driver Course; International Driver Training, Inc.; and A Cool Defensive Driving Course expressed concern that all applicants are being required to comply with the proposed rules within the next eight months (prior to December 31, 2001) even if the ADM had been previously approved under other rules.

Agency Response. The Agency disagrees with these comments. The time period stated in rule for course owners to bring their ADMs into compliance with existing rules is reasonable. The rule language will not be modified in this area.

Comment. Individuals representing Driver Training Associates; All-Pro Defensive Driver Course; International Driver Training, Inc.; and A Cool Defensive Driving Course commented that the technical standards are not subject to an outside review process or oversight and therefore may be changed at TEA's whim, inviting arbitrary and capricious treatment to those governed by the rules. They also stated that all ADMs submitted under existing rules and standards should be approved or denied using the standards under which they were submitted.

Agency Response. The Agency incorporated the required critical elements of the technical standards document into rule in §176.1108. Any future change regarding ADMs will go through the rule process and be subject to public comment prior to adoption. Upon adoption, all ADMs will be required, within a reasonable period of time, to come into compliance with rule.

Comment. Individuals representing Driver Training Associates; All-Pro Defensive Driver Course; International Driver Training, Inc.; and A Cool Defensive Driving Course commented that the $9,000 application fee for ADMs submitted prior to the effective date of the new rules, should they be adopted, should not be charged.

Comment. An individual representing a Sense of Humor Workshop requested that TEA consider capping fees for course providers at $9,000 for any and all driving safety course and delivery method approvals. Furthermore, he stated that all ADM applicants should be required to pay a retroactive amount, even if already approved, to bring their total course approval expenses to $9,000.

Agency Response. In regard to fees and licensing costs, the TEA will continue to charge course approval fees as currently allowed by law and rule. The issue of charging the $9,000 fee for review of ADMs will be equitably handled. The fee will not be charged if the ADM is in a completed format, including the application packet, upon adoption of the rule.

Comment. Individuals representing Driver Training Associates; All-Pro Defensive Driver Course; International Driver Training, Inc.; and A Cool Defensive Driving Course expressed concern about §176.1108(a)(1)(J)(ii) relating to the evaluation of performance of the delivery method based on criteria established by TEA and the possibility that TEA might change these criteria capriciously and on whim rather than need.

Agency Response. The Agency agrees that this performance evaluation criteria provision should be deleted and has modified the section accordingly.

Comment. An individual representing All-Pro Defensive Driver Course commented that the proposed rule requiring that server and technical support be located in Texas is not necessary, creates an additional economic burden on small businesses, may prohibit business relationships, and places an undue burden on interstate commerce.

Comment. An individual representing Driver Training Associates commented that there is no compelling need to create additional burdens on Texas businesses.

Comment. An individual representing A Cool Defensive Driving Course commented that the requirement for having technical support, Internet Service Provider (ISP) hosts, and data storage facilities in Texas appears to be arbitrary, capricious, and creating a mirror system in Texas which would be extremely burdensome.

Comment. An individual representing CDS Driving Safety Course questioned why course owners must locate their technical support, ISP hosts, and data storage facilities in Texas. He further commented that the State should not limit with which businesses he could contract.

Comment. An individual representing Defensive Driver Online, Ltd., commented that it is essential that technical support, ISP hosts, and data storage facilities be located in Texas.

Agency Response. Based on public comment, language in this area was modified to require a back-up of student certificate data to be stored in Texas. The information to be stored in Texas will include: (1) student database (footprint) records; (2) validation questions and keys; (3) final exam questions and keys; and (4) student data information used to validate and issue uniform certificates of completion. Any information which changes must be updated at least once every 24 hours and all information must be available to TEA representatives on demand. Uniform certificates of completion must stay in the course provider's possession within the State of Texas until issued.

Comment. Driver Training Associates; All-Pro Defensive Driver Course, International Driver Training, Inc.; and A Cool Defensive Driving Course commented that TEA should not favor one type of ADM over another, should not implement only one type of delivery method, and should not unreasonably impede qualified delivery methods or curricula. They contended that the technical standards fail to address ADMs utilizing video and CD- ROM and only address Internet or electronic delivery methods, which would make TEA staff biased.

Agency Response. The Agency agrees with the contention that TEA is not to favor one course or methodology over another. The Agency disagrees that one type of delivery method is being implemented. The ADM approval process has thus far approved ADMs using videotape in conjunction with analog voice, videotape in conjunction with digital telephony, videotape in conjunction with the Internet, and pure Internet courses. Currently under review are ADMs utilizing CD-ROM. The rule language specifically addresses the issue of changing technology for both educational content and student validation issues. Although it is true that some rules apply strictly to Internet ADMs, the majority of the new rule language applies to all types of delivery methods.

Comment. Driver Training Associates; All-Pro Defensive Driver Course, International Driver Training, Inc.; and A Cool Defensive Driving Course questioned whether the technical standards can be justified when the technical standards for state colleges and universities are less rigorous.

Agency Response. There are significant differences between driver training regulations and regulations governing higher education programs. Because these entities are fundamentally different, it is not appropriate for TEA to attempt a comparison of driving safety courses and college credit courses delivered by distance learning technology.

Comment. Driver Training Associates; All-Pro Defensive Driver Course, International Driver Training, Inc.; and A Cool Defensive Driving Course requested that the commissioner of education withdraw the proposed rules in light of comments received since no clear evidence exists to indicate that the current ADM technical standards are not working.

Agency Response. The Agency disagrees that the proposed rules should be withdrawn. The current review and approval process and testimony has emphasized the need for rules regarding ADMs.

Comment. An individual representing The Safe Driver Centre Course commented that the focus on editing of the course material is misplaced and that the style and editing rules are unimportant to the approval process.

Agency Response. The Agency disagrees. The rule requiring ADMs to be adequately edited for correct use of grammar, spelling, and punctuation will not be revised. The ADM approval process will continue to require that these areas be addressed.

Comment. An individual representing USInteractive, also known as Blockbuster Franchise Defensive Driving, commented that students must have access to a live instructor endorsed by the course provider, on average, within two minutes.

Comment. An individual representing The Safe Driver Centre Course commented that within five minutes on a 24-hour per day, 7-day per week basis is burdensome and unnecessary in the Internet environment.

Comment. An individual representing A Cool Defensive Driving Course commented that the 24-hour, 7-day instructor requirement seems to be designed to squelch competition by small businesses that don't have the same resources as larger corporations and that the marketplace should decide whether this is a desirable feature of ADMs.

Agency Response. The Agency disagrees. Language regarding availability of a licensed instructor has been in rule for several years and will not be modified.

Comment. An individual representing USInteractive commented that a student should only be allowed one chance to answer student and course validation questions.

Agency Response. The Agency agrees and has modified the section to include language regarding "one chance to answer validation questions."

Comment. An individual representing USInteractive commented that student-solicited validation information must be used in conjunction with student information that can be verified by an outside third-party source for personal validation.

Comment. An individual representing A Cool Defensive Driving Course expressed the following concerns regarding third party security requirements: (1) they are illegal in most other states because student information is not released by the state to the public; (2) these requirements will result in a nightmare of student complaints; (3) that such requirements are burdensome to both the public and course provider; and (4) that students in Texas, who have requested that DPS not release driver's license information, should have an alternative method, such as proctoring, so that they can still participate in an ADM.

Comment. An individual representing National Traffic Safety Institute of Texas, Inc., commented that he had been told to plan on third-party authentication, and they were able to do so.

Comment. An individual representing CDS Driving Safety Course commented that if third-party validation is used then the student should be told which databases would be used.

Agency Response. Based on public comment, language regarding "student solicited validation questions" is now stated in rule. Experience gained from approved ADMs currently operating in Texas indicates that obtaining and using third-party data is feasible and does not appear to present problems for either the course provider or the student. Students have not, thus far, been reluctant to have third-party data reviewed nor has TEA received complaints from the general public about the use or identity of third-party databases.

Comment. An individual representing USInteractive commented that a minimum of 40 student validation questions verified by third-party sources is required to validate a student. A minimum of 50 course validation questions, randomly shuffled, that are specific to the course, but not necessarily specific to the course content, is required for course validation.

Comment. An individual representing A Cool Defensive Driving Course commented that third-party validation is not necessary and what is required in the technical standards is excessive.

Agency Response. Based on public comment, language regarding "the required number of student validation questions" has been modified and is now stated in rule. However, the requirement will be 30 student validation questions containing a minimum of 20 third-party validation questions. The agency will provide a pool of 30 or more questions to the course owners that

must be used to randomly generate the remaining ten student validation questions. These ten questions will not have to be validated against a third-party database.

Comment. An individual representing Comedy Driving Safety School commented that nowhere are there provisions to insure that no drugs and/or alcohol are present or consumed during the taking of the class as is a strict requirement of DSC classroom classes.

Agency Response. The Agency disagrees that additional rule provisions are needed in this area. The Agency applies rigorous approval requirements to ADMs with the intent that students will not be able to successfully complete the course if they are under the influence of drugs and/or alcohol.

Comment. An individual representing USInteractive commented that a minimum of 250 course content questions, randomly shuffled, is required as a basis from which to draw the course content validation questions for each course.

Comment. An individual representing The Safe Driver Centre Course commented that TEA is overestimating the severity of the security problem and that requiring a bank of twice the number of questions as are asked is arbitrary. He commented that the key to validation is vigilant human monitoring rather than complex third-party validation systems.

Agency Response. Based on public comment, language regarding the required number of course validation questions is now stated in rule. However, the requirements will be a pool of 160 course validation questions instead of 250, randomly generated, with a minimum number of 50% educational content questions. Also, 80 questions instead of 40 course questions must be asked and validated throughout the course. These modifications to rule have been made in response to the public comments and to improve security.

Comment. An individual representing USInteractive commented that a student should not be allowed more than 30 seconds to respond to a student validation or course content question.

Comment: An individual representing A Cool Defensive Driving Course commented that students might need more than 45 seconds to respond to questions.

Agency Response. The Agency disagrees with a response time of 30 seconds or less. Language regarding the "30-second time limit" for responding to a question is restrictive and does not provide the student an adequate response time. The rules allow one chance to answer these questions, but due to learning and/or language barriers as well as system processing time, it is appropriate to give the student 60 seconds to respond.

Comment. An individual representing USInteractive commented that if a student is stopped because of failure to answer student or course validation questions, the student must respond to on-line instruction for re-entry within a specified amount of time (recommend 5 minutes).

Agency Response. The Agency disagrees and believes that adequate security requirements now exist in rule; therefore, this modification is not needed.

Comment. An individual representing USInteractive commented that course content presentation should allow for a maximum of 50% text-based delivery, meaning no Internet-based workbooks should be allowed. The remaining 50% of the course needs to be a combination of video, audio, animation and graphics. These technical capabilities are currently available, regardless of comments to the contrary.

Agency Response. The Agency agrees that a predominantly text-based course is not acceptable and rule language has been modified to address this issue as well as include multi-media requirements. However, language regarding a "50% course content limit on text-based material" is not feasible since ADMs are required to follow the same content and course sequence as a traditional course. This requirement may preclude courses from meeting the 50% limit on text-based material.

Comment. An individual representing USInteractive commented that, except for courses offered by accredited colleges and universities, an ADM may have only one home page that enables the user to take the course and that the home page must identify the course provider, the course, and the ADM used.

Agency Response. The Agency disagrees. Course owners are required to provide consumers with specific information regarding the course. However, restricting the number of websites through which courses can be offered is not an appropriate rule or technical standard.

Comment. An individual representing USInteractive commented that all ADMs delivered over the Internet must have a disclaimer at the beginning of the course that lists all of the computer equipment a student must have to successfully complete the course, and the student must acknowledge this information before being allowed to proceed.

Agency Response. The Agency agrees. Language in rule has been modified to include a requirement for "a statement regarding the required course computer equipment." Course owners will be required to have the student acknowledge this information in the enrollment agreement.

Comment. An individual representing USInteractive commented that all ADMs must have a disclaimer at the beginning which states that Internet courses are subject to atmospheric and other types of interference beyond the control of the course provider and that the course may take longer than six hours because of these interruptions. In addition, the student must acknowledge this information before being allowed to proceed.

Agency Response. The Agency agrees. Language in rule has been modified to include a statement that "interruptions of service may occur over which the course owner has no control." Course owners will be required to have the student acknowledge this information in the enrollment agreement.

Comment. An individual representing USInteractive commented that no advertising should appear during the instructional portion of an ADM presentation and that advertising should take place only on the home page, during breaks, after the test, or during loading periods.

Comment. An individual representing A Cool Defensive Driving Course commented that this is one of the proposals that seem to be a design issue rather than a regulatory issue.

Agency Response. The Agency agrees with the restriction of advertising. Language regarding this issue is now stated in rule. The Agency will prohibit the appearance of advertising during the actual instruction times of the course. Advertising is still allowed on homepages and other areas outside actual instruction time.

Comment. An individual representing USInteractive commented that each course should be sufficiently difficult to ensure that a

certain percentage of students fail the course, and these standards should be set forth and reviewed by TEA on an annual basis.

Agency Response. The Agency disagrees. Language regarding a "required quota for failure" is problematic because there is no legal authority or sound educational theory to support this requirement. The concern regarding failure criterion is noted and language in rule now addresses the issue of course difficulty by requiring questions that are educationally challenging. In addition, personal validation and course failure criterion is now stated in rule.

Comment. USInteractive commented that course provider licenses issued for ADMs should be for a probationary period of 12 months. During the first 12 months, TEA should review the course and determine that security is adequate and the course is being presented as approved. Should a violation of either of these items be found, the probationary license would automatically be revoked.

Agency Response. There does not appear to be legal authority contained in VTCS, 4413(29c), to make this possible. Consideration of this proposal would require that the legislature amend the law to provide authority for conditional licenses.

Comment. An individual representing USInteractive commented that TEA should develop a penalty for course providers who attempt to hack into other course provider's systems.

Agency Response. The proposed language regarding "course provider penalties for attempted hacking" is outside the jurisdiction of the Agency. However, TEA is sensitive to the security issues surrounding system invasion (hacking) and rule language has been modified to address this issue.

Comment. An individual representing A Cool Defensive Driving Course commented that many of the technical standards appear to be proposals designed to squelch competition rather than provide a necessary alternative delivery method and that many seem to be design issues rather than regulatory matters. In this area, he lists several items including flash, browsing, visual and audible cues, monitor adjustment, video capture requirements, pop-up reminders, and video displaying inline on same page as text.

Comment. An individual representing CDS Driving Safety Course commented that design requirements should be mandated, such as the option of switching off audible cues, switching to headset use, menus being either text or graphic, course mapping, assigned user IDs, case-sensitive passwords, and page timers.

Agency Response. The Agency agrees that non-critical design elements could be considered optional. Regulatory matters such as "video capture requirements," multi-media, and "video display on the same page as text" have been incorporated in rule.

Comment. An individual representing CDS Driving Safety Course commented that he believes the rule prohibiting advertising prior to course approval is wrong; he believes that he should have the right to advertise and let the public know that a product is going to be available to them in the near future. He believes this may create legal problems for TEA.

Agency Response. The Agency disagrees. VTCS, Article 4413(29c), Section 9(4), states that a school shall not use advertising designed to deceive or mislead the student. VTCS, Article 4413(29c), Section 12(b), forbids a school to advertise before the date the school receives a school license from the commissioner.

Comment. An individual representing CDS Driving Safety Course commented that to insure equity, ADMs should be required to have regular breaks totaling 60 minutes of the 360 minutes of required class time, just like traditional classroom courses. He believes that the rationale regarding student concentration for long periods applies equally to both ADM and traditional classes.

Agency Response. The Agency is sensitive to the issue of equity and comments regarding fairness are noted. However, compelling arguments exist on both sides of this issue and no changes to existing rule are being adopted at this time.

Comment. An individual representing CDS Driving Safety Course commented that the Agency should require course owners to provide an alternative testing technique for students with reading, hearing, or learning disabilities. He believes that this may cause legal problems for TEA.

Agency Response. The Agency disagrees. The course provider is responsible for meeting the requirements found in both State and Federal law, including the Americans with Disabilities Act. Rule language regarding this issue will not be modified.

Comment. An individual representing CDS Driving Safety Course commented on the security testing and system invasion (hacker) protection required by TEA. He believes that the state would be embarrassed and the industry would be damaged if student information, testing, or financial data were compromised. He also suggests that course owners should require verification of identity and participation before allowing a student to re-enter the course after having been "timed out." He also commented that TEA should arrange for security testing to insure the privacy and security of student information and that this should be paid for by the $9,000 application fee.

Agency Response. The Agency agrees that system security is important and will continue to regulate the security and testing standards of all course providers in Texas. Rule language now includes requirements such as data submission standards, firewalls, software and hardware security through logical or physical isolation, etc. However, the Agency views security surrounding the transmission of financial data as outside its jurisdictional control.

The amendments are adopted under the Texas Civil Statutes, Article 4413(29c), §6, as amended by Senate Bill 777, 76th Texas Legislature, 1999, which authorizes the commissioner of education to adopt rules necessary to implement the Texas Driver and Traffic Safety Education Act.

§176.1101. Definitions.

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

(1) Advertising--Any affirmative act, whether written or oral, designed to call public attention to a school and/or course in order to evoke a desire to patronize that school and/or course. This includes Meta tags and search engine listings.

(2) Break--An interruption in a course of instruction occurring after the course introduction and before the comprehensive exam and course summation.

(3) Change of ownership of a school or course provider--A change in the control of the school or course provider. Any agreement

to transfer the control of a school or course provider is considered to be a change of ownership. The control of a school or course provider is considered to have changed:

(A) in the case of ownership by an individual, when more than 50% of the school or course provider has been sold or transferred;

(B) in the case of ownership by a partnership or a corporation, when more than 50% of the school or course provider or of the owning partnership or corporation has been sold or transferred; or

(C) when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the school or course provider.

(4) Clock hour--50 minutes of instruction in a 60-minute period for a driving safety course.

(5) Course validation question--A question designed to establish the student's participation in the course and comprehension of the course material by requiring the student to answer a question regarding a fact or concept taught in the course.

(6) Division--The division of the Texas Education Agency (TEA) responsible for administering the provisions of the law, rules, regulations, and standards as contained in this chapter and licensing driver training programs.

(7) Division director--The person designated by the commissioner of education to carry out the functions and regulations governing the driving safety schools and course providers and designated as director of the division responsible for licensing driver training programs.

(8) Final examination question--A question designed to measure the student's comprehension and knowledge of course material presented after the instruction is completed.

(9) Good reputation--A person is considered to be of good reputation if:

(A) there are no felony convictions related to the operation of a school or course provider, and the person has been rehabilitated from any other felony convictions;

(B) there are no convictions involving crimes of moral turpitude;

(C) within the last ten years, the person has never been successfully sued for fraud or deceptive trade practice;

(D) the person does not own or operate a school or course provider currently in violation of the legal requirements involving fraud, deceptive trade practices, student safety, quality of education, or refunds; has never owned or operated a school or course provider with habitual violations; and has never owned or operated a school or course provider which closed with violations including, but not limited to, unpaid refunds or selling, trading, or transferring a driver education certificate or uniform certificate of course completion to any person or school not authorized to possess it;

(E) the person has not withheld material information from representatives of TEA or falsified instructional records or any documents required for approval or continued approval; and

(F) in the case of an instructor, there are no misdemeanor or felony convictions involving driving while intoxicated over the past seven years.

(10) Inactive course--A driving safety course for which no uniform certificates of completion have been purchased for 36 months or longer.

(11) Instructor trainer--A driving safety instructor who has been trained to prepare instructors to give instruction in a specified curriculum.

(12) Moral turpitude--Conduct that is inherently immoral or dishonest.

(13) New course--A driving safety course is considered new when it has not been approved by TEA to be offered previously, or has been approved by TEA and offered and then discontinued, or the content, lessons, or delivery of the course have been changed to a degree that a new application is requested and a complete review of the application and course presentation is necessary to determine compliance.

(14) Personal validation question--A question designed to establish the identity of the student by requiring an answer related to the student's personal information such as a driver's license number, address, date of birth, or other similar information that is unique to the student.

(15) Public or private school--For the purpose of these rules, a public or private school is an accredited public or non-public secondary school.

(16) Uniform certificate of course completion--A document that is printed, administered, and supplied by TEA to owners or primary consignees for issuance to students who successfully complete an approved driving safety course and that meets the requirements of Transportation Code, Chapter 543, and Code of Criminal Procedure, Article 45.0511. This term encompasses all parts of a uniform certificate of course completion with the same serial number. It is a government record.

§176.1108. Courses of Instruction.

(a) This section contains requirements for driving safety, continuing education, and instructor development courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. Except as provided by paragraph (1)(I) of this subsection, all course content shall be delivered under the direct observation of a licensed instructor. Any changes and updates to a course shall be submitted and approved prior to being offered. Approval of any course that is inactive as of September 1, 2000, will be revoked.

(1) Driving safety courses.

(A) Educational objectives. The educational objectives of driving safety courses shall include, but not be limited to: promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of drivers and citizens; reducing traffic violations; reducing traffic-related injuries, deaths, and economic losses; and motivating continuing development of traffic-related competencies.

(B) Driving safety course content guides. A course content guide is a description of the content of the course and the techniques of instruction that will be used to present the course. To be approved, each course owner shall submit as part of the application a course content guide that includes the following:

(i) a statement of the course's traffic safety goal and philosophy;

(ii) a statement of policies and administrative provisions related to instructor conduct, standards, and performance;

(iii) a statement of policies and administrative provisions related to student progress, attendance, makeup, and conduct. The policies and administrative provisions shall be used by each school that offers the course and include the following requirements:

(I) progress standards that meet the requirements of subparagraph (F) of this paragraph;

(II) appropriate standards to ascertain the attendance of students. All schools approved to use the course must use the same standards for documenting attendance to include the hours scheduled each day and each hour not attended;

(III) if the student does not complete the entire course, including all makeup lessons, within the timeline specified by the court, no credit for instruction shall be granted;

(IV) any period of absence for any portion of instruction will require that the student complete that portion of instruction. All make-up lessons must be equivalent in length and content to the instruction missed and taught by a licensed instructor; and

(V) conditions for dismissal and conditions for reentry of those students dismissed for violating the conduct policy;

(iv) a statement of policy addressing entrance requirements and special conditions of students, such as the inability to read, language barriers, and other disabilities;

(v) a list of relevant instructional resources, such as textbooks, audio and visual media and other instructional materials, and equipment that will be used in the course; and the furniture deemed necessary to accommodate the students in the course, such as tables, chairs, and other furnishings. The course shall include a minimum of 60 minutes of videos, including audio; however, the videos and other relevant instructional resources cannot be used in excess of 150 minutes of the 300 minutes of instruction. The resources may be included in a single list or may appear at the end of each instructional unit;

(vi) written or printed materials that shall be provided for use by each student as a guide to the course. The division director may make exceptions to this requirement on an individual basis;

(vii) instructional activities to be used to present the material (lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions, etc.). When small-group discussions are planned, the course content guide shall identify the questions that will be assigned to the groups;

(viii) instructional resources for each unit;

(ix) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the course guide. The evaluative technique may be used throughout the unit or at the end; and

(x) a completed form cross-referencing the instructional units to the topics identified in subparagraph (D) of this paragraph. A form to cross-reference the instructional units to the required topics and topics unique to the course will be provided by the division.

(C) Course and time management. Approved driving safety courses shall be presented in compliance with the following guidelines.

(i) A minimum of 300 minutes of instruction is required.

(ii) The total length of the course shall consist of a minimum of 360 minutes.

(iii) Sixty minutes of time, exclusive of the 300 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum course content. All break periods shall be provided after instruction has begun and before the comprehensive exam and summation.

(iv) Administrative procedures, such as enrollment, shall not be included in the 300 minutes of the course.

(v) Courses conducted in a single day in a traditional classroom setting shall allow a minimum of 30 minutes for lunch, which is exclusive of the total course length of 360 minutes.

(vi) Courses taught over a period longer than one day shall provide breaks on a schedule equitable to those prescribed for one-day courses. However, all breaks shall be provided after the course introduction and prior to the last unit of the instructional day or the comprehensive exam and summation, whichever is appropriate.

(vii) The order of topics shall be approved by Texas Education Agency (TEA) as part of the course approval, and for each student, the course shall be taught in the order identified in the approved application.

(viii) Students shall not receive a uniform certificate of course completion unless that student receives a grade of at least 70% on the final examination.

(ix) The TEA shall produce and supply to course providers, at no cost to the course providers, copies of a short video that will provide information about the requirements for completing a six-hour driving safety course and the penalties involved for accepting a uniform certificate of course completion for a course that was not six hours in length. The course provider shall ensure that the video is shown to all students of each class prior to the final examination. Alternative methods for providing the required information to the students may be submitted by the course provider and approved at the discretion of the division director.

(x) No more than 50 students per class are permitted in driving safety courses if any student in the class receives a uniform certificate of completion.

(xi) The driving safety school shall make a material effort to establish the identity of the student.

(D) Minimum course content. A driving safety course shall include, as a minimum, materials adequate to address the following topics and to comply with the minimum time requirements for each unit and the course as a whole.

(i) Course introduction--minimum of ten minutes (instructional objective--to orient students to the class). Instruction shall address the following topics:

(I) purpose and benefits of the course;

(II) course and facilities orientation;

(III) requirements for receiving course credit; and

(IV) student course evaluation procedures.

(ii) The traffic safety problem--minimum of 15 minutes (instructional objectives--to develop an understanding of the nature of the traffic safety problem and to instill in each student a sense of responsibility for its solution). Instruction shall address the following topics:

(I) identification of the overall traffic problem in the United States, Texas, and the locale where the course is being taught;

(II) death, injuries, and economic losses resulting from motor vehicle crashes in Texas; and

(III) five leading causes of motor vehicle crashes in Texas as identified by the Department of Public Safety (DPS).

(iii) Factors influencing driver performance--minimum of 20 minutes (instructional objective--to identify the characteristics and behaviors of drivers and how they affect driving performance). Instruction shall address the following topics:

(I) attitudes, habits, feelings, and emotions;

(II) alcohol and other drugs;

(III) physical condition;

(IV) knowledge of driving laws and procedures; and

(V) understanding the driving task.

(iv) Traffic laws and procedures--minimum of 30 minutes (instructional objectives--to identify the requirements of, and the rationale for, applicable driving laws and procedures and to influence drivers to comply with the laws on a voluntary basis). Instruction shall address the following topics:

(I) passing;

(II) right-of-way;

(III) turns;

(IV) stops;

(V) speed limits;

(VI) railroad crossings safety;
(-a-) statistics;
(-b-) causes; and
(-c-) evasive actions;

(VII) categories of traffic signs, signals, and highway markings;

(VIII) pedestrians;

(IX) improved shoulders;

(X) intersections;

(XI) occupant restraints;

(XII) litter prevention;

(XIII) law enforcement and emergency vehicles (this category will be temporary until the need is substantiated by documentation from the DPS on the number of deaths or injuries involved because of improper procedures used by a citizen when stopped by a law enforcement officer); and

(XIV) other laws as applicable (i.e., financial responsibility/compulsory insurance).

(v) Special skills for difficult driving environments--minimum of 20 minutes (instructional objectives--to identify how special conditions affect driver and vehicle performance and identify techniques for management of these conditions). Instruction shall address the following topics:

(I) inclement weather;

(II) traffic congestion;

(III) city, urban, rural, and expressway environments;

(IV) reduced visibility conditions--hills, fog, curves, light conditions (darkness, glare, etc.), etc.; and

(V) roadway conditions.

(vi) Physical forces that influence driver control--minimum of 15 minutes (instructional objective--to identify the physical forces that affect driver control and vehicle performance). Instruction shall address the following topics:

(I) speed control (acceleration, deceleration, etc.);

(II) traction (friction, hydroplaning, stopping distances, centrifugal force, etc.); and

(III) force of impact (momentum, kinetic energy, inertia, etc.).

(vii) Perceptual skills needed for driving--minimum of 20 minutes (instructional objective--to identify the factors of perception and how the factors affect driver performance). Instruction shall address the following topics:

(I) visual interpretations;

(II) hearing;

(III) touch;

(IV) smell;

(V) reaction abilities (simple and complex); and

(VI) judging speed and distance.

(viii) Defensive driving strategies--minimum of 40 minutes (instructional objective--to identify the concepts of defensive driving and demonstrate how they can be employed by drivers to reduce the likelihood of crashes, deaths, injuries, and economic losses). Instruction shall address the following topics:

(I) trip planning;

(II) evaluating the traffic environment;

(III) anticipating the actions of others;

(IV) decision making;

(V) implementing necessary maneuvers;

(VI) compensating for the mistakes of other drivers;

(VII) avoiding common driving errors; and

(VIII) interaction with other road users (motorcycles, bicycles, trucks, pedestrians, etc.).

(ix) Driving emergencies--minimum of 40 minutes (instructional objective--to identify common driving emergencies and their countermeasures). Instruction shall address the following topics:

(I) collision traps (front, rear, and sides);

(II) off-road recovery, paths of least resistance; and

(III) mechanical malfunctions (tires, brakes, steering, power, lights, etc.).

(x) Occupant restraints and protective equipment--minimum of 15 minutes (instructional objective--to identify the rationale for having and using occupant restraints and protective equipment). Instruction shall address the following topics:

(I) legal aspects;

(II) vehicle control;

(III) crash protection;

(IV) operational principles (active and passive); and

(V) helmets and other protective equipment.

(xi) Alcohol and traffic safety--minimum of 40 minutes (instructional objective--to identify the effects of alcohol on roadway users). Instruction shall address the following topics related to the effects of alcohol on roadway users:

(I) physiological effects;

(II) psychological effects;

(III) legal aspects;

(IV) synergistic effects; and

(V) countermeasures.

(xii) Comprehensive examination and summation--minimum of 15 minutes (this shall be the last unit of instruction).

(xiii) The remaining required 20 minutes of instruction shall be allocated to the topics included in the minimum course content or to additional driving safety topics that satisfy the educational objectives of the course.

(E) Instructor training guides. An instructor training guide contains a description of the plan, training techniques, and curriculum to be used to train instructors to present the concepts of the approved driving safety course described in the applicant's driving safety course content guide. Each course provider shall submit as part of the application an instructor training guide that is bound or hole-punched and placed in a binder and that has a cover and a table of contents. The guide shall include the following:

(i) a statement of the philosophy and instructional goals of the training course;

(ii) a description of the plan to be followed in training instructors. The plan shall include, as a minimum, provisions for the following:

(I) instruction of the trainee in the course curriculum;

(II) training the trainee in the techniques of instruction that will be used in the course;

(III) training the trainee about administrative procedures and course provider policies;

(IV) demonstration of desirable techniques of instruction by the instructor trainer;

(V) a minimum of 15 minutes of instruction of the course curriculum by the trainee under the observation of the instructor trainer as part of the basic training course;

(VI) time to be dedicated to each training lesson; and

(VII) a minimum of 600 minutes of instruction of the course in a regular approved course under the observation of a licensed instructor trainer. The instructor trainee shall provide instruction for two full courses. It is not mandatory that the two courses be taught as two complete courses; however, every instructional unit shall be taught twice; and

(iii) instructional units sufficient to address the provisions identified in clause (ii)(I)-(V) of this subparagraph. The total time of the units shall contain a minimum of 24 instructional hours. Each instructional unit shall include the following:

(I) the subject of the unit;

(II) the instructional objectives of the unit;

(III) time to be dedicated to the unit;

(IV) an outline of major concepts to be presented;

(V) instructional activities to be used to present the material (i.e., lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions). When small-group discussions are planned, the course guide shall identify the questions that will be assigned to the groups;

(VI) instructional resources for each unit; and

(VII) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the instructor training guide. The evaluative technique may be used throughout the unit or at the end.

(F) Examinations. Each course provider shall submit for approval, as part of the application, tests designed to measure the comprehension level of students at the completion of the driving safety course and the instructor training course. The comprehensive examination for each driving safety course must include at least two questions from each unit, excluding the course introduction and comprehensive examination units. Instructors may not be certified or students given credit for the driving safety course unless they score 70% or more on the final test. The course content guide shall identify alternative testing techniques to be used for students with reading, hearing, or learning disabilities and policies for retesting students who score less than 70% on the final exam. The applicant may choose not to provide alternative testing techniques; however, students shall be advised of courses providing alternative testing prior to enrollment in the course. Test questions may be short answer, multiple choice, essay, or a combination of these forms.

(G) Student course evaluation. Each student in a driving safety course shall be given an opportunity to evaluate the course and the instructor on an official evaluation form. A master copy of the evaluation form will be provided to TEA.

(H) State-level evaluation of driving safety courses. Each course provider shall collect adequate student data to enable TEA to evaluate the overall effectiveness of a course in reducing the number of violations and accidents of persons who successfully complete the course. The commissioner of education may determine a level of effectiveness that serves the purposes of Texas Civil Statutes, Article 4413(29c).

(I) Driving safety courses delivered by an alternative delivery method (ADM).

(i) The commissioner of education may approve an ADM for an approved driving safety course and waive any rules to accomplish this approval if the ADM includes testing and security measures that are at least as secure as the measures available in a usual classroom, including:

(I) as provided in this paragraph, the educational objectives, minimum course content, applicable areas of course and time management, examination, and student course evaluation requirements are met. The following requirements shall also be met:

(-a-) the ADM shall follow the same topic order and course content sequence as the approved traditional course. A predominantly text-based ADM will not be considered. The minimum time requirements for each unit and the course as a whole described in subparagraphs (C) and (D) of this paragraph shall be met;

(-b-) advertisement of goods and services shall not appear during the actual instructional times of the course;

(-c-) the student shall be able to browse or review previously completed material;

(-d-) the student shall be able to navigate logically and systematically through the course;

(-e-) technical support personnel shall be knowledgeable of course content and technical issues;

(-f-) the course shall be adequately edited for correct use of grammar, punctuation, and spelling before it is submitted for review; and

(-g-) multi-media requirements shall be met, as follows:

(-1-) all videos shall be timed and include a validation process that verifies the student spent the required time viewing and comprehending the video material;

(-2-) videos may utilize streaming video, flash, or comparable technologies;

(-3-) the video shall be captured at 15 frames per second or more. Video size shall be at least 240x180 pixels and shall resize while maintaining its aspect ratio;

(-4-) if using streaming video, the video file shall stream for multiple connection speeds. A download rate of at least 28.8Kbps is required;

(-5-) the video shall have inline controls available to the user for pausing and restarting;

(-6-) videos shall display inline on the same page with the relevant text; and

(-7-) permanent moving animation that is not related to the topic being presented on the page is prohibited;

(II) the course materials are written by a TEA-licensed driving safety instructor or other individuals or organizations with recognized experience in writing instructional materials with input from a TEA-licensed driving safety instructor;

(III) with the exception of circumstances beyond the control of the course owner, the student has adequate access to a licensed instructor and telephonic technical assistance (help desk) (on the average, within two minutes) throughout the course such that the flow of instructional information is not delayed;

(IV) the equipment and course materials are available only through and at the approved driving safety school or classroom or at a storefront location specifically approved by TEA for that purpose. TEA shall be informed prior to any moves, additions, or changes to the course, data processing system, operating system, or organizational rules maintained by the course owner that could impact the course content or the confidentiality of any part of the system of records, applications, operating systems, or hardware used by the course owner;

(V) there is sufficient evidence to demonstrate the security of the course and that the general public cannot circumvent it, including the following:

(-a-) course owners shall make a material effort to validate the student's identity at the point of registration and throughout the course and maintain a record of the results;

(-b-) acceptable validation methods to verify student identity are third-party verification of personal information, voice recognition, thumb-print scans, retina scans, student-solicited responses when combined with third-party verification of personal information, or other acceptable validation methods that meet or exceed these methods; and

(-c-) the student shall be allowed no more than 60 seconds to respond to each personal or course validation question and shall have only one chance to respond correctly;

(VI) the ADM shall incorporate a personal validation process that verifies student identity and participation throughout the course that includes the following:

(-a-) if the ADM requires a student's picture identification to be verified at the beginning and conclusion of the course, the following criteria shall be met:

(-1-) at least one third-party verified personal validation question per unit (minimum of ten) shall be asked, excluding log-on questions;

(-2-) all questions shall be generated in random order and the same questions shall not be asked more than twice. Questions that appear twice shall be as a result of random generation and not by design; and

(-3-) the test bank for personal validation questions shall equal three times the number of questions being asked;

(-b-) if the ADM does not require a student's picture identification at the beginning and conclusion of the course, the following criteria shall be met:

(-1-) at least one personal validation question shall be asked throughout the course every ten to 20 minutes, for a total of at least 30 personal validation questions. Personal validation questions shall be asked while the student is completing the course, not including the final examination. Registration, log-on questions (i.e., password), and re-entry questions shall not be counted as part of the 30 personal validation questions;

(-2-) at least 20 of the 30 personal validation questions asked during the course must be verified against a third-party database;

(-3-) the test bank for third-party verified validation questions shall be at least 30 questions and shall be drawn from databases of at least two different sources. A maximum of 12 questions may be drawn from driver's license and/or Social Security information;

(-4-) all third-party verifiable validation questions shall be randomly generated in respect to time and order and the same questions shall not be asked more than twice. Questions that appear twice shall be as a result of random generation and not by design; and

(-5-) at least ten additional personal validation questions shall be asked and shall be randomly generated from a list of 30 questions supplied by TEA for this purpose. All questions from this list shall be randomly generated in respect to time and

order and the same questions shall not be asked more than twice. Questions that appear twice shall be as a result of random generation and not by design; and

(-c-) exceptions to the personal validation process shall only be approved for a personal validation process that meets or exceeds the requirements specified in items (-a-) and (-b-) of this subclause;

(VII) the ADM shall incorporate a course validation process that verifies student participation and comprehension of course material, including the following:

(-a-) the ADM includes built-in time parameters to ensure that six hours have been attended and completed by the student; and

(-b-) testing of student participation throughout the course to ensure that the student receives the minimum course content and time management requirements for instruction as provided by subparagraphs (C) and (D) of this paragraph, as follows:

(-1-) at least 80 course validation questions shall be asked throughout the course. Each student shall be asked at least five time-limited course questions during every major unit throughout the course. Course validation questions shall be asked while the student is completing the course, not including the final examination;

(-2-) at least 50% of the course validation questions asked shall be educational content questions drawn from statistics, facts, and techniques presented as part of the course material;

(-3-) the test bank for course validation questions shall be at least 160 questions, of which at least 50% shall be educational questions drawn from the course material;

(-4-) all course validation questions shall be generated in random order and the same questions shall not be asked more than twice. Questions that appear twice shall be as a result of random generation and not by design;

(-5-) at least 20% of course validation questions shall relate to the content of multimedia "clips" presented during the course. All questions shall be generated in random order and the same questions shall not be asked more than twice. Questions that appear twice shall be as a result of random generation and not by design;

(-6-) course validation questions, whether pertaining to educational content or to a specific event, fact, person, or situation presented during the course, shall be of such difficulty that the answer may not be easily determined without having completed the actual instruction; and

(-7-) course validation questions shall be short answer, multiple choice, essay, or a combination of these forms;

(VIII) the ADM shall incorporate a final examination that measures student knowledge and comprehension of course material by an examination consisting of at least two questions per required unit set forth in subparagraph (D)(ii)-(xi) of this paragraph for a total of at least 20 questions. The final examination questions shall be drawn from a bank of at least 80 questions. Test questions shall be generated in random order, and no test question shall be repeated within the 20-question final examination. Test questions shall be of such difficulty that the answer may not be easily determined without having completed the actual instruction. Testing shall be administered by a TEA-licensed instructor, and if the ADM does not involve the student being in physical proximity to the instructor, the testing may be administered using technology;

(IX) the ADM provides for failure criteria for personal validation, course validation, and final examination that meet or exceed those set forth in items (-a-)-(-c-) of this subclause. Course owners shall rigidly enforce failure criteria as follows:

(-a-) for personal validation questions that are not answered within 60 seconds of the time of transmission from the course owner or that are answered incorrectly, the student shall be suspended from the course after each missed question. The student shall be allowed to reenter the course after the first missed question if the student successfully answers the missed question along with at least three of five randomly generated personal validation questions. The student shall be failed and shall not receive a uniform certificate of completion if the student misses more than two verified personal validation questions. Course providers shall be allowed to make allowances for obvious and logical mistakes by students, such as when a student enters information that matches the database information in substance but not in form;

(-b-) for course validation questions that are not answered within 60 seconds of the time of transmission from the course provider or that are answered incorrectly, the student shall be suspended from the course after missing 16 questions. The student shall be allowed to reenter the course upon correctly answering three of five course validation questions from material relevant to the missed question. The seventeenth, eighteenth, and nineteenth missed questions shall be handled in the same manner. The twentieth missed question shall result in course failure and the student shall not receive a uniform certificate of completion. Course providers shall be allowed to make allowances for obvious and logical mistakes by students, such as when a student enters information that matches the correct answer in substance but not in form; and

(-c-) for final examination questions, students shall be allowed only one answer to each question posed. If the question is not answered within 60 seconds of the time of transmission from the course provider or is answered incorrectly, the question shall be counted as incorrect. A student must correctly answer 70% or more of all the questions on the final examination. A student shall be tested on the final examination a total of no more than three times. If the student is re-tested after failing the final examination, the re-test shall consist of 20 randomly generated questions that meet the same time and content requirements as the final examination. If a student fails to correctly answer at least 70% of the final examination questions on three consecutive attempts, the student shall be failed and denied a uniform certificate of completion;

(X) the ADM provides for the creation and maintenance of records documenting student enrollment, the steps taken to verify each student's identity verification, the participation of each student, and the testing of each student's knowledge. The following requirements shall be met:

(-a-) the enrollment contract shall identify the type of any third-party data that will be accessed prior to or during validation of the student's identity. The course owner shall obtain the student's approval to access the third-party data;

(-b-) the enrollment contract shall identify the hardware and software requirements to successfully complete the course. The course owner shall obtain the student's acknowledgement that the student understands the computer requirements;

(-c-) the enrollment contract shall specify that interruptions in course service may occur over which the course owner has no control. The course owner shall obtain the student's acknowledgement that the student understands that service interruptions may occur;

(-d-) the enrollment contract shall specify the data that will be collected from the student that could be sold to entities that may derive commercial or social benefits from the data, and the course owner shall obtain the student's approval for collection and distribution of that data;

(-e-) TEA shall be informed of proposed changes to course and student validation records (i.e., footprints), and no changes can be implemented without written approval signed by the division director; and

(-f-) the course owner shall maintain a complete student course data file (footprint) to demonstrate student activity. Course owners shall ensure that at least the following information is collected and retained for creating the student footprint:

(-1-) student's name and driver's license number;

(-2-) dates and times of student activity (log-on and log-off times);

(-3-) dates, times, and results of personal-validation and course-content questions. If a "key" or "code" is used to identify the question and answer, rather than recording the entire question and answer, then the "key" or "code" must be furnished to TEA;

(-4-) verification of the amount of time the student spent in each unit;

(-5-) verification of the amount of total time the student spent in the course;

(-6-) an identifier of the reason a person was suspended or failed the course;

(-7-) dates, times, and responses for each question on the final examination. If a "key" or "code" is used to identify the question and answer, rather than recording the entire question and answer, the "key" or "code" must be furnished to TEA; and

(-8-) name or identity number of staff member entering comments, retesting, or revalidating student; and

(XI) the ADM provides for data security, as follows:

(-a-) records that constitute sensitive or confidential information shall be protected in each individual course;

(-b-) any programs, applications, or databases that contain testing programs, files containing student identification information, files containing information on certification or certificate issuance, or testing "keys" shall be subject to the rules governing protection of data;

(-c-) prior to ADM approval, course owners shall provide TEA a non-disclosure agreement in which they assure that they will not provide any stored or transient information to a requesting party other than an internal business function, TEA, or a TEA-approved recipient. Each internal business function given access to sensitive/confidential information shall be approved in writing by TEA. Alternatively, the course owner shall include in the enrollment contract a privacy statement regarding data that will be collected from the student that could be sold to entities that may derive commercial or social benefits from the data, and the course owner shall obtain the student's approval for collection and distribution of that data;

(-d-) access to confidential electronic information as defined in item (-b-) of this subclause shall occur through strictly controlled and audited software and/or hardware interfaces. Access to confidential information shall be documented and occur through strictly enforced business rules and operational procedures that comply with state and federal laws;

(-e-) remote transmission of sensitive data such as student identity data shall take place through secure channels implementing asymmetric key (public key) cryptography or its equivalent. Remote transmission includes any data that traverses the Internet or other data or voice network(s) that exist in the public domain apart from the course owner's on-premises local area network;

(-f-) course owners shall make information inaccessible to those who are not authorized to obtain it, and are responsible for maintaining the security of hardware, software, and confidential information stored therein. Either logical or physical isolation of the system hardware and software or a combination of the two is acceptable. If a non-distributed (central) architecture is used in which all applications (secure and otherwise) reside on a single host, then acceptable access control mechanisms might include (but are not limited to) locked rooms for servers, tape libraries, and network infrastructure; secure operating systems; or encrypted databases, applications, and data files. In a distributed environment, additional mechanisms shall be employed such as the use of firewalls, network and application-level access control lists, and other protection technology to ensure that restricted interfaces and backends are not compromised;

(-g-) course owners shall assure that course data are readily, securely, and reliably available by electronic or printed means to TEA and TEA authorized recipients on a demand basis. If the data are not stored in Texas, then back-ups of the data shall be stored in Texas and any information that changes must be updated at least once every 24 hours;

(-h-) course owners shall have a disaster recovery system that ensures system restoration, in case of failure, to a working state of acceptable accuracy within 24 hours. A certification statement from an authorized/qualified third party will be considered acceptable proof that the course owner has an acceptable disaster recovery system;

(-i-) upon termination of the course approval and/or course provider license, any missing student data shall be delivered to TEA within seven calendar days of termination; and

(-j-) TEA reserves the right to require modifications to the system and policies maintained by the course owner if a threat to data security is perceived. This may involve providing a third-party certification to TEA by the course owner.

(ii) For an ADM approved before the effective date of this subsection, the ADM must demonstrate compliance with this subsection prior to December 31, 2001.

(J) Requirements for authorship. The course materials shall be written by a TEA-licensed driving safety instructor or other individuals or organizations with recognized experience in writing instructional materials with input from a TEA-licensed driving safety instructor.

(2) Instructor development courses.

(A) Driving safety instructors shall successfully complete 36 clock hours (50 minutes of instruction in a 60-minute period) in the approved instructor development course for the driving safety course to be taught, under the supervision of a driving safety instructor trainer. Supervision is considered to have occurred when the instructor trainer is present and personally provides the 36 clock hours of training for driving safety instructors, excluding those clock hours approved by TEA staff that may be presented by a guest speaker or using films and other media that pertain directly to the concepts being taught.

(B) Instruction records shall be maintained by the course provider and instructor trainer for each instructor trainee and

shall be available for inspection by authorized division representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include: the trainee's name, address, driver's license number, and other pertinent data; the name and instructor license number of the person conducting the training; and the dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training course, the instructor trainer conducting the training will certify one copy of the instruction record for attachment to the trainee's application for licensing, and one copy will be maintained in a permanent file at the course provider location.

(C) All student instruction records submitted for the TEA-approved instructor development course shall be signed by the course provider. Original documents shall be submitted.

(D) Driving safety instructor development courses may be offered at approved classroom facilities of a licensed school which is approved to offer the driving safety course being taught. A properly licensed instructor trainer shall present the course.

(E) Applicants shall complete 36 hours of training in the driving safety curriculum that shall be taught. Of the 36 hours, 24 shall cover techniques of instruction and in-depth familiarization with materials contained in the driving safety curriculum. The additional 12 hours shall consist of practical teaching with students and shall occur after the first 24 hours have been completed.

(F) The driving safety course provider shall submit dates of instructor development course offerings for the 24-hour training that covers techniques of instruction and in-depth familiarization with the material contained in the driving safety curriculum, locations, class schedules, and scheduled instructor trainers' names and license numbers before the courses are offered. The 12-hour practical-teaching portion of the instructor development course shall be provided at properly licensed schools or classrooms approved to offer the course being provided.

(3) Continuing education courses.

(A) Continuing education requirements include the following.

(i) Each course provider will be responsible for receiving an approval for a minimum of a two-hour continuing education course. Each instructor currently endorsed to teach the course must attend the approved continuing education course conducted by the course provider.

(ii) The request for course approval shall contain the following:

(I) a description of the plan by which the course will be presented;

(II) the subject of each unit;

(III) the instructional objectives of each unit;

(IV) time to be dedicated to each unit;

(V) instructional resources for each unit, including names or titles of presenters and facilitators;

(VI) any information that TEA mandates to ensure quality of the education being provided;

(VII) a plan by which the course provider will monitor and ensure attendance and completion of the course by the instructions within the guidelines set forth in the course; and

(VIII) a course evaluation form to be completed by each instructor attending the course. The course provider must maintain each instructor's completed evaluation form for one year.

(iii) A continuing education course may be approved if TEA determines that:

(I) the course constitutes an organized program of learning that enhances the instructional skills, methods, or knowledge of the driving safety instructor;

(II) the course pertains to subject matters that relate directly to driving safety instruction, instruction techniques, or driving safety-related subjects;

(III) the entire course has been designed, planned, and organized by the course provider. The course provider shall use licensed driving safety instructors to provide instruction or other individuals with recognized experience or expertise in the area of driving safety instruction or driving safety-related subject matters. Evidence of the individuals' experience or expertise may be requested by the division director; and

(IV) the course contains updates or approved revisions to the driving safety course curriculum, policies or procedures, and/or any changes to the course, that are affected by changes in traffic laws or statistical data.

(B) Course providers shall notify the division director of the scheduled dates, times, and locations of all continuing education courses no less than ten calendar days prior to the class being held, unless otherwise excepted by the division director.

(b) Course providers shall submit documentation on behalf of schools applying for approval of additional courses after the original approval has been granted. The documents shall be designated by the division director and include the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional course shall not be granted if the school's compliance is in question at the time of application.

(c) If an approved course is discontinued, the division director shall be notified within 72 hours of discontinuance and furnished with the names and addresses of any students who could not complete the course because it was discontinued. If the school does not make arrangements satisfactory to the students and the division director for the completion of the courses, the full amount of all tuition and fees paid by the students are due and refundable. If arrangements are not made satisfactory to the students and the division director, the refunds must be made no later than 30 days after the course was discontinued. Any course discontinued shall be removed from the list of approved courses.

(d) If, upon review and consideration of an original, renewal, or amended application for course approval, the commissioner of education determines that the applicant does not meet the legal requirements, the commissioner shall notify the applicant, setting forth the reasons for denial in writing.

(e) The commissioner of education may revoke approval of any course given to a course owner, provider, or school under any of the following circumstances.

(1) A statement contained in the application for the course approval is found to be untrue.

(2) The school has failed to maintain the faculty, facilities, equipment, or courses of study on the basis of which approval was issued.

(3) The school and/or course provider has been found to be in violation of Texas Civil Statutes, Article 4413(29c), and/or this chapter.

(4) The course has been found to be ineffective in carrying out the purpose of the Texas Driver and Traffic Safety Education 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 June 29, 2001.

TRD-200103725
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Effective date: July 19, 2001
Proposal publication date: February 16, 2001
For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.27

The Texas Board of Veterinary Medical Examiners adopts the repeal of §575.27, concerning Complaints--Receipt, Investigation and Disposition. The repeal is adopted without changes to the proposal as published in the March 9, 2001, issue of the *Texas Register* (26 TexReg 1967).

The repeal is needed because the section is outdated and does not reflect the current complaint procedures of the Board. A new section will be adopted to replace the repealed section.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the authority of §801.151(a) of the Texas Occupations Code which gives the Board authority to adopt rules necessary to administer the Veterinary Licensing 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 July 2, 2001.

TRD-200103751
Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners
Effective date: July 22, 2001
Proposal publication date: March 9, 2001
For further information, please call: (512) 305-7555

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22 TAC §575.27

The Texas Board of Veterinary Medical Examiners adopts new §575.27, concerning Complaints--Receipt, Investigation and Disposition. The new section is adopted without changes to the proposed text as published in the March 9, 2001, issue of the *Texas Register* (26 TexReg 1967) .

The section updates the Board's current practices with regard to filing and investigating of complaints, informal disciplinary conferences and administrative law hearings. No substantive changes have been proposed. Adoption of the new section will explain in clear terms to both the complainant and respondent veterinarian the Board's procedures in processing complaints and the rights of the parties involved in the process. By restating these procedures, the Board will encourage public understanding and acceptance of the Board's complaint process.

One written comment on the section was received from Susan Hopper, D.V.M. Dr. Hopper suggested that the Board consider establishing a filing fee for complaints submitted to the Board. The Board responds that it is not legislatively empowered to establish a fee. In addition, a fee would have a chilling effect on the right of the public to file complaints against veterinarians and would be contrary to public policy set out in the Veterinary Licensing Act. Dr. Hopper also feels that the Board's investigators do not always obtain statements from all witnesses in a complaint case. The Board feels that the new section encourages witnesses with relevant knowledge to come forward with statements. The respondent veterinarian is urged to provide all relevant information, including any statements from witnesses, in the veterinarian's response to the complaint. Finally, Dr. Hopper objects that all complaint information in the investigation file is not available to the respondent veterinarian before the convening of the informal conference. The Board notes that the informal conference is a part of the investigative process and that by law (Texas Occupations Code, §801.207) the investigative record is confidential. If a veterinarian does not agree with the results of an informal conference, the veterinarian has the right to full disclosure of charges and an administrative hearing before the State Office of Administrative Hearings. The Board does not propose any changes to the section based on the comments of Dr. Hopper.

An oral comment was received from Mr. Ellis Gilleland of Austin, Texas. Mr. Gilleland stated that the new section gives too much discretion to the executive director by allowing the executive director to dismiss complaints without public review by the Board The Board notes that the current rules have not been changed in this regard. The executive director makes a determination as to whether a complaint should be processed based on a recommendation of an investigator who first reviews the complaint. Because of the large number of complaints received and the fact that the Board only meets three times a year, it is not feasible for the Board to review each complaint. No changes to the section are proposed based on these comments.

The new section is adopted under the authority of the Texas Occupations Code, §801.151(a). The Board interprets, §801.151(a) as authorizing it to adopt rules necessary to administer Chapter 801, including rules for complaint procedures.

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

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

TRD-200103752

Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners
Effective date: July 22, 2001
Proposal publication date: March 9, 2001
For further information, please call: (512) 305-7555

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PART 32. STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

CHAPTER 741. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The State Board of Examiners for Speech-Language Pathology and Audiology (board) adopts amendments to §741.1 and §741.41, concerning speech-language pathology and audiology. Section 741.41 is adopted with changes to the proposed text as published in the March 2, 2001, issue of the *Texas Register* (26 TexReg 1824). Section 741.1 is adopted without changes and therefore the section will not be republished.

The adopted amendment to §741.1 defines the term "dispense" and renumbers the remaining paragraphs in this section. The adopted amendment to §741.41 clarifies advertising of services with respect to the fitting and dispensing of hearing aids to residents within the State of Texas by facsimile broadcast and Internet providers. The amendments are a result of the Audiology Practices, Inc., Petition for Adoption of a Rule, which was submitted in response to the phenomenal growth in the mail order business through the advent of the Internet and E-commerce.

The public benefit anticipated as a result of enforcing the sections will be to insure that clients seeking treatment of hearing loss through the use of amplification devices receive a comprehensive audiological evaluation to determine the appropriate device needed.

No comments were received on the proposal during the comment period.

A change was made due to staff comments. Concerning §741.41(d)(4), the word "includes" was changed to "including" to clarify the rule.

SUBCHAPTER A. DEFINITIONS

22 TAC §741.1

The amendment is adopted under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce the Texas Occupations Code, Chapter 401.

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 July 2, 2001.

TRD-200103778

Elsa Cardenas-Hagan
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: July 22, 2001
Proposal publication date: March 2, 2001
For further information, please call: (512) 458-7236

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SUBCHAPTER D. THE STANDARDS OF PROFESSIONAL AND ETHICAL CONDUCT

22 TAC §741.41

The amendment is adopted under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce the Texas Occupations Code, Chapter 401.

§741.41. Code of Ethics.

(a) A licensee or registrant shall:

(1) seek appropriate medical consultation whenever indicated;

(2) seek to identify competent, dependable referral sources for clients;

(3) maintain objectivity in all matters concerning the welfare of the client;

(4) terminate a professional relationship when it is reasonably clear that the client is not benefiting from the services being provided; and

(5) provide accurate information to clients and the public about the nature and management of communicative disorders and about the profession and the services rendered.

(b) A licensee or registrant shall not:

(1) engage in the medical treatment of speech-language and hearing disorders;

(2) guarantee, directly or by implication, the results of any therapeutic procedures as follows:

(A) a reasonable statement of prognosis may be made; and

(B) caution must be exercised not to mislead clients to expect results that cannot be predicted from reliable evidence;

(3) delegate any service requiring professional competence of a licensee or registrant to anyone not licensed or registered for the performance of that service;

(4) provide services if the services can not be provided with reasonable skill or safety to the client;

(5) provide any services which create an unreasonable risk that the client may be mentally or physically harmed;

(6) engage in sexual contact, including intercourse, kissing or fondling, with a client or an assistant, intern, or student supervised by the licensee or registrant;

(7) use alcohol or drugs when the use adversely affects or could adversely affect the licensee's or registrant's provision of professional services;

(8) evaluate or treat speech, language, or hearing disorders solely by correspondence;

(9) reveal, without authorization, any professional or personal information about the person served professionally, unless required by law to do so, or unless doing so is necessary to protect the welfare of the person or of the community;

(10) participate in activities that constitute a conflict of professional interest which may include the following:

(A) the exclusive recommendation of a product that the individual owns or has produced;

(B) lack of accuracy in the performance description of a product a licensee or registrant has developed; or

(C) the restriction of freedom of choice for sources of services or products;

(11) use his or her professional relationship with a client, intern, assistant, or student to promote for personal gain or profit any item, procedure, or service unless the licensee or registrant has disclosed to the client, intern, assistant, or student the nature of the licensee's or registrant's personal gain or profit; and

(12) misrepresent his or her training or competence.

(c) A licensee or registrant shall fully inform clients of the:

(1) results, in writing, of an evaluation within 60 days;

(2) nature and possible effects of the services rendered; and

(3) nature and possible effects of activities if the client is participating in research or teaching activities.

(d) A licensee or registrant shall not present false, misleading, deceptive, or not readily verifiable information relating to the services of the licensee or registrant or any person supervised or employed by the licensee or registrant which includes, but is not limited to:

(1) use of professional or commercial affiliations in any way that would mislead clients or the public;

(2) presenting false, misleading, or deceptive information in connection with an application by the licensee or registrant for a license issued under the Texas Occupations Code, Chapter 401, or for employment to provide speech-language pathology or audiology services;

(3) presenting false, misleading, or deceptive information relating to the following:

(A) any advertisement, announcement, or presentation;

(B) any announcement of services;

(C) letterhead or business cards;

(D) commercial products;

(E) billing statements;

(F) facsimile broadcast; or

(G) Internet website.

(4) presenting false, misleading, or deceptive advertising that is not readily subject to verification including any manner of communication referenced in paragraph (3) of this subsection and advertising that:

(A) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(B) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;

(C) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(D) contains a testimonial;

(E) causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;

(F) advertises or represents that health care insurance deductibles or co-payments may be waived or are not applicable to health care services to be provided if the deductibles or co-payments are required;

(G) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or co-payments are required;

(H) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; and

(I) advertises or represents in the use of a professional name, a title, or professional identification that is expressly or commonly reserved to or used by another profession or professional.

(e) A licensee or registrant shall maintain accurate records of professional services rendered as follows:

(1) records must be maintained for seven consecutive years;

(2) records are the responsibility and property of the entity or individual who owns the practice or the practice setting; and

(3) records created as a result of treatment in a school setting shall be maintained as part of the student's permanent school record.

(f) A licensee or registrant shall make a reasonable attempt to notify each client of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board by providing notification on:

(1) a sign prominently displayed in the primary place of business of each licensee; and

(2) a written document such as a written contract, a bill for service, or office information brochure provided by a licensee or registrant to a client or third party.

(g) A licensee or registrant shall bill a client or a third party only for the services actually rendered in the manner agreed to by the licensee or registrant and the client or the client's authorized representative and shall:

(1) provide, in plain language, a written explanation of the charges for speech-language pathology and/or audiology services previously made on a bill or statement for the client upon the written request of a client, a client's guardian, or a client's parent, if the client is a minor; and

(2) comply with the Health and Safety Code, §311.0025, which prohibits improper, unreasonable, or medically unnecessary billing by hospitals or health care professionals.

(h) A licensee or registrant shall inform the board of violations of this code of ethics or of any other provision of the chapter by:

(1) complying with any order relating to the licensee or registrant which is issued by the board;

(2) not aiding or abetting the practice of an unlicensed person when that person is required to have a license or registration under the Texas Occupations Code, Chapter 401;

(3) reporting in accordance with the Family Code, §261.101(b), if there is cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect by any person;

(4) not interfering with a board investigation or disciplinary proceeding by willful misrepresentation of facts to the board or the board's designee or by the use of threats or harassment against any person; and

(5) cooperating with the board by furnishing required documents or papers and by responding to a request for information from or a subpoena issued by the board or the board's designee within 30 days of the request.

(i) A supervisor of an intern or assistant shall:

(1) ensure that all services provided are in compliance with this chapter and the Texas Occupations Code, Chapter 401, such as verifying:

(A) the intern or assistant holds a license;

(B) the supervisor has been approved by the board office;

(C) the scope of practice is appropriate; and

(D) the intern or assistant is qualified to perform the procedure;

(2) be responsible for all client services performed by the intern or assistant;

(3) provide appropriate supervision after the board office approved the supervisory arrangement; and

(4) limit the number of interns and assistants being supervised in order to assure that the appropriate level of service is provided to the client/patient in accordance with subsection (b)(4) of this section, §741.62(f) of this title (relating to Requirements for an Intern in Speech-Language Pathology License), §741.65(g)-(h) of this title (relating to Requirements for an Assistant in Speech-Language Pathology License), §741.82(f) of this title (relating to Requirements for an Intern in Audiology License), and §741.85(g)-(h) of this title (relating to Requirements for an Assistant in Audiology License). The supervisor shall be responsible for all clients/patients who are receiving services from the intern or assistant he or she is supervising.

(j) In addition to the provisions listed in subsection (i) of this section, a supervisor of an assistant shall:

(1) be responsible for evaluations, interpretation, and case management of the assistant's clients; and

(2) not designate anyone other than a licensed speech-language pathologist or intern in speech-language pathology to represent speech-language pathology to an Admission, Review, and Dismissal (ARD).

(k) A licensed intern or assistant shall abide by the decisions made by the supervisor relating to the intern's or assistant's scope of practice. In the event the supervisor requests that the intern or assistant violate this chapter; the Texas Occupations Code, Chapter 401; or any other law, the intern or assistant shall refuse to do so and immediately notify the board office and any other appropriate authority.

(l) A licensee or registrant shall not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for securing or soliciting patients or patronage for or from any health care professional. The provisions of the Health and Safety Code, §161.091, concerning the prohibition of illegal remuneration apply to licensees.

(m) A licensee or registrant who provides direct patient care shall comply with the Health and Safety Code, Chapter 85, Subchapter I, concerning the prevention of the transmission of HIV or Hepatitis B virus by infected health care workers.

(n) A licensee or registrant shall be subject to disciplinary action by the board if the licensee or registrant is issued a public letter of reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office under the Texas Code of Criminal Procedure, Article 56.31, relating to the Crime Victims Compensation Act.

(o) A licensee's or registrant's renewal shall be subject to the Family Code, Chapter 232, concerning failure to pay child support.

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 July 2, 2001.

TRD-200103779
Elsa Cardenas-Hagan
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: July 22, 2001
Proposal publication date: March 2, 2001
For further information, please call: (512) 458-7236

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TITLE 25. HEALTH SERVICES

PART 8. INTERAGENCY COUNCIL ON EARLY CHILDHOOD INTERVENTION

CHAPTER 621. EARLY CHILDHOOD INTERVENTION

SUBCHAPTER B. EARLY CHILDHOOD INTERVENTION SERVICE DELIVERY

25 TAC §621.24

The Interagency Council on Early Childhood Intervention (ECI) adopts an amendment §621.24, regarding Program Administration for Comprehensive Services, with changes from the proposed text as published in the February 23, 2001 issue of the *Texas Register* (26 TexReg 1658).

The purpose of the amendment is to add new subparagraphs (D) and (E) under subsection (b)(3). The statements in subparagraph (D) fold into rule ECI's deadline and requirement for standard use of the ECI logo and slogan. This information has been distributed to ECI providers in policy and is not a new requirement. The language in subparagraph (E) communicates that only ECI providers or at ECI's direction can the logo and slogan be used.

ECI received comments from four executives affiliated with ECI programs, and the President of United Way of Metropolitan Dallas, Inc.

Comment: One commenter expressed that their agency was pleased with the actual logo design, stating it is clear and versatile in use and that consistent statewide usage will assist in making all ECI programs recognizable across Texas.

Response: ECI agrees.

Comment: Three commenters expressed concern regarding their agency's ability to be identified and effective in their local community for outreach and fundraising purposes. Commenters were afraid they would lose their reputation as an independent non-profit entity in the community, and/or would appear to be a branch of the state ECI agency. One felt that the proposed rule added confusion to the interpretation of respective roles of host agency and provider.

Response: The proposed rules and graphic standards do not require an agency to modify its materials or practices; the rules only apply to the specific ECI program operated by a host agency. The proposed standards for use of the ECI logo and slogan allow an agency to identify itself by its current name and/or logo. If the agency and ECI logo are used together then the ECI name and logo must be equal or larger in size than agency or other funding source logos it appears with. We agree that the rule as proposed is not clear regarding which entities the standards apply to. We have revised the rule to clarify.

Comment: Two commenters expressed concern regarding the rigidity or prescriptiveness of the Graphic Standards Manual referred to in the proposed rule. Specifically, one commenter wanted more latitude in size and placement of ECI logo.

Response: ECI is revising the Graphic Standards Manual to clarify that the stationary and business card pages included in the manual are samples. Other stationary and business card designs may be used but the ECI logo must be equal or larger in size than agency or other funding source logos it appears with. ECI recommends that programs utilize the samples, as stationary and business cards are key components in communicating the program's identity to referral sources and families and it is critical that those pieces maintain a strong affiliation with the Texas Interagency Council on Early Childhood Intervention.

Comment: Two commenters expressed concern that ECI Policy and Procedures and the Graphic Standards Manual implementing the new name and logo requirements were distributed to local providers before the proposed rules were published, in effect adopting the new requirements without giving providers and the public an opportunity for comment or input.

Response: Providers had numerous opportunities for input on the new standards before adoption of the requirements. Beginning in 1998, discussions regarding the new standards were held in a variety of venues, including statewide policy initiative meetings open to local executive and program directors. In July of 2000 the draft policy outlining use of the standards was distributed to local providers for input and comment, and revisions were made to the policy in response to the comments. A draft Graphic Standards Manual was also distributed. Both documents made clear that the proposed effective date for implementation would not occur until September 1, 2001.

Comment: One commenter was concerned that the proposed standards would not allow United Way- funded agencies that administer ECI programs to use the United Way logo or a statement identifying the agency as a member of the United Way on the agency/program letterhead or other materials.

Response: The proposed rules and Graphic Standards Manual do not prohibit agencies or programs from including information identifying other funding sources, such as United Way, on any or all of their materials, publications, correspondence, etc.

Comment: One commenter was concerned that if all ECI programs have the same logo and letterhead that it would be confusing to families, referral sources, the community, etc

Response: ECI disagrees. ECI believes that it is confusing to parents, referral sources and communities to have entities with divergent names (for example Infant Development Program and Parent Child Program) providing the same early intervention services to eligible children. ECI wants to make it easier for families to find services by standardizing the words and symbols used in communicating about the ECI program and the statewide system.

Comment: One commenter was concerned about the cost effectiveness of multiple letterheads and other funding source requirements

Response: ECI does not require different letterheads. ECI is revising the Graphic Standards Manual to clarify that multiple logos may be used as long as the ECI logo is of equal or larger size.

Comment: One commenter was concerned that the use of all-inclusive terms such as "for all materials" or "all use" in the standards, including program correspondence, implies movement into the daily management of provider agencies as they interact in their local communities. The commenter expressed concern that compliance with the rules is included in FY 2001 program monitoring and that the Graphic Standards Manual would apply to medical records forms.

Response: The rule has been revised to clarify application to ECI program materials. ECI does not intend to interfere with the daily and routine operations of the agency as a whole. The intent of the rule is to standardize how ECI programs communicate with the public, referral sources and families seeking or receiving services. The Graphic Standards Manual will go into effect September 1, 2001 (FY 2002) and will be included in program monitoring after that date. ECI staff is available to consult with providers on the required changes.

Comment: One commenter recommended improved clarity in the rule and policy to ensure implementation of the proposed rule and policy does not exceed the original intent of coordinated public awareness, education and child find.

Response: ECI encourages local agencies and programs to coordinate their public awareness and fundraising activities. The purpose of the proposed rules is to benefit families seeking services. We believe standardizing how ECI programs communicate with the public and referral sources will make ECI services more commonly known in communities and will facilitate families locating needed services. We believe use of a consistent "brand" will aid in that effort.

Comment: One commenter recommended eliminating the requirements in the Graphic Standards Manual related to letterhead and business card design requirements and only require use of "ECI," ECI affiliation, and logo in the program name.

Response: The agency disagrees. Stationary and business cards are a key component of communicating the program's

identity to referral sources and families. It is critical that those pieces maintain a strong affiliation with the Texas Interagency Council on Early Childhood Intervention and the statewide network.

Comment: One commenter supports the use of the ECI logo and slogan and believes there are benefits associated with its use.

Response: ECI agrees.

The amendment is adopted under Chapter 73 of the Human Resources Code, which provides the agency with the authority to administer public programs for developmentally delayed children.

§621.24. Program Administration for Comprehensive Services.

(a) Program eligibility for comprehensive services.

(1) Funds for comprehensive services are available to public or private service organizations that may be current or potential providers of services for children with developmental delays.

(2) Eligibility for continued funding shall be contingent upon the program's accomplishments, progress toward stated goals, compliance with state standards, implementation of program review findings, and availability of funds. The program provider shall submit an annual application for continuation funding.

(b) Program requirements.

(1) Child find. Each program must develop and implement a child find plan which includes:

(A) ongoing contact and coordination with primary referral sources and other service providers, including, but not limited to:

(i) child find programs located within the education service centers;

(ii) local and regional health departments with Maternal and Child Health Programs under Title V of the Social Security Act;

(iii) Medicaid's Early Periodic Screening, Diagnosis, and Treatment Program (EPSDT);

(iv) head start programs;

(v) hospitals;

(vi) day care programs;

(vii) school districts;

(viii) social service agencies;

(ix) primary health care providers;

(x) Early Childhood Intervention (ECI) programs;

(xi) child care management services (CCMS);

(xii) any program funded under Development Disabilities Assistance and Bill of Rights Act; and

(xiii) programs under Supplemental Security Income under Title XVI of the Social Security Act;

(B) information regarding availability of other local services including other ECI programs;

(C) accepting referrals for intervention services and evaluating each child for eligibility within 45 days of the referral.

(2) Required services. Each comprehensive program must provide an evaluation and assessment, service coordination, and Individualized Family Service Plan (IFSP) and comprehensive services. Each program funded by the Interagency Council on Early Childhood Intervention must have the capacity to provide or arrange for all services described in §621.23(5)(C) of this title (relating to Service Delivery Requirements for Comprehensive Services). All services which the child or family receives, regardless of the funding sources, must be considered toward meeting the service needs of the child as defined in the child's IFSP. No ECI funding can be used to arrange, provide, or duplicate a service for which other funding sources, public or private, are available and could be used.

(3) Public awareness. Each program must develop and implement a public awareness plan which includes:

(A) information on child find, early identification, referral, and access to services of the Texas Early Childhood Intervention Program, locally and across the state;

(B) a variety of continuous methods for reaching the general public; and

(C) involvement and communication with public and private agencies; parent, professional, and advocacy groups; and other organizations or associations.

(D) By September 1, 2001 programs must implement the use of the ECI logo and slogan and meet requirements listed in the ECI Graphic Standards Manual for all materials used by the ECI program for marketing, public awareness, child find, promotion, public education, and program correspondence related to the ECI program. Programs must use "ECI" as part of their program name.

(E) The ECI logo and slogan are for use by providers under contract with ECI or by entities not under contract when directed by the Interagency Council on Early Childhood Intervention. All use must be in accordance with the ECI Graphic Standards Manual.

(4) Interagency coordination. Each program must develop and implement an interagency coordination plan which includes as a minimum procedures:

(A) preventing duplication of assessments and services;

(B) coordinating referrals to and from ECI programs;

(C) participating in local and regional planning and coordination groups affecting services to young children; and

(D) coordinating activities to make the most effective use of staff development and comprehensive service provision.

(5) Staff composition and qualifications.

(A) Programs must employ staff who meet the appropriate professional requirements and hold current professional credentials for their profession. Appropriate professional requirements are the entry level professional standards which:

(i) are based on the state's highest requirements applicable to the profession or discipline in which a person is providing early intervention services; and

(ii) establish suitable qualifications for personnel providing early intervention services to eligible children and their families, who are served by state, local, and private agencies.

(B) ECI professional staff must abide by the licensure or certification requirements and the established rules of supervision and conduct for their professions.

(C) For the occupational categories for which state authority has not established professional standards (such as service coordinator and early intervention specialist), programs must employ staff

who are qualified in terms of education and experience for their assigned scopes of responsibilities and provide the required degree of supervision.

(D) As of September 1, 1995, the following qualifications and responsibilities for EIS Professionals are effective.

(i) Definitions of Early Intervention Specialist Professional levels. EIS Professional is an occupational title and occupational category specific to service providers employed by Early Childhood Intervention (ECI) programs. These service providers have demonstrated through their education and experience the knowledge and skills required in early intervention service delivery. There are two classes of EIS Professionals.

(I) Entry level--Persons with bachelor's degrees which include a minimum of 18 hours of college credit related to the provision of early intervention services are eligible to apply for Entry Level status. An Entry Level EIS Professional will have a maximum of two years from the date of hiring to complete the requirements to be approved as a Fully Qualified EIS Professional. Failure to complete the required process within two years will result in the loss of professional status and privileges. Exceptions to this provision may be approved by the state ECI office on an individual basis for extreme circumstances. Requests for exceptions must be in writing.

(II) Fully qualified--Persons meeting the conditions and requirements for Professional Recognition as Fully Qualified EIS Professionals.

(ii) Scope of responsibilities. Early Intervention Specialist Professionals (Entry Level and Fully Qualified EIS Professionals) may represent the discipline of early intervention and may be one of the two required professionals on an Interdisciplinary Team (IDT). EIS Professionals may conduct family intake processes, participate in determining eligibility, conduct developmental screenings and assessments, participate in the development and implementation of Individualized Family Service Plans, and provide service coordination, special instruction, and family education services.

(iii) Supervision. The Entry Level EIS Professionals must receive a minimum of one hour per week of direct supervision from a fully qualified professional until they have successfully completed the requirements to be Fully Qualified EIS Professionals. The supervising professionals may be from any of the disciplines related to early intervention and must meet the highest state standards for their profession.

(iv) EIS Professionals and Provisional EIS Professionals who were hired before September 1, 1995, and are currently employed in ECI-funded programs, who failed to complete the required application process are not considered EIS Professionals. They will no longer be able to independently perform the scope of responsibilities of EIS Professionals as defined in clause (ii) of this subparagraph. To obtain status as Fully Qualified EIS Professionals, they must enter the system as Entry Level EIS Professionals and complete the conditions defined in clause (v) of this subparagraph.

(v) Professional recognition for EIS Professionals hired after September 1, 1995. Persons hired as EIS Professionals after September 1, 1995, who are not Fully Qualified EIS Professionals are identified as Entry Level EIS Professionals and to be recognized as Fully Qualified EIS Professionals must:

(I) meet the educational requirements of a bachelor's degree which includes a minimum of 18 hours of course credit relevant to early intervention service provision and submit a statement of intent to complete the required demonstrations of early intervention knowledge and skills and apply for full professional recognition;

(II) within nine months of their hiring date, submit a progress report of the demonstration of early intervention knowledge and skills completed by their ECI program director and supervisor;

(III) within two years of their hiring date, complete the required demonstrations of early intervention knowledge and skills and submit documentation to the state office; and

(IV) complete the required processes or lose professional status and privileges. If the required processes are not completed as specified in subclauses (I)-(III) of this clause; they will no longer be able to independently perform the scope of responsibilities of EIS Professionals as defined in clause (ii) of this subparagraph.

(vi) Continuing professional education requirements. EIS Professionals must meet annual continuing professional education requirements to maintain their status. Continuing professional education consists of the planned individual learning experiences as described in the EIS Professional's annual Individual Professional Development Plan (IPDP) which shall include completion of a minimum of ten contact hours of approved continuing professional development education experiences.

(vii) EIS Professionals must submit annually the record of their continuing education on or before the anniversary of the certificate date.

(viii) Registry. The Texas Interagency Council on Early Childhood Intervention shall issue certificates of recognition to and maintain a registry of individuals who successfully complete the requirements to be Fully Qualified EIS Professionals.

(ix) Grievance process. Each local agency shall have a procedure for local resolution of personnel grievances. A party who has a disagreement with the local decision regarding his qualifications or status as an EIS Professional shall have an opportunity for dispute resolution at the local level. Agencies may use existing personnel grievance procedures to resolve disagreements and will inform their staff of their existence.

(x) Complaints. Any individual or organization may file a complaint with the Council alleging that a requirement of the applicable federal and/or state regulations has been violated as provided in §621.43 of this title (relating to Confidentiality).

(E) The director of the local ECI program must provide and document the amounts of appropriate supervision for all ECI contract staff and program staff to ensure the philosophy and intent of these regulations are met as adopted by the Interagency Council on Early Childhood Intervention.

(F) Local programs must establish a procedure to ensure that employees have not been convicted of any felony or a misdemeanor related to child abuse or sexual abuse or any other offense against a person or family.

(6) Inservice education. Each program shall annually assess and address the training needs of the early childhood intervention staff. Documentation of the development and implementation of each staff members individualized professional development plan (IPDP) shall be maintained by the program.

(7) ECI child service standards.

(A) Determination of staff-child ratios must take into account the degree of each child's developmental level of functioning, the setting in which the child will be served, and the nature of the comprehensive services to be provided.

(B) Programs which provide child care as defined by the Texas Department of Human Services (TDHS) must meet licensing standards of TDHS.

(8) Child health standards. Programs that receive ECI funds must have written policies and procedures which are implemented and evaluated in each of the following areas.

(A) Medication policies. If staff is involved in the administration of medication, written policies must be maintained regarding such administration.

(B) Infectious disease prevention and management.

(i) All programs must adhere to the procedures of the universal precautions for the Texas Early Childhood Intervention Program, as issued by the council.

(ii) All programs must comply with the Texas Communicable Disease Prevention and Control Act, Texas Civil Statutes, Article 4419b-1.

(iii) In the event of an outbreak of a contagious disease, infants attending center-based activities must be excluded if they have not been immunized due to medical or religious contraindications.

(C) Policies regarding serving children who are HIV positive. The following requirements must be enforced in serving children who are HIV positive.

(i) Children with HIV infection must not be discriminated against on the basis of HIV infection. Reasonable accommodations will be made to serve them on the basis of individual need.

(ii) Any information a parent may provide on the HIV status of a child or family member will be deemed confidential and released only to individuals designated by the parent.

(iii) For identified children with HIV infection, with parental consent, the staff must communicate with the physician responsible for medical care and must involve the physician in programmatic decisions about treatment. Communication with the physician must occur prior to assessment and on an ongoing basis as needed.

(iv) Programs cannot require HIV testing of children.

(9) Safety regulations regarding emergencies for all buildings where ECI programs are housed. Programs that receive ECI funds must have written policies and procedures which are implemented and evaluated in the following areas.

(10) Accessibility and safety. Programs that receive ECI funds must have written policies and procedures which are implemented and evaluated in the following areas.

(A) All ECI services must be available in buildings that are physically accessible to persons with disabilities.

(B) Buildings where the ECI program is housed (including offices) must be inspected annually by a local or state fire authority. A safety and sanitation inspection must be completed annually by an entity outside of the ECI program using an approved ECI checklist. If the fire or safety and sanitation inspection indicates that hazards exist, these hazards must be corrected.

(C) Buildings must be clean, free of hazards, free of insect and rodent infestation, in good repair, with adequate light, ventilation, and temperature control.

(D) An external emergency release mechanism must be provided for opening interior doors that can be locked from the inside. Locks may not be used to restrain a child within a room.

(E) Buildings must be able to be safely evacuated in the event of an emergency.

(11) Transportation safety. Programs that receive ECI funds must have written policies and procedures which are implemented and evaluated in the following areas.

(A) The transportation system operated by the ECI program must meet local and state licensing, inspection, insurance, and capacity requirements.

(B) Children must be transported in an appropriately installed, federally approved child passenger restraint seat, appropriate to the child's age and size.

(C) Drivers of vehicles must have valid and appropriate drivers' licenses. Drivers must have current defensive driving certification.

(D) Drivers and drivers' aides must have training in first aid, emergency care of seizures, and be certified in cardiopulmonary resuscitation for children and infants.

(12) Reporting child abuse. The program must report suspected child abuse or neglect as required by the Texas Family Code, Chapter 261.

(13) Staff health regulations. Programs that receive ECI funds must have written policies and procedures which are implemented and evaluated in the following areas.

(14) Staff development for health and safety issues. Programs that receive ECI funds must have written policies and procedures which are implemented and evaluated in the following areas.

(A) All staff who work directly with children must receive training in first aid and emergency care of seizures and be certified in cardiopulmonary resuscitation for children and infants.

(B) All staff who work directly with children must receive training in the implementation of universal precautions for Texas ECI programs and in the recognition of common childhood illnesses.

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 July 2, 2001.

TRD-200103738
Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention
Effective date: September 1, 2001
Proposal publication date: February 23, 2001
For further information, please call: (512) 424-6750

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SUBCHAPTER D. EARLY CHILDHOOD INTERVENTION ADVISORY COMMITTEE

25 TAC §621.62

The Interagency Council on Early Childhood Intervention (ECI) adopts an amendment to §621.62, concerning the Early Childhood Intervention Advisory Committee, with changes to the proposed text as published in the May 25, 2001, issue of the *Texas Register* (26 TexReg 3695).

The changes are non-substantive and were suggested by a board member when the board was approving for publishing as final.

The purpose of the adoption is to amend the composition of the Advisory Committee in order to allow the Advisory Committee to better represent the state agencies in Texas that provide services to children with developmental delays.

ECI is the lead agency for providing early childhood intervention services in Texas as required by federal law (Individuals with Disabilities Education Act (IDEA), 20 USC 1400). IDEA requires the lead agency to have a State Interagency Coordinating Council (ICC). In Texas, the State Interagency Coordinating Council is the Advisory Committee established in Texas Human Resources Code §73.004. The Committee must include representatives from a number of different agencies that provide services to children with disabilities, and is charged with advising and assisting the state ECI agency in carrying out agency duties.

Currently, the Texas Department of Human Services (TDHS) is designated in rule as a governor appointed member of the ECI Advisory Committee and has voting rights at meetings. The Texas Department of Protective and Regulatory Services (DPRS) is not a governor appointed Advisory Committee member and does not have voting rights on the Committee. Representatives from the two agencies and ECI have agreed that because of the nature of the programs the two agencies provide, these Advisory Committee positions should be amended to designate DPRS as an official Advisory Committee member and remove TDHS as a member.

This rule change will not preclude the Board from appointing members for non-voting ad hoc or ex officio membership.

The rotation schedule for Committee member reappointments is being revised to accurately reflect the number of Committee members and the dates their terms expire in accordance with previous rule changes which modified the total number of Committee members to 24. The new rotation schedule evenly divides into 24.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Human Resources Code, §73.004, Advisory Committee which authorizes the (ECI) Council to establish the size and composition of the committee by rule, consistent with federal regulations and state rules.

§621.62. Size, Composition, and Terms of Office.

(a) Size. The advisory committee shall consist of 24 members which the governor shall appoint.

(b) Composition. The advisory committee shall be composed as follows.

(1) Official members must include:

(A) at least seven parents, including minority parents of infants or toddlers with developmental disabilities or children with developmental disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with developmental disabilities. At least one such member shall be a parent of an infant or toddler with a developmental disability or a child with a developmental disability aged six or younger, and no parent may be an employee of an early childhood intervention funded program;

(B) at least five public or private providers of early childhood intervention services, one of whom is a preschool specialist and a provider of birth to three services in an educational service center;

(C) at least one representative from the Texas Legislature;

(D) at least one person involved in personnel preparation;

(E) one representative from each of the following agencies and public program: the Texas Department of Public Health; the Texas Department of Mental Health and Mental Retardation; the Texas Department of Protective and Regulatory Services; the Texas Education Agency; the Texas Department of Insurance; the Texas Workforce Commission and Head Start. The representative must have sufficient authority to engage in policy planning and implementation on behalf of his or her agency. The Texas Education Agency representative must be responsible for preschool services to children with disabilities;

(F) a physician, preferably a pediatrician who deals with children with developmental disabilities;

(G) a public health professional who deals with children with developmental disabilities; and

(H) a professional advocate of the rights of young children with developmental disabilities.

(2) Ex officio members may be appointed by the Board to perform specific, time-limited tasks as needed. The Board determines voting status of ex officio members.

(c) Terms of office. Official advisory committee members shall serve staggered six-year terms of office, with the terms of eight members expiring February 1 of each odd number year.

(d) Chairperson. The advisory committee shall appoint the chairperson of the advisory committee.

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 July 2, 2001.

TRD-200103739
Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention
Effective date: July 22, 2001
Proposal publication date: May 25, 2001
For further information, please call: (512) 424-6750

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TITLE 28. INSURANCE

PART 2. TEXAS WORKERS' COMPENSATION COMMISSION

CHAPTER 103. AGENCY ADMINISTRATION
SUBCHAPTER B. AGENCY CONTRACTS

28 TAC §103.101

The Texas Workers' Compensation Commission (the commission) adopts new §103.101, concerning vendor protest procedures, without changes to the proposed text published in the April 27, 2001 issue of the *Texas Register* (26 TexReg 3122) which will

not be republished. The new rule provides the procedure an aggrieved party must follow to resolve a dispute in connection with the solicitation, evaluation or award of any contract with the commission. The new rule provides vendors a procedure to resolve protests relating to the solicitation, evaluation, or award of a contract by the commission. Senate Bill 1752 of the 75th Legislature, 1997, added Government Code §2155.076 to the State Purchasing Act to require each state agency to develop and adopt protest procedure rules for resolving vendor protests relating to purchasing issues. Section 2155.076 requires an agency's rules to be consistent with the General Services Commission (GSC) rules, which are located in 1 TAC Chapter 111.

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.

No comments were received regarding the proposed new rule.

This new rule provides a procedure for an actual or proposed bidder, offeror or contractor to follow to protest the solicitation, evaluation, or award of a contract. The contents of the protest, time period for filing a protest, and notice required is set out in the proposed new rule. The commission is given the authority to settle the protest, or if it is not resolved, to issue a written determination on the protest. The proposed new rule provides for the appeal of the commission's decision to the executive director whose decision is the final administrative action of the commission. The proposed rule requires that in the event of a protest, documents collected in association with the solicitation, evaluation, and/or award of a contract be maintained by the commission for four years.

The new rule is adopted under the Texas Labor Code §402.041, which sets out the role of the executive director, the Texas Labor Code §402.042, which authorizes the executive director to enter orders as authorized by the statute as well as to prescribe the form and manner and procedure for transmission of information to the commission, the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Government Code §2155.076, which requires each state agency to develop and adopt protest procedure rules for resolving vendor protests relating to purchasing issues.

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

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

TRD-200103672
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Effective date: July 17, 2001
Proposal publication date: April 27, 2001
For further information, please call: (512) 804-4287

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SUBCHAPTER C. RESOLUTION OF CONTRACT CLAIMS

28 TAC §§103.300 - 103.322

The Texas Workers' Compensation Commission (the commission) adopts new §§103.300-103.322, concerning negotiation and mediation of certain breach of contract claims asserted by contractors against the commission, without changes to the proposed text published in the April 27, 2001 issue of the *Texas Register* (26 TexReg 3124) which will not be republished. These new sections are necessary to establish procedures for negotiation and mediation in accordance with Texas Government Code, Chapter 2260, which requires each state agency to adopt rules to govern the negotiation and mediation of certain claims for breach of contract.

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.

No comments were received regarding the proposed new rule.

Sections 103.300-103.322 are based on model rules adopted by the Office of the Attorney General. Section 103.300 states that the purpose of the rules is the implementation of Government Code, Chapter 2260. Section 103.301 sets out the applicability of the rules. Section 103.302 contains the definitions of terms used in the proposed rules. Section 103.303 establishes that the procedures in the proposed rules are a prerequisite to suit under the Civil Practice & Remedies Code, Chapter 107, and the Government Code, Chapter 2260. Section 103.304 states that the provisions do not waive sovereign immunity to suit or liability.

Section 103.305 sets out the procedures for a contractor to file a claim with the commission. Section 103.306 sets out the procedures for the commission to assert a counterclaim against the contractor.

Section 103.307 requires that the parties, in accordance with the timetable set out in §103.308, negotiate to attempt to resolve claims and counterclaims. Section 103.309 describes the conduct of negotiation. Section 103.310 requires the parties to disclose their settlement approval procedures prior to negotiations. Section 103.311 provides that an agreement to settle a claim must be in writing, signed by representatives of the contractor and the commission who have authority to bind each party. Section 103.312 provides that each party is responsible for its own costs incurred during negotiations.

Section 103.313 describes the process by which a contractor may request a contested case hearing before the State Office of Administrative Hearings on an unresolved claim. Section 103.314 describes the timetable for mediation of a claim. Sections 103.315 through 103.322 describe the mediation process and procedures.

The new rules are adopted under the Texas Government Code, §2260.052 which provides that each unit of state government with rulemaking authority shall develop rules to govern the negotiation and mediation of a claim for a breach of contract; The Texas Labor Code, §402.061 which authorizes the commission to adopt rules necessary to administer the Texas Workers' Compensation Act; the Texas Labor Code, §401.024 which allows the commission to contract with a data collection agent; the Texas Labor Code, §402.042 which sets out the general powers and duties of the executive director of the commission; the Texas Labor Code, §406.004 which requires employer notification to the commission of noncoverage election and which allows the commission to contract with the Texas Employment Commission or

the Comptroller for assistance in collecting employer notification; the Texas Labor Code, §413.003 which allows the commission to contract with a private or public entity to perform a duty or function of the Medical Review Division; the Texas Labor Code, §413.051 which allows the commission to contract with entities to develop, maintain, or review medical policies and fee guidelines and compliance therewith.

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 Cory
General Counsel
Texas Workers' Compensation Commission
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Proposal publication date: April 27, 2001
For further information, please call: (512) 804-4287

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SUBCHAPTER D. FACILITIES AND PROPERTY MANAGEMENT

28 TAC §103.400

The Texas Workers' Compensation Commission (the commission) adopts new §103.400, concerning fleet vehicle management program, without changes to the proposed text published in the April 27, 2001, issue of the *Texas Register* (26 TexReg 3128) which will not be republished. The new rule is adopted in accordance with the requirements of the Texas Government Code §2171.1045, which requires each state agency to adopt rules relating to the assignment and use of the agency's vehicles.

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.

No comments were received regarding the proposed amendment.

House Bill 3125, which was adopted by the 76th Texas Legislature, requires each state agency to adopt rules consistent with the management plan adopted by the Office of Vehicle Fleet Management of the General Services Commission relating to the assignment and use of the agency's vehicles. This rule satisfies that requirement.

This new rule is adopted under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act, and the Texas Government Code, §2171.1045, which requires each state agency to adopt rules consistent with the management plan adopted by the Office of Vehicle Fleet Management of the General Services Commission relating to the assignment and use of the agency's vehicles.

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

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General Counsel
Texas Workers' Compensation Commission
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CHAPTER 126. GENERAL PROVISIONS APPLICABLE TO ALL BENEFITS

28 TAC §126.10

The Texas Workers' Compensation Commission (the commission) adopts an amendment to §126.10, concerning the commission-approved list of designated doctors, without changes to the proposed text published in the April 27, 2001 issue of the *Texas Register* (26 TexReg 3129) which will not be republished. The amendment is adopted to make §126.10 consistent with the language in §130.1 of this title, concerning certification of maximum medical improvement and evaluation of permanent impairment.

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

No comments were received regarding the proposed amendment.

House Bill 2510 passed by the 76th Texas Legislature amended Texas Labor Code §408.124 to allow the commission by rule to adopt the fourth edition of the *Guides to the Evaluation of Permanent Impairment*, published by the American Medical Association (*AMA Guides*), for determining the existence and degree of an employee's impairment.

Section 130.1 of this title was amended to require the use of the *AMA Guides*, fourth edition, to evaluate impairment for certifying examinations conducted on or after October 15, 2001, while maintaining the requirement for the use of the *AMA Guides*, third edition, second printing, 1989, for certifying examination dates before October 15, 2001 and certain others as set out in §130.1(c)(2)(B)(ii). The amendment of §130.1 necessitates the amendment of §126.10 to delete references to a particular edition of the *AMA Guides*. Instead, the rule refers to §130.1.

Because §130.1 contains the instructions regarding which *AMA Guides* should be used for determination of an employee's impairment, the amendment to §126.10(a)(2) references §130.01. Eliminating the reference to a particular edition of the *AMA Guides* in §126.10(a)(2) and referencing the requirement of §130.1, allows the commission to adopt an amendment to §130.1 if necessary, without requiring additional amendments to §126.10.

The amendment is adopted under the Texas Labor Code, §401.011(17), which provides a definition for "doctor"; Texas Labor Code, §401.011(30), which provides a definition for "maximum medical improvement"; Texas Labor Code, §401.024, as amended by the 76th Texas Legislature, which provides the commission the authority to require use of facsimile or other electronic means to transmit information in the system; Texas Labor Code, §402.042, which authorizes the Executive Director

to enter orders as authorized by the statute as well as to prescribe the form and manner and procedure for transmission of information to the commission; Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; Texas Labor Code, §406.010, which authorizes the commission to adopt rules regarding claims service; Texas Labor Code, §408.004, which addresses required medical examinations; Texas Labor Code, §408.025, which requires the commission to specify by rule what reports a health care provider is required to file; Texas Labor Code, §408.102, which provides that temporary income benefits continue until the injured employee reaches maximum medical improvement; Texas Labor Code, §408.122, which establishes eligibility for impairment income benefits and provides for the use of designated doctors when a dispute exists regarding the certification of MMI; Texas Labor Code, §408.123, which requires a doctor certifying MMI to file a report and which requires a certification of MMI and assignment of an impairment rating by a doctor other than the treating doctor be sent to the treating doctor who must indicate either agreement or disagreement with the certification of the evaluation; Texas Labor Code, §408.124, which provides the commission the authority to by rule adopt the fourth edition of the "*Guides to the Evaluation of Permanent Impairment*" published by the American Medical Association to determine the existence and degree of an injured employee's impairment; Texas Labor Code, §408.125, which addresses use of a designated doctor to resolve impairment rating disputes, Texas Labor Code, §413.002 and Chapter 414, which give the commission authority to monitor an evaluate health care providers (including designated doctors), insurance carriers, and workers' compensation claimants to ensure compliance with the rules adopted by the commission and to issue administrative penalties.

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 Cory
General Counsel
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CHAPTER 130. IMPAIRMENT AND SUPPLEMENTAL INCOME BENEFITS SUBCHAPTER A. IMPAIRMENT INCOME BENEFITS

28 TAC §130.6

The Texas Workers' Compensation Commission (the commission) adopts amendments to §130.6, concerning the designated doctor; general provisions, without changes to the proposed text published in the April 27, 2001, issue of the *Texas Register* (26 TexReg 3131) which will not be republished. This amendment is adopted to make §130.6 consistent with the language in §130.1 of this title, concerning certification of maximum medical improvement and evaluation of permanent impairment.

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.

No comments were received regarding the proposed amendment.

House Bill 2510 passed by the 76th Texas Legislature amended Texas Labor Code §408.124 to allow the commission by rule to adopt the fourth edition of the *Guides to the Evaluation of Permanent Impairment*, published by the American Medical Association (*AMA Guides*), for determining the existence and degree of an employee's impairment.

Section 130.1 of this title was amended to require the use of the *AMA Guides*, fourth edition to evaluate impairment for certifying examinations conducted on or after October 15, 2001, while maintaining the requirement for the use of the *AMA Guides*, third edition, second printing, 1989, for certifying examination dates before October 15, 2001, and certain others as set out in §130.1(c)(2)(B)(ii).

The amendment of §130.1 necessitates the amendment of §130.6 of this title to delete references to a particular edition of the *AMA Guides*. Because §130.1 contains the instructions regarding which *AMA Guides* should be used for determination of an employee's impairment, the amendment to §130.6(j) references §130.1. Eliminating the reference to a particular edition of the *AMA Guides* in §130.6(j) and referencing the requirement of §130.1, allows the commission to adopt amendments to §130.1 if necessary, without requiring additional amendments to §130.6.

The amendment is adopted under Texas Labor Code, §401.011(17), which provides a definition for "doctor"; Texas Labor Code, §401.011(30), which provides a definition for "maximum medical improvement"; Texas Labor Code, §401.024, as amended by the 76th Texas Legislature, which provides the commission the authority to require use of facsimile or other electronic means to transmit information in the system; Texas Labor Code, §402.042, which authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form and manner and procedure for transmission of information to the commission; Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; Texas Labor Code, §406.010, which authorizes the commission to adopt rules regarding claims service; Texas Labor Code, §408.004, which addresses required medical examinations; Texas Labor Code, §408.025, which requires the commission to specify by rule what reports a health care provider is required to file; Texas Labor Code, §408.102, which provides that temporary income benefits continue until the injured employee reaches maximum medical improvement; Texas Labor Code, §408.122, which establishes eligibility for impairment income benefits and provides for the use of designated doctors when a dispute exists regarding the certification of MMI; Texas Labor Code, §408.123, which requires a doctor certifying MMI to file a report and which requires a certification of MMI and assignment of an impairment rating by a doctor other than the treating doctor be sent to the treating doctor who must indicate either agreement or disagreement with the certification of the evaluation; Texas Labor Code, §408.124, which provides the commission the authority to by rule adopt the fourth edition of the *Guides to the Evaluation of Permanent Impairment* published by the American Medical Association to

determine the existence and degree of an injured employee's impairment; Texas Labor Code, §408.125, which addresses use of a designated doctor to resolve impairment rating disputes, Texas Labor Code, §413.002 and Chapter 414, which give the commission authority to monitor and evaluate health care providers (including designated doctors), insurance carriers, and workers' compensation claimants to ensure compliance with the rules adopted by the commission and to issue administrative penalties.

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 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 13. CONTROLLED SUBSTANCES

The Texas Department of Public Safety adopts the repeal of Chapter 13, Subchapters A-H, §§13.1, 13.2, 13.11-13.29, 13.41-13.47, 13.61-13.67, 13.81-13.87, 13.101-13.113, 13.131-13.149, and 13.161-13.174, concerning Controlled Substances, without changes to the proposed text as published in the March 23, 2001, issue of the *Texas Register* (26 TexReg 2287) and will not be republished.

Due to substantial changes having been made in federal law, federal rules, and Texas law, including House Bill 1070 passed during the 75th Texas Legislature, 1997, these rules as they currently exist are outdated. Therefore, these sections are being repealed with the simultaneous filing of new sections that will be organized in a more logical manner and include standardization of descriptions of time periods and adoption of federal regulations and other state rules by cross reference.

No comments were received regarding adoption of the repeals.

SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §13.1, §13.2

The repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.006(4), which provides that the director of the department shall adopt rules, subject to commission approval, considered necessary for the control of the department; and Health and Safety Code, §481.003(a).

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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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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SUBCHAPTER B. REGISTRATION

37 TAC §§13.11 - 13.29

The repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.006(4), which provides that the director of the department shall adopt rules, subject to commission approval, considered necessary for the control of the department; and Health and Safety Code, §481.003(a).

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

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SUBCHAPTER C. SECURITY

37 TAC §§13.41 - 13.47

The repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.006(4), which provides that the director of the department shall adopt rules, subject to commission approval, considered necessary for the control of the department; and Health and Safety Code, §481.003(a).

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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Thomas A. Davis, Jr.
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SUBCHAPTER D. RECORDKEEPING

37 TAC §§13.61 - 13.67

The repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.006(4), which provides that the director of the department shall adopt rules, subject to commission approval, considered necessary for the control of the department; and Health and Safety Code, §481.003(a).

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

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SUBCHAPTER E. PEYOTE

37 TAC §§13.81 - 13.87

The repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.006(4), which provides that the director of the department shall adopt rules, subject to commission approval, considered necessary for the control of the department; and Health and Safety Code, §481.003(a).

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

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SUBCHAPTER F. TRIPLICATE PRESCRIPTIONS

37 TAC §§13.101 - 13.113

The repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.006(4), which provides that the director of the department shall adopt rules, subject to commission approval, considered necessary for the control of the department; and Health and Safety Code, §481.003(a).

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

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SUBCHAPTER G. PRECURSOR AND LABORATORY APPARATUS

37 TAC §§13.131 - 13.149

The repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.006(4), which provides that the director of the department shall adopt rules, subject to commission approval, considered necessary for the control of the department; and Health and Safety Code, §481.003(a).

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

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SUBCHAPTER H. SUMMARY FORFEITURE AND DESTRUCTION OF CONTROLLED SUBSTANCES PROPERTY, PLANTS, AND OTHER MISCELLANEOUS ITEMS

37 TAC §§13.161 - 13.174

The repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.006(4), which provides that the director of the department shall adopt rules, subject to commission approval, considered necessary for the control of the department; and Health and Safety Code, §481.003(a).

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

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For further information, please call: (512) 424-2135

CHAPTER 13. CONTROLLED SUBSTANCES

The Texas Department of Public Safety adopts new Chapter 13, Subchapters A-M, §§13.1-13.11, 13.21-13.33, 13.41-13.58, 13.71-13.86, 13.101-13.115, 13.131-13.137, 13.151-13.165, 13.181-13.187, 13.201-13.209, 13.221-13.224, 13.231-13.237, 13.251-13.254, and 13.271-13.278, concerning Controlled Substances, without changes to the proposed text as published in the March 23, 2001, issue of the *Texas Register* (26 TexReg 2291) and will not be republished.

The drug rules as they exist were written in the 1970's and have been amended many times since, usually issue by issue. Since that time there have been many changes to related federal law, federal rules, and Texas law, including House Bill 1070, 75th Texas Legislature, 1997. Amendments to these rules are necessary to integrate those changes.

The previous Chapter 13 is proposed to be repealed in its entirety and to be replaced (in its entirety) with a new Chapter 13. The new Chapter 13 is organized to simplify and shorten it and place its material in a more logical order. Changes include standardization of descriptions of time periods and adoption of federal regulations and other state rules by cross reference. Using this technique, the person (physician, pharmacist, chemical distributor) will only have to comply with one set of rules regarding any issue, for example, record keeping and security.

Subchapter A: General Provisions. This subchapter collects all of the definitions of general relevance to the entire chapter as a drafting convenience. It contains several miscellaneous provisions, including cross-references to other state or other federal laws, rules or regulations, alternative schedule nomenclature, the forms for transmitting or communicating information and the telephone numbers and addresses of the various Department of Public Safety (DPS) units involved in the administration of this chapter.

Subchapter B: Registration. This subchapter clarifies the activities and the schedules for which controlled substance registration must be obtained. It reorganizes Subchapter B in the old Chapter 13 and repeats much of it without substantive change. The new subchapter explains in more detail the status of "expiration" versus "termination" of a registration.

Subchapter C: Peyote. This subchapter collects issues from subchapters throughout old Chapter 13, primarily in Subchapter E, and repeats them without substantive change. There is a new §13.47 governing the possession and display of identification and access information, when a person is hunting, harvesting, cutting, collecting, transporting, or in possession of peyote. Also, there is a new §13.48 governing source information describing where the peyote came from.

Subchapter D: Official Prescriptions. This subchapter repeats much of the old Subchapter F, and parts of the old Subchapters C and D, regarding triplicate prescriptions without substantive change except to track the statutory change from the "Triplicate Prescription Program" to the "Official Prescription Program." There are new provisions governing electronic and non-electronic reporting and the deletion or return of a particular Schedule II substance with regard to the Official Prescription Program.

Subchapter E: Precursors And Apparatus. This subchapter repeats much of the old Subchapter G regarding precursors and apparatus without substantive change. §13.115 adds red phosphorus and hypophosphoric acid to the list of chemical precursors regulated under the section. This addition is based on the fact that these chemicals do jeopardize public health and welfare, and that they are proliferating and being used in clandestine laboratories in the illicit manufacture of controlled substances, particularly methamphetamine.

Subchapter F: Applications. This subchapter collects many of the provisions regarding applications that were contained in various subchapters, primarily B (Controlled Substances Registrations), E (Peyote Distributors) and G (Precursor Permits) in the old rules and repeats them without substantive change. This subchapter does clarify that incomplete, insufficient, or otherwise less than fully effective signatures may be rejected on an application.

Subchapter G: Forfeiture And Destruction. This subchapter repeats much of the old Subchapter E regarding forfeiture and destruction without substantive change.

Subchapter H: Security. This subchapter collects many of the assorted security provisions that were found throughout the old Chapter 13, primarily Subchapter C, and repeats them without substantive change.

Subchapter I: Record Keeping. This subchapter collects many of the assorted record keeping provisions that were found throughout the old Chapter 13 and repeats them without substantive change.

Subchapter J: Inventory. This subchapter collects many of the assorted inventory provisions that were found throughout the old Chapter 13, primarily Subchapters D (Record Keeping), E (Peyote) and G (Precursor and Laboratory Apparatus), and repeats them without substantive change.

Subchapter K: Inspection. This subchapter collects many of the assorted inspection provisions that were found throughout the old Chapter 13 and repeats them without substantive change.

Subchapter L: Reporting Discrepancy, Loss, Theft or Diversion. This subchapter collects many of the assorted reporting discrepancy, loss, theft and diversion provisions that were

found throughout the old Chapter 13 and repeats them without substantive change.

Subchapter M: Denial, Revocation And Related Disciplinary Action. This subchapter collects many of the assorted denial, revocation, and related disciplinary action provisions that were found throughout the old Chapter 13 and repeats them without substantive change. This subchapter clarifies the applicability of the APA (The Administrative Procedure Act, Texas Government Code, Chapter 2001) to certain disciplinary action proceedings and not to others. The subchapter governs the denial, revocation, suspension, probation, reprimand, voluntary surrender, or cancellation of a controlled substance registration or a chemical precursor and apparatus permit.

No comments were received regarding adoption of the new sections.

SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §§13.1 - 13.11

The new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.006(4), which provides that the director of the department shall adopt rules, subject to commission approval, considered necessary for the control of the department; and Health and Safety Code, §481.003(a).

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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Director
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SUBCHAPTER B. REGISTRATION

37 TAC §§13.21 - 13.33

The new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.006(4), which provides that the director of the department shall adopt rules, subject to commission approval, considered necessary for the control of the department; and Health and Safety Code, §481.003(a).

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

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SUBCHAPTER C. PEYOTE

37 TAC §§13.41 - 13.58

The new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.006(4), which provides that the director of the department shall adopt rules, subject to commission approval, considered necessary for the control of the department; and Health and Safety Code, §481.003(a).

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

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SUBCHAPTER D. OFFICIAL PRESCRIPTIONS

37 TAC §§13.71 - 13.86

The new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.006(4), which provides that the director of the department shall adopt rules, subject to commission approval, considered necessary for the control of the department; and Health and Safety Code, §481.003(a).

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

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SUBCHAPTER E. PRECURSORS AND APPARATUS

37 TAC §13.101 - 13.115

The new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.006(4), which provides that the director of the department shall adopt rules, subject to commission approval, considered necessary for the control of the department; and Health and Safety Code, §481.003(a).

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

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SUBCHAPTER F. APPLICATION

37 TAC §§13.131 - 13.137

The new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.006(4), which provides that the director of the department shall adopt rules, subject to commission approval, considered necessary for the control of the department; and Health and Safety Code, §481.003(a).

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

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SUBCHAPTER G. FORFEITURE AND DESTRUCTION

37 TAC §§13.151 - 13.165

The new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.006(4), which provides that the director of the department shall adopt rules, subject to commission approval, considered necessary for the control of the department; and Health and Safety Code, §481.003(a).

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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Effective date: July 18, 2001
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For further information, please call: (512) 424-2135

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SUBCHAPTER H. SECURITY

37 TAC §§13.181 - 13.187

The new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.006(4), which provides that the director of the department shall adopt rules, subject to commission approval, considered necessary for the control of the department; and Health and Safety Code, §481.003(a).

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

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

TRD-200103704
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: July 18, 2001
Proposal publication date: March 23, 2001
For further information, please call: (512) 424-2135

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SUBCHAPTER I. RECORD KEEPING

37 TAC §§13.201 - 13.209

The new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.006(4), which provides that the director of the department shall adopt rules, subject to commission approval, considered necessary for the control of the department; and Health and Safety Code, §481.003(a).

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

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

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: July 18, 2001
Proposal publication date: March 23, 2001
For further information, please call: (512) 424-2135

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SUBCHAPTER J. INVENTORY

37 TAC §§13.221 - 13.224

The new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.006(4), which provides that the director of the department shall adopt rules, subject to commission approval, considered necessary for the control of the department; and Health and Safety Code, §481.003(a).

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

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

TRD-200103706
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: July 18, 2001
Proposal publication date: March 23, 2001
For further information, please call: (512) 424-2135

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SUBCHAPTER K. INSPECTION

37 TAC §§13.231 - 13.237

The new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.006(4), which provides that the director of the department shall adopt rules, subject to commission approval, considered necessary for the control of the department; and Health and Safety Code, §481.003(a).

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

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

TRD-200103707
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: July 18, 2001
Proposal publication date: March 23, 2001
For further information, please call: (512) 424-2135

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SUBCHAPTER L. REPORTING DISCREPANCY, LOSS, THEFT, OR DIVERSION

37 TAC §§13.251 - 13.254

The new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.006(4), which provides that the director of the department shall adopt rules, subject to commission approval, considered necessary for the control of the department; and Health and Safety Code, §481.003(a).

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

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

TRD-200103708
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: July 18, 2001
Proposal publication date: March 23, 2001
For further information, please call: (512) 424-2135

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SUBCHAPTER M. DENIAL, REVOCATION, AND RELATED DISCIPLINARY ACTION

37 TAC §§13.271 - 13.278

The new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.006(4), which provides that the director of the department shall adopt rules, subject to commission approval, considered necessary for the control of the department; and Health and Safety Code, §481.003(a).

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

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

TRD-200103709
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: July 18, 2001
Proposal publication date: March 23, 2001
For further information, please call: (512) 424-2135

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CHAPTER 15. DRIVERS LICENSE RULES

SUBCHAPTER B. APPLICATION REQUIREMENTS - ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.47

The Texas Department of Public Safety adopts new §15.47, concerning Electronically Readable Information, without changes to the proposed text as published in the March 23, 2001, issue of the *Texas Register* (26 TexReg 2323) and will not be republished.

The justification for the new section will be to limit the purposes for which personal information contained on the driver license/commercial driver license/identification certificate may be assessed in an electronically readable format.

The new section is necessary in order for the department to comply with House Bill 571, passed during the 76th Texas Legislature, 1999, which limits the information placed on a Texas driver license in an electronically readable format, and allows for this information to be used for law enforcement and governmental purposes only.

No comments were received regarding adoption of the new section.

The new section is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005.

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

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

TRD-200103710
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: July 18, 2001
Proposal publication date: March 23, 2001
For further information, please call: (512) 424-2135

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CHAPTER 16. COMMERCIAL DRIVERS LICENSE

SUBCHAPTER D. SANCTIONS AND DISQUALIFICATIONS

37 TAC §§16.93, 16.95, 16.98

The Texas Department of Public Safety adopts amendments to §16.93 and §16.98, and new §16.95, concerning Commercial Drivers License (CDL) Sanctions and Disqualifications, without changes to the proposed text as published in the March 23, 2001, issue of the *Texas Register* (26 TexReg 2324) and will not be republished.

The justification for the amendments and new section will be to provide for an efficient and consistent administrative hearing process in compliance with statute.

Amendment to §16.93 is necessary to update the statutory reference. Amendment to §16.98 reformats the section by adding new subsection (b), changes the title of the section, and updates the statutory reference. New §16.95 establishes a notice and hearing procedure as required by House Bill 3641 passed during the 76th Texas Legislature, 1999. The amendments and new section will further tie the commercial driver license administrative hearing process to the non-CDL administrative hearing process of Texas Transportation Code, Chapter 521, Subchapter N and 37 TAC §§15.81-15.85.

No comments were received regarding adoption of the amendments and new section.

The amendments and new section are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §522.005.

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

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

TRD-200103712
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: July 18, 2001
Proposal publication date: March 23, 2001
For further information, please call: (512) 424-2135

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37 TAC §16.95, §16.96

The Texas Department of Public Safety adopts the repeal of §16.95 and §16.96, concerning Commercial Drivers License (CDL) Sanctions and Disqualifications, without changes to the proposed text as published in the March 23, 2001, issue of the *Texas Register* (26 TexReg 2325) and will not be republished.

Repeal of the current rules will allow for the simultaneous filing of a new §16.95 that provides for an efficient and consistent administrative hearing process in compliance with statute.

No comments were received regarding adoption of the repeals.

The repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §522.005.

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

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

TRD-200103711
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: July 18, 2001
Proposal publication date: March 23, 2001
For further information, please call: (512) 424-2135

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

CHAPTER 211. ADMINISTRATION

37 TAC §211.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts amended §211.1, concerning definitions, without changes to the proposed text as published in the April 13, 2001, issue of the *Texas Register* (26 TexReg 2814).

The adopted amendment adds a definition for court-ordered community supervision and amends the definition of the term Texas peace officer for the purposes of eligibility of reserve officers for the Texas Peace Officers' Memorial. This amendment also adopts a change to the effective date in subsection (b) of this section.

No written comments were received.

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

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 July 2, 2001.

TRD-200103743

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: August 1, 2001

Proposal publication date: April 13, 2001

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

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CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.19

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts amended §217.19, concerning reactivation of a license, without changes to the proposed text as published in the April 13, 2001, issue of the *Texas Register* (26 TexReg 2816).

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

No written comments were received.

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

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 July 2, 2001.

TRD-200103744

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: August 1, 2001

Proposal publication date: April 13, 2001

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

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CHAPTER 219. PRELICENSING AND REACTIVATION COURSES, TEST AND ENDORSEMENTS OF ELIGIBILITY

37 TAC §219.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts amended §219.1, concerning eligibility to take state examinations, without changes to the proposed text as published in the April 13, 2001, issue of the *Texas Register* (26 TexReg 2817).

The adopted amendment includes changes to subsection (d) of this section. Clarification is provided in subsection (d) of this section, stating that, in order to issue an endorsement of eligibility, the person issuing such an endorsement must have on file for the person to whom it is issued, written documentation of successful completion of the basic licensing course for the license sought. This amendment also adopts a change to the effective date in subsection (i) of this section.

No written comments were received.

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

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 July 2, 2001.

TRD-200103745

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: August 1, 2001

Proposal publication date: April 13, 2001

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

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CHAPTER 229. TEXAS PEACE OFFICERS' MEMORIAL ADVISORY COMMITTEE

37 TAC §229.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts amended §229.1, concerning general eligibility of deceased Texas peace officers and their inclusion on the Texas Peace Officers' Memorial, without changes to the proposed text as published in the April 13, 2001, issue of the *Texas Register* (26 TexReg 2818).

The adopted amendment eliminates subsection (a)(3) of this section concerning reserve peace officers. This amendment also adopts a change to the effective date in subsection (c) of this section.

No written comments were received.

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

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 July 2, 2001.

TRD-200103746

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: August 1, 2001

Proposal publication date: April 13, 2001

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

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37 TAC §229.3

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts amended §229.3, concerning specific eligibility of deceased Texas peace officers and their inclusion on the Texas Peace Officers' Memorial, without changes to the proposed text as published in the April 27, 2001, issue of the *Texas Register* (26 TexReg 3155).

The adopted amendment eliminates some of the language in subsection (a)(3) of this section concerning reserve peace officers. This amendment also adopts a change to the effective date in subsection (b) of this section.

One written comment was received from the Chief of Police of Universal City Police Department supporting the change.

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

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 July 2, 2001.

TRD-200103747

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: August 1, 2001

Proposal publication date: April 27, 2001

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

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PART 12. TEXAS MILITARY FACILITIES COMMISSION

CHAPTER 375. BUILDING CONSTRUCTION ADMINISTRATION

37 TAC §375.11

The Texas Military Facilities Commission (Commission) adopts the repeal of Texas Administrative Code, Title 37, Section 12, §375.11, relating to Uniform General Conditions, without changes to the proposed rule as published in the May 11, 2001, issue of the *Texas Register* (26 TexReg 3475).

The repeal is adopted because the Commission, a public authority, is exempt from the General Services Commission (GSC) Uniform General Conditions.

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to Government Code, §435.011, which provides the Commission with authority to promulgate rules.

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 July 2, 2001.

TRD-200103735

Jerry D. Malcolm

Executive Director

Texas Military Facilities Commission

Effective date: July 22, 2001

Proposal publication date: May 11, 2001

For further information, please call: (512) 406-6971

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CHAPTER 379. ADMINISTRATIVE RULES

37 TAC §379.40

The Texas Military Facilities Commission adopts new §379.40, relating to Commission Vehicle Use, without changes to the proposed text as published in the May 11, 2001, issue of *Texas Register* (26 TexReg 3476).

The rule is adopted to comply with Government Code, §2171.1045, which requires state agencies to adopt rules relating to the assignment and use of the agency's vehicles. The rules are consistent with the General Services Commission's State Vehicle Fleet Management Plan and specifically address the requirements that: (1) vehicles are assigned to the agency's motor pool and may be available for checkout; and (2) the agency may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis only if there

is a documented finding that the assignment is critical to the needs and mission of the agency.

No comments were received regarding adoption of the new section.

The new section is adopted under the Government Code, §435.011, which provides the Texas Military Facilities Commission with the authority to promulgate rules as well as Texas Government Code, §2171.1045.

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 July 2, 2001.

TRD-200103734
Jerry D. Malcolm
Executive Director
Texas Military Facilities Commission
Effective date: July 22, 2001
Proposal publication date: May 11, 2001
For further information, please call: (512) 406-6971

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER X. REQUIREMENTS FOR MEDICAID-CERTIFIED FACILITIES

40 TAC §19.2322

The Texas Department of Human Services (DHS) adopts an amendment to §19.2322 without changes to the proposed text published in the April 27, 2001, issue of the *Texas Register* (26 TexReg 3155). The amendment will not be republished.

Justification for removing the requirement that waiver beds for underserved minorities be located in a county with a total population of at least 1,000,000 is to enable minority populations to reside in facilities closer to their homes and families.

The department received no comments regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001- 22.030 and §§32.001-32.042.

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

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

TRD-200103643
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: August 1, 2001
Proposal publication date: April 27, 2001
For further information, please call: (512) 438-3108

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REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Proposed Rule Review

Texas Natural Resource Conservation Commission

Title 30, Part 1

The Texas Natural Resource Conservation Commission (commission) files this notice of intention to review and propose the readoption of Chapter 321, Control of Certain Activities By Rule. This review of Chapter 321 is proposed in accordance with the requirements of Texas Government Code, §2001.039; and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999, which require state agencies to review and consider for readoption each of their rules every four years. A review must include an assessment of whether the reasons for the rules continue to exist.

CHAPTER SUMMARY

Chapter 321 provides Texas authorization for numerous discharges that are more efficiently authorized by rule than by individual permits and is organized into the following 15 subchapters:

Subchapter A, Boat Sewage Disposal, contains provisions addressing the following: definitions; the requirements, specifications, and certifications for marine sanitation devices; disposal of boat sewage; specifications, certifications, fees, and disposal of sewage from pump-out facilities; exclusions; renewal of certifications; disposition of fees; cancellation of certification, replacement, or transfer; and criminal penalties.

Subchapter B, Concentrated Animal Feeding Operations, contains provisions addressing the following: waste and wastewater discharge and air emissions limitations; definitions; applicability; procedures for making application for an individual permit; procedures for making application for registration; notice of application for registration; proper concentrated animal feeding operation (CAFO) operation and maintenance; pollution prevention plans; best management practices; monitoring and reporting requirements; notification; dairy outreach program areas; effect of conflict or invalidity of rule; air standard permit authorization; and initial Texas Pollutant Discharge Elimination System (TPDES) authorization.

Subchapter C, Meat Processing, contains provisions addressing the following: definitions; applicability; certification of registration; domestic waste disposal.

Subchapter D, Sand and Gravel Washing, contains provisions addressing the following: application of subchapter; treatment and retention facilities; diversion of runoff; available capacity; and prohibition of unauthorized discharge.

Subchapter E, Surface Coal Mining, Preparation, and Reclamation Activities, contains provisions addressing the following: definitions; discharges authorized by rule; permit required; term, modification; hearing; enforcement; effluent and additional effluent limitations; associated facilities; and monitoring and reporting of data.

Subchapter F, Shrimp Industry, contains provisions addressing the following: definitions; applicability; certificate of registration; domestic waste disposal; requirements; rights of review; and appeal of decisions by the executive director.

Subchapter G, Hydrostatic Test Discharges, contains provisions addressing the following: definitions; applicability; new and used facilities; registration; general and specific requirements for discharges; sampling, reporting, recordkeeping, and restrictions; and enforcement.

Subchapter H, Discharge to Surface Waters from Treatment of Petroleum Substance Contaminated Waters, contains provisions addressing the following: definitions; applicability; discharges of water contaminated by gasoline, jet fuel or kerosene, and other petroleum substances; telephone utilities; restrictions; enforcement; and reservations.

Subchapter I, Additional Characteristics and Conditions of General Permits And For Controlling Certain Activities By Rule, contains provisions addressing the following: additional characteristics and conditions for general permits and control of certain activities by rule.

Subchapter J, Discharges To Surface Waters From Ready-Mixed Concrete Plants And/Or Concrete Products Plants Or Associated Facilities, contains provisions addressing the following: definitions; purpose and applicability; certificate of registration and public notice; general and specific requirements for discharge; sampling, reporting, recordkeeping, and restrictions; enforcement and revocation; and annual waste treatment fees.

Subchapter K, Concentrated Animal Feeding Operations, contains provisions addressing the following: waste and wastewater discharge and

air emission limitations; definitions; applicability; application requirements and review; notice of application; public comments; permit issuance; amendments; renewal; proper CAFO operation and maintenance; pollution prevention plans; best management practices; other requirements; monitoring and reporting requirements; registration; dairy outreach program areas; and effect of conflict or invalidity of rule.

Subchapter L, Discharges To Surface Waters From Motor Vehicles Cleaning Facilities, contains provisions addressing the following: definitions; purpose and applicability; certificate of registration and public notice; active agency permits; general and specific requirements for discharge; sampling, reporting, and recordkeeping; restrictions; enforcement and revocation; and annual waste treatment fees.

Subchapter M, Discharges to Surface Waters From Petroleum Bulk Stations And Terminals, contains provisions addressing the following: definitions; purpose and applicability; active permits; certificate of registration and public notice; general and specific requirements for discharge; sampling, reporting and recordkeeping; restrictions; enforcement and revocation; and annual waste treatment fees.

Subchapter N, Handling of Wastes From Commercial Facilities Engaged In Livestock Trailer Cleaning, contains provisions addressing the following: statement of no discharge policy; definitions; purpose and applicability; certificate of registration and public notice; requirements for containment of waste and ponds; general requirements; restrictions; enforcement and revocation; and annual waste treatment fees.

Subchapter O, Discharges From Aquaculture Production Facilities, contains provisions addressing the following: definitions; purpose and applicability; certificate of registration and public notice; groundwater protection; waste utilization or disposal by land application of wastewater and pond bottom sludges; Edwards Aquifer Recharge Zone; required best management practices and specific requirements for discharge; general requirements; enforcement and revocation, suspension, or annulment; and annual waste treatment fees.

PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission conducted a preliminary review and determined that the reasons for the rules in Chapter 321 continue to exist. The rules are needed to implement the commission's objectives to streamline the permitting process consistent with Texas Water Code, Chapters 5 and 26 and Texas Health and Safety Code, Chapters 341, 361, and 382. Chapter 321 provides Texas authorization for numerous discharges that are more efficiently authorized by rule than by individual permits. In the future, some of these permits by rule may be converted into general permits.

PUBLIC COMMENTS

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9 - 10.13, 76th Legislature, 1999. The commission invites public comment on whether the reasons for the rules in Chapter 321 continue to exist. Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2000-037-321-WT. Comments must be received by 5:00 p.m., August 20, 2001. For further information or questions concerning this proposal, please contact Michael Bame, Policy and Regulations Division, (512) 239-5658.

TRD-200103815

Ramon Dasch
Acting Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: July 3, 2001

Adopted Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (the department) adopts the review Title 4, Texas Administrative Code, Part 1, Chapter 4, concerning Cooperative Marketing Associations, and Chapter 6, concerning Seed Arbitration, pursuant to the Texas Government Code, §2001.039 and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999 (Section 9-10.13). Section 9- 10.13 and §2001.039 require state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist.

The notice of intent to review Chapters 4 and 6 was published in the May 18, 2001, issue of the *Texas Register* (26 TexReg 3643). No comments were received on the notice. As part of the review process, the department adopts the repeal of Title 4, Part 1, §4.5 and §6.5. These may be found in the adopted rule section of this publication of the *Texas Register*. The assessment of Title 4, Part 1, Chapters 4 and 6 by the department at this time indicates that with the exception of the sections proposed for repeal, the reason for readopting without changes all remaining sections in Chapters 4 and 6 continues to exist.

TRD-200103732
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: June 29, 2001

Texas Workers' Compensation Commission

Title 28, Part 2

In accordance with the General Appropriation Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039, as added by Senate Bill 178, 76th Legislature, and pursuant to the notice of intention to review published in the May 4, 2001, issue of the *Texas Register* (26 TexReg 3401) the Texas Workers' Compensation Commission (the commission) has reviewed and considered for readoption the following rules in Title 28, Part 2 of the Texas Administrative Code.

CHAPTER 102. PRACTICE AND PROCEDURES--GENERAL PROVISIONS.

§102.2. Gifts, Grants, and Donations.

§102.3. Computation of Time.

§102.4. General Rules for Non-Commission Communications.

§102.5. General Rules for Written Communications to and from the Commission.

§102.7. Abbreviations.

§102.8. Information Requested on Written communications to the Commission.

§102.9. Submission of Information Requested by the Commission.

§102.10. Interest, General.

The commission has assessed whether the reason for adopting or readopting these rules continues to exist. No comments were received regarding the review of this rule.

As a result of the review, the commission has determined that the reason for adoption of these rules continues to exist. Therefore, the commission readopts this rule. If the commission determines that this rule should be revised, the revision will be accomplished in accordance with the Administrative Procedure Act.

TRD-200103670
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: June 27, 2001

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IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture

Notice of Public Hearings

The Texas Department of Agriculture (the department) will hold two public hearings on Thursday, July 20, 2001, to take public comment on proposed amendments to its Boll Weevil Eradication Program rules found at 4 Texas Administrative Code, Chapter 3, Subchapter E., concerning the establishment of the Upper Coastal Bend Boll Weevil Eradication Zone. The proposal will be published in the July 13, 2001, issue of the *Texas Register*. The hearings will be held as follows:

beginning at 9:00 a.m., at the Jackson County Services Building Auditorium, 411 N. Wells, Edna, Texas; and

beginning at 1:00 p.m., at the El Campo Civic Center, 2305 N. Mechanic (Bus. Hwy. 71 & FM 2765), El Campo, Texas.

For more information, please contact , John McFerrin, Producer Relations Specialist, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas, 78711 (512)463-7593.

TRD-200103812
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: July 3, 2001

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Texas Commission on Alcohol and Drug Abuse

Public Hearings

The Texas Commission on Alcohol and Drug Abuse (Commission), through its Regional Advisory Consortia, will hold public hearings in each Health and Human Services region to solicit input on its Strategic Plan, Statewide Service Delivery Plan, and intended use of block grant. Comments will be directed to the long-term goals of the agency and how to best coordinate and deliver substance abuse related services.

Public hearings have been scheduled for the following dates, times and places:

Friday, August 17, 2001, 2 p.m. - 4 p.m., Regional Training and Development Complex, 1530 South Southwest Loop 323, Tyler, Texas 75701. The telephone number is (903) 510-2900.

Friday, August 10th, 2001, 10 a.m. - noon, Texarkana College Levi Hall Room of the Student Center, 2500 North Robinson Road Texarkana, Texas 75599. The telephone number is (903) 838-4541.

September 14, 2001, 1:30 p.m. - 3:30 p.m., Texas Commission on Alcohol and Drug Abuse, 9001 North IH 35, Suite 105, Austin, Texas 78753-5233. The telephone number is (800) 832-9623.

September 20, 2001, 5 p.m. - 7 p.m., Foundation for South East Texas, 700 North Street, Beaumont, Texas. The telephone number is (409) 833-5775.

Wednesday, August 22, 2001, 6:30 p.m. - 8:30 p.m., Cesar Chavez Academy, 7814 Alameda Street, El Paso, Texas, 79915. The telephone number is (915) 434-9627.

August 24, 2001, 2 p.m. - 4 p.m., Houston Council on Alcohol and Drug Abuse, 303 Jackson-Hill Houston, Texas, 77007. The telephone number is (713) 942-4100.

Friday, October 5, 2001, 1 p.m. - 3 p.m., Taylor County Plaza Building, 400 Oak Street, Stone Wall Room, 4th floor, Abilene, Texas, 79602. The telephone number is (915) 795-4242.

Friday, October 12, 2001, 7 p.m. - 9 p.m., The Patrician Movement, 222 E. Mitchell Street, San Antonio, Texas, 78210. The telephone number is (210) 532-3126.

Representatives from the Commission will be present to explain the planning process and members of the Regional Advisory Consortium along with Commission staff will be present to consult with and receive comments from interested citizens and affected groups. All written and oral comments will be considered in preparation of the Strategic Plan, Statewide Services Delivery Plan, and Block Grant Application.

Spanish-language interpreters and interpreters for the hearing impaired will be provided upon request. Please contact Erika Vicinaiz at (800) 832-9623, extension 6633 ten working days prior to the public hearing to request these services. If you are an individual with a disability and need reasonable accommodation, please notify the commission ten days in advance of the hearing date for accommodations to be made.

The Commission and its Regional Advisory Consortia in Region 9 of the Health and Human Services Commission held a public hearing on July 11, 2001 at the Permian Basin Regional Planning Commission,

2910 La Force Blvd., Midland, Texas. The public hearing began at 11:00am and ended at 1:00pm.

Additional information may be obtained by contacting the Texas Commission on Alcohol and Drug Abuse, Belinda Williams or Erika Vicinaiz at (800) 832-9623, extension 6650 or 6633.

TRD-200103818
Karen Pettigrew
General Counsel
Texas Commission on Alcohol and Drug Abuse
Filed: July 3, 2001

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Coastal Coordination Council

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

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were received for the following projects(s) during the period of June 22, 2001, through June 28, 2001. The public comment period for these projects will close at 5:00 p.m. on August 6, 2001.

FEDERAL AGENCY ACTIONS:

Applicant: Yuma E & P Company, Inc.; Location: The project is located in State Tract (ST) 49 in Trinity Bay, Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Umbrella Point, Texas. Approximate UTM Coordinates: Easting: 324000; Northing: 3283500. CCC Project No.: 01-0229-F1; Description of Proposed Action: The applicant proposes to install a shell pad and structures for drilling the State Tract 49 No. 1 Well. Approximately 1,493 cubic yards of shell will be required to construct a 210-foot by 64-foot by 3-foot pad. The pad will impact an area approximately 0.3-acre in size. All structures will be marked/lighted in accordance with U.S. Coast Guard regulations. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Victoria County Navigation District; Location: The project is located at the Port of Victoria, Victoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Bloomington, Texas. Approximate UTM Coordinates: Zone 14; Easting: 698114; Northing: 3175203. CCC Project No.: 01-0230-F1; Description of Proposed Action: The applicant proposes to enlarge the existing turning basin and barge canal. There will be no wetland impacts associated with the amendment. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899.

Applicant: Hall's Bayou Ranch, Inc.; Location: The project is located in Carancahua Bayou at its confluence with the Gulf Intracoastal Waterway (GIWW) north of West Galveston Bay in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Sea Isle, Texas. Approximate UTM Coordinates: Zone 15; Easting: 304100; Northing: 3236300. CCC Project No.: 01-0233-F1; Description of Proposed Action: The applicant requests authorization to place fill material at the opening of Carancahua Bayou at the point where it empties into the GIWW. The opening measures approximately 15 feet wide. Water depth at the opening ranges from -1 foot to -3 feet mean sea level. The applicant proposes to raise the elevation at the opening to + 3-feet mean sea level in order to connect an existing levee road. Two 30-inch diameter culverts with flashboard risers will also be installed at this location for drainage. The fill and water control structure is necessary to restore and preserve inland marsh areas located inland within the Hall's Bayou Ranch. The applicant wishes to restore several brackish marsh habitats within the ranch boundaries to fresh water marshes. The proposed water control structure will serve to reduce salt-water intrusion into these inland marshes. It is estimated that up to 2,000 acres of fresh water marsh habitat would be restored and ultimately preserved as a result of this project. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Khang Bui; Location: The project is located in the Port Arthur Canal on State Highway 82 on Pleasure Island in Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Port Arthur South, Texas. Approximate UTM Coordinates: Zone 15; Easting: 411500; Northing: 3292900. CCC Project No.: 01-0234-F1; Description of Proposed Action: The applicant proposes to modify Department of the Army Permit 20391 to increase dock facilities by adding three barges. The barges will be stabilized with steel pilings. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information for the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at (512) 475-0680.

TRD-200103814
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: July 3, 2001

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Comptroller of Public Accounts

Notice of Intent to Amend Contract

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) furnishes this notice of intent to amend a consultant contract.

Effective December 10, 1998, the Comptroller, acting on behalf of the Texas Prepaid Higher Education Tuition Board, and Watson Wyatt Investment Consulting, Inc. (Consultant) entered into a contract for investment consulting services. The initial term of the contract was from December 10, 1998 through December 10, 1999. The contract was renewed from December 10, 1999 through December 10, 2000, from December 10, 2000 through January 9, 2001, and from January 10, 2001 through January 10, 2002. The Comptroller issues this notice of its intent to amend the contract by increasing the total amount paid to the Consultant under the contract from $315,000.00 to $425,000.00.

Total payments under the contract, including all renewal periods, shall not exceed $425,000.00.

For further information, contact John C. Wright, Assistant General Counsel, Contracts, 111 E. 17th St., Room G-24, Austin, Texas 78774, telephone number (512) 305-8673; fax (512) 475-0973, or by e-mail at contracts@cpa.state.tx.us.

TRD-200103715
William Clay Harris
Assistant General Counsel
Comptroller of Public Accounts
Filed: June 29, 2001

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 07/09/01 - 07/15/01 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.09 for the period of 07/09/01 - 07/15/01 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200103811
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 3, 2001

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Texas Department of Criminal Justice

Notice of Contract Award

The Texas Department of Criminal Justice on behalf of the Internal Audit Division, publishes this notice of a contract award to the Institute of Internal Auditors, 249 Maitland, Altamonte Springs, Florida 32701. Notice of a Request for Qualifications to secure the services of a qualified reviewer to perform an independent external peer review was published in the March 30, 2001, edition of the *Texas Register* (26 TexReg 2556). This contract was awarded in accordance with the requirements in Chapter 2254, Subchapter A, Texas Government Code.

The contract number is 696-AO-1-1-C0164. Services will include a review of necessary documentation, audit reports, working papers and interviews with professional staff to support a formal written report completed by August 31, 2001. The total cost for the contract is not to exceed $35,000. The term of the contract is June 26, 2001 through August 31, 2001.

TRD-200103742
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: July 2, 2001

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General Land Office

Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Natural Resources Code, notice is hereby given that David Dewhurst, Texas Land Commissioner, approved a coastal boundary survey, submitted by Shiner Moseley and Associates, Inc., conducted from December 7, 2000 to January 12, 2001, locating the following shoreline boundary:

Beginning at the west end of the Galveston seawall extending approximately 19 miles west-southwest to Point San Luis in Galveston County, Texas.

For a copy of this survey or more information on this matter, contact Ben Thomson, Director, Survey Division, Texas General Land Office at (512) 463-5212.

TRD-200103817
Larry R. Soward
Chief Clerk
General Land Office
Filed: July 3, 2001

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General Services Commission

Notice to Bidders

NOTICE TO BIDDERS - NTB 01-011-582, Reroofing and Roof Related Work, TNRCC Facilities, Austin, Texas

SEALED BIDS WILL BE RECEIVED BY THE GENERAL SERVICES COMMISSION (GSC), FACILITIES CONSTRUCTION & SPACE MANAGEMENT DIVISION (FCSM) FOR CONSTRUCTION OF PROJECT NO. 01-011-582, Reroofing and Roof Related Work, 12100 Park 35 Circle, Austin, Texas 78753. **Sealed bids will be received until 3:00 P.M. on Thursday, August 2, 2001. HUB Subcontracting Plans are due by 3:00 P.M. on Friday, August 3, 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: 01-011-582, Reroofing and Roof Related Work is approximately $700,000.

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) 463-3417. It should be submitted as soon as possible, but no later than 5:00 p.m. on Thursday, July 26, 2001 (a week prior to bid opening) 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** and other web sites, see the Project Manual.

Bid Documents: Plans and specifications are available for prime contractors from EDIS OLIVER & ASSOCIATES, 4412 Spicewood Springs Road, Suite 203, AUSTIN, TEXAS 78766, (512) 342-0102, Fax: (512) 342-0104, upon delivery of a refundable deposit of $50.00 per set. Bid documents will be available for review at the FCSM office, 1711 San Jacinto, Suite 202, Austin, Texas 78701, the engineer's office and the Plan Rooms of Associated General Contractors, F. W. Dodge Corporation, the Builder's Exchange of Texas, the Associated Builder's and Contractors, the Hispanic Contractors Association, in Austin and San Antonio, Texas.

Pre-Bid Conference: There will be MANDATORY Pre-Bid Conference on Tuesday, July 10, 2001 at 10:00 A.M., at the Texas Natural Resources Conservation Commission office, 12100 Park 35 Circle, Austin, Texas 78753. Meet at the front lobby in Building "A" to receive further instructions. A non-mandatory walk through of the project site will be conducted at 1:00 P.M. on the same day.

BIDS ARE TO BE MADE IN ACCORDANCE WITH STATE PROCEDURES.

TO BE RUN IN: The Austin American-Statesman, San Antonio Express-News

ONE TIME: Monday, July 2, 2001

http://www.marketplace.state.tx.us/1380/bid_show.cfm?bidid=32443

TRD-200103721
Cynthia Hill
Acting General Counsel
General Services Commission
Filed: June 29, 2001

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Texas Department of Health

Notice of Uranium Byproduct Material License Amendment Five on Exxon Mobil Corporation

The Texas Department of Health (department) gives notice that it has amended uranium by-product material license L01431 issued to Exxon Mobil Corporation (mailing address: 3225 Gallows Road, Room 8B312, Fairfax, Virginia 22037-0001). Amendment five changes the company name, changes mailing address, names Mark E. Hoffman as Radiation Safety Officer, and removes the deadline for completion of cleanup activities, outside of the impoundments restricted area, while the department reviews the licensee's proposed closure plan.

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, §401.264, 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-200103768
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 2, 2001

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Notice of Uranium Byproduct Material License Amendment Four on USX, Texas Uranium Operations

The Texas Department of Health (department) gives notice that it has amended uranium by-product material license L02449 issued to USX, Texas Uranium Operations (mailing address: USX, Texas Uranium Operations, Drawer V, George West, Texas 78022). Amendment four, deletes survey requirements for which there are no longer any sources of contamination present on site, and following receipt of concurrence from the United States Nuclear Regulatory Commission, removes the 28.2 acres Pawlik Production Area from the license.

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, §401.264, 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-200103763
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 2, 2001

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Notice of Uranium Byproduct Material License Amendment Seven on 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 Edmonds Lane, Suite 108, Lewisville, Texas 75067). Amendment seven reassigns the 000 site Radiation Safety Officer (RSO) to sites 001, 002, and 003, and reassigns the 001, 002, and 003 sites RSO to site 000.

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, §401.264, 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-200103761
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 2, 2001

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Notice of Uranium Byproduct Material License Amendment Seven on USX, Texas Uranium Operations

The Texas Department of Health (department) gives notice that it has amended uranium by-product material license L02449 issued to USX, Texas Uranium Operations (mailing address: USX, Texas Uranium Operations, Drawer V, George West, Texas 78022). Amendment seven, at the licensee's request, following concurrence survey by department personnel, releases the Clay West and Moser wellfield patterns area for unrestricted use while awaiting United States Nuclear Regulatory Commission concurrence on removal from the license.

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, §401.264, 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-200103764
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 2, 2001

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Notice of Uranium Byproduct Material License Amendment Three on Cogema Mining, Inc.

The Texas Department of Health (department) gives notice that it has amended uranium by-product material license L03024 issued to Cogema Mining, Inc. (mailing address: Cogema Mining, Inc., P.O. Box 228, Bruni, Texas 78334). Amendment three, at the licensee's request, following concurrence survey by Texas Department of Health personnel, releases the E-1, E-2, H-2 and H-3 wellfield patterns area for unrestricted use while awaiting United States Nuclear Regulatory Commission concurrence on removal from the license.

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, §401.264, 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-200103766
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 2, 2001

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Notice of Uranium Byproduct Material License Amendment Three on Exxon Mobil Corporation

The Texas Department of Health (department) gives notice that it has amended uranium by-product material license L01431 issued to Exxon Mobil Corporation (mailing address: 3225 Gallows Road, Room 8B312, Fairfax, Virginia 22037-0001). Amendment three deletes or modifies references and conditions relating to certain expired authorizations and license conditions, and replaces the Senior Staff Engineer of Exxon Coal and Minerals Company with Len M. Racioppi as the Radiation Safety Officer.

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, §401.264, 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-200103767
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 2, 2001

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Notice of Uranium Byproduct Material License Amendment Three on USX, Texas Uranium Operations

The Texas Department of Health (department) gives notice that it has amended uranium by-product material license L02449 issued to USX, Texas Uranium Operations (mailing address: USX, Texas Uranium Operations, Drawer V, George West, Texas 78022). Amendment three deletes or modifies references and conditions relating to certain expired authorizations and, at the licensee's request, following concurrence survey by department personnel, releases the Boots/Brown wellfield patterns area for unrestricted use while awaiting United States Nuclear Regulatory Commission concurrence on removal from the license.

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, §401.264, 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-200103762
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 2, 2001

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Notice of Uranium Byproduct Material License Amendment Two on Cogema Mining, Inc.

The Texas Department of Health (department) gives notice that it has amended uranium by- product material license L03024 issued to Cogema Mining, Inc. (mailing address: Cogema Mining, Inc., P.O. Box 228, Bruni, Texas 78334). Amendment two provides a deadline for completion of reclamation activities to conditions that will allow for unrestricted use of the property consistent with its original use.

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, §401.264, 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-200103765
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 2, 2001

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Texas Department of Insurance

Insurer Services

Application for admission to the State of Texas by PLANET INDEMNITY COMPANY, a foreign fire and casualty company. The home office is in Peoria, Illinois.

Application to change the name of CHRYSLER INSURANCE COMPANY to DAIMLERCHRYSLER INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Southfield, Michigan.

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-200103813
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: July 3, 2001

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Texas Natural Resource Conservation Commission

Enforcement Orders

An agreed order was entered regarding GENICO DISTRIBUTORS, INC. DBA JUMPIN JOHN'S, Docket No. 1999-1049-PST-E on June 12, 2001 assessing $44,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JOSHUA OLSZEWSKI, Staff Attorney at (512) 239-3645, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALADDIN CAR WASH, INC. , GENICO DISTRIBUTORS, INC. AND VILLAGE CAR WASH, INC., Docket No. 1999-0178-PST-E on June 12, 2001 assessing $27,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JOSHUA OLSZEWSKI, Staff Attorney at (512) 239-3645, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ADVANTAGE BLASTING & COATING, INC., Docket No. 2000-1037-AIR-E on June 12, 2001 assessing $7,500 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 INDUSTRIAL MODELS, INC., Docket No. 2000-1372-AIR-E on June 12, 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) 588-5868, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TURBINE CHROME SERVICES, INC., Docket No. 2000-0981-AIR-E on June 12, 2001 assessing $3,600 in administrative penalties with $720 deferred.

Information concerning any aspect of this order may be obtained by contacting TEL CROSTON, Enforcement Coordinator at (512) 239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SUPERIOR LAWN SERVICE, INC., Docket No. 2000-1447-AIR-E on June 12, 2001 assessing $1,250 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 MARBLE MASTERS OF TEXAS, INCORPORATED, Docket No. 2001-0045-AIR-E on June 12, 2001 assessing $3,125 in administrative penalties.

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 LANE SUPPLY COMPANY, INCORPORATED, Docket No. 2000-0977-AIR-E on June 12, 2001 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TEL CROSTON, Enforcement Coordinator at (512) 239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MCKENNA MEMORIAL HOSPITAL, Docket No. 2000-1234-EAQ-E on June 12, 2001 assessing $900 in administrative penalties with $180 deferred.

Information concerning any aspect of this order may be obtained by contacting REBECCA CLAUSEWITZ, Enforcement Coordinator at (210) 403-4012, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding G.B.N.C., INCORPORATED, Docket No. 1999- 1502-AIR-E on June 12, 2001 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting KELLY MEGO, Staff Attorney at (713) 422-8916, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding LAGARY DIXSON DBA EXPRESS AUTO KARE, Docket No. 2000-0161-AIR-E on June 12, 2001 assessing $625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting KELLY MEGO, Staff Attorney at (713) 422-8916, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CRAIG KOODA DBA KOODA EXTERIORS, Docket No. 1999-1233-LII-E on June 12, 2001 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting KELLY MEGO, Staff Attorney at (713) 422-8916, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF ANGUS, Docket No. 2000-0381- MWD-E on June 12, 2001 assessing $15,000 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.

An agreed order was entered regarding GENE DANIELSON, Docket No. 2000-0705- MWD-E on June 12, 2001 assessing $6,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting LAURIE EAVES, Enforcement Coordinator at (512) 239-4495, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WEST HOUSTON AIRPORT CORPORATION, Docket No. 2000-0709-MWD-E on June 12, 2001 assessing $18,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting LAURIE EAVES, Enforcement Coordinator at (512) 239-4495, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WEST HARDIN COUNTY CONSOLIDATED INDEPENDENT SCHOOL DISTRICT, Docket No. 2000-0963-MWD-E on June 12, 2001 assessing $6,250 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 W-INDUSTRIES, INC., Docket No. 2000-1188- MWD-E on June 12, 2001 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting CATHERINE ALBRECHT, Enforcement Coordinator at (713) 767-3672, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF THORNTON, Docket No. 2000-0658- MWD-E on June 12, 2001 assessing $8,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SHERRY SMITH, Enforcement Coordinator at (512) 239-0572, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF DAISETTA, Docket No. 2000-0971- MWD-E on June 12, 2001 assessing $8,125 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 AQUASOURCE, INC., Docket No. 1999-1532- MWD-E on June 12, 2001 assessing $52,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SHERRY SMITH, Enforcement Coordinator at (512) 239-0572, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF BUFFALO, Docket No. 2000-1253- MWD-E on June 12, 2001 assessing $1,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting BRIAN LEHMKUHLE, Enforcement Coordinator at (512) 239-4482, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding DOUGLAS J. SMITH, SR., Docket No. 2000- 0624-OSI-E on June 12, 2001 assessing $250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting LAURENCIA FASOYIRO, Staff Attorney at (713) 422-8914, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. AKRAM RHANI DBA P.T. CONOCO, Docket No. 2000-1455-PST-E on June 12, 2001 assessing $1,250 in administrative penalties.

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 VISTA STORES LLC, Docket No. 2000-1113- PST-E on June 12, 2001 assessing $2,700 in administrative penalties with $540 deferred.

Information concerning any aspect of this order may be obtained by contacting BILL DAVIS, Enforcement Coordinator at (512) 239-6793, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding HARRY GARBAR DBA S & J STORES, Docket No. 1999-0538-PST-E on June 12, 2001 assessing $4,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting ELISA ROBERTS, Staff Attorney at (817) 583-5777, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MRS. ROSA EISSLER LEE DBA BLUEBERRY HILL MOBILE HOME ESTATES, Docket No. 2000-0997-PWS-E on June 12, 2001 assessing $1,313 in administrative penalties.

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 THALIA WATER SUPPLY CORPORATION, Docket No. 2000-1237-PWS-E on June 12, 2001 assessing $2,188 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 CITY OF PAMPA, Docket No. 2000-1097- PWS-E on June 12, 2001 assessing $19,775 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 OUR WATER SUPPLY CORPORATION, Docket No. 2000-1294-PWS-E on June 12, 2001 assessing $313 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SHAWN HESS, Enforcement Coordinator at (806) 468-0502, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALVIN KIDD & MITCHELL KIDD DBA OLD WEST MOBILE HOME PARK, Docket No. 2000-0849-PWS-E on June 12, 2001 assessing $313 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SUBHASH JAIN, Enforcement Coordinator at (512) 239-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CORBET WATER SUPPLY CORPORATION, Docket No. 2000-0829-PWS-E on June 12, 2001 assessing $4,063 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SANDY VANCLEAVE, Enforcement Coordinator at (512) 239-0667, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CASEY DEVELOPMENT COMPANY LC AND CARL H. CASEY AND D.M. CASEY, Docket No. 2000-0936-PWS-E on June 12, 2001 assessing $750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting GARY SHIPP, Enforcement Coordinator at (806) 796-7092, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CAMP LONGHORN CAPITAL, INC., Docket No. 2001-0055-PWS-E on June 12, 2001 assessing $180 in administrative penalties with $36 deferred.

Information concerning any aspect of this order may be obtained by contacting DAVID VANSOEST, 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 GULSHAN ENTERPRISES INC. DBA HANDI PLUS NO. 18, Docket No. 2000-1335-PWS-E on June 12, 2001 assessing $1,750 in administrative penalties with $350 deferred.

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.

A default order was entered regarding AUGUSTIN VALENCIANA DBA DON BALTA'S RESTAURANT, Docket No. 1998-0981-PWS-E on June 12, 2001 assessing $4,343 in administrative penalties.

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.

A default order was entered regarding DAISY GODBEY DBA CREATIVE KIDS EXPRESS CHILD CARE, Docket No. 1999-0808-PWS-E on June 12, 2001 assessing $4,063 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SCOTT MCDONALD, Staff Attorney at (817) 588-5888, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding THAN MAI CHAU DBA HANDI PLUS #47, Docket No. 2000-0009-PWS-E on June 12, 2001 assessing $4,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting LAURENCIA FASOYIRO, Staff Attorney at (713) 422-8914, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200103718
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 29, 2001

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Notice of Application and Preliminary Decision for a Municipal Solid Waste Permit

For The Period of June 22, 2001

APPLICATION. The City of El Paso has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a permit (Proposed Permit No. MSW 2284) to authorize a new Type I municipal solid waste disposal facility. The proposed site covers approximately 311.3 acres and will provide 217.4 acres for landfilling purposes. The facility is located approximately a quarter mile north of the intersection at IH-10 and Farm to Market Road 1110 in El Paso County, Texas. This application was submitted to the TNRCC on February 1, 2000. The TNRCC executive director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue this draft permit. The permit application, executive director's preliminary decision, and draft permit are available for viewing and copying at the City of El Paso Department of Solid Waste Management at 7969 San Paulo Drive, El Paso, Texas, in El Paso County. MAILING LISTS. You may ask to be placed on a mailing list to obtain additional information regarding this application by sending a request to the Office of the Chief Clerk at the address below. You may also ask to be on a county-wide mailing list to receive public notices for TNRCC permits in the county. PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comment or to ask questions about the application. The TNRCC will hold a public meeting if the executive director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing. You may submit additional written public comment to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, Texas 78711-3087 within 30 days from the date of newspaper publication of this notice. OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for public comments, the executive director will consider the comments and prepare a response to all relevant and

material or significant public comments. The response to comments, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments or who requested to be on a mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the executive director's decision. A contested case hearing is a legal proceeding similar to a civil trial in a state district court. A contested case hearing will only be granted based on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised during the public comment period and not withdrawn. Issues that are not raised in public comments may not be considered during a hearing. EXECUTIVE DIRECTOR ACTION. The executive director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the executive director will not issue final approval of the permit and will forward the application and requests to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. INFORMATION. If you need more information about this permit application or the permitting process, please call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TNRCC can be found at our web site at www.tnrcc.state.tx.us. Further information may also be obtained from the City of El Paso Department of Solid Waste Management at 7969 San Paulo Drive, El Paso, Texas, in El Paso County, or by calling the City Offices at (915) 621-6700.

TRD-200103719
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 29, 2001

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The TNRCC staff proposes a DO when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 13, 2001**. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed DOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 13, 2001**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: Curiel Aggregates and Materials, Inc.; DOCKET NUMBER: 2000-0877-AIR-E; TNRCC ID NUMBER: EE-2160-G; LOCATION: Township Line Road, Horizon, El Paso County, Texas; TYPE OF FACILITY: aggregate processing and distribution yard, (site); RULES VIOLATED: 30 TAC §116.110(a) and §106.142(3) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain a permit for a rock crusher serving a hot mix asphalt plant located at the site and by failing to satisfy the conditions of a standard exemption by having no water spray system at the rock crusher, shaker screens or belt transfer points of the plant; §116.110(a) and §106.512(1) and THSC, §385.0518(a) and §382.085(b), by failing to obtain a permit or satisfy the conditions of a standard exemption for a generator located at the site's hot mix asphalt plant; §116.110(a) and §106.142(6) and THSC, §382.0518(a) and §382.085(b), by failing to obtain a permit or satisfy the conditions of a standard exemption for a second rock crusher at the site; PENALTY: $15,000; STAFF ATTORNEY: Dwight Martin, Litigation Division, MC 175, (512) 239-0682; REGIONAL OFFICE: El Paso Regional Office, 401 E. Franklin Ave., Ste. 560, El Paso, Texas 79901- 1206, (915) 834-4949.

(2) COMPANY: Equiva Services, L.L.C.; DOCKET NUMBER: 2000-1436-IHW-E; TNRCC ID NUMBER: 35845; LOCATION: 1121 Springdale Road, Austin, Travis County, Texas; TYPE OF FACILITY: industrial hazardous waste clean-up site at East Austin Tank Farm; RULES VIOLATED: Texas Water Code (TWC), §26.121, by causing, allowing, or permitting the discharge of waste or pollutants into or adjacent to waters of the state without specific authorization; Provision 3 of the Texas Water Commission Agreed Order issued on April 22, 1992, by failing to modify the Facility Interim Corrective Action Plan, or Corrective Action Plan to prevent off-site migration; or submit proof that areas of contamination were not in any way attributable to facility operations, within 90 days of confirmation of the presence of off-site contamination; Provision 4 of the Texas Water Commission Agreed Order issued on April 22, 1992, by failing to follow the approved Facility Corrective Action Plan, which called for site-wide recovery of 39 gallons per minute; PENALTY: $700,000; STAFF ATTORNEY: Victor Simonds, Litigation Division, MC 175, (512) 239-6201; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Dr., Ste. 150, Austin, Texas 78758-5336, (512) 339-2929.

(3) COMPANY: Frank Castillo dba Galvanized International; DOCKET NUMBER: 2000-0095- AIR-E; TNRCC ID NUMBER: CD-0355-C; LOCATION: 149 Lincoln Avenue, Port Isabel, Cameron County, Texas; TYPE OF FACILITY: transportation equipment painting and sandblasting; RULES VIOLATED: 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain a permit or satisfy the conditions of a permit exemption prior to operating and sandblasting operation; PENALTY: $3,000; STAFF ATTORNEY: Elisa Roberts, Litigation Division, MC R-4, (817) 588-5877; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Ave., Harlingen, Texas 78550-5247, (956) 425-6010.

(4) COMPANY: Gary Cameron; DOCKET NUMBER: 1999-0688-OSI-E; TNRCC ID NUMBER: 229-434; LOCATION: Spurger, Tyler County, Texas; TYPE OF FACILITY: operator authorized to construct, install, alter or repair on-site sewage facilities, (OSSF); RULES VIOLATED: 30 TAC §285.30(f), by failing to install a system which meets

the minimum standards of an OSSF; §285.58(a)(10), by failing to return to the site and work on the OSSF without cause for 30 consecutive days; §285.20(6), by failing to pay the reinspection fee; PENALTY: $1,500; STAFF ATTORNEY: Troy Nelson, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Fwy., Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: Gerald Heim dba Heim Water System; DOCKET NUMBER: 2000-1009-PWS-E; TNRCC ID NUMBERS: 2500026 and 12227; LOCATION: United States Highway 80 approximately two miles west of Mineloa, Wood County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c) and THSC, §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis; §290.109(g)(4) and §290.122(c), by failing to provide public notice of the bacteriological sampling violations; §290.51(a), by failing to pay Public Health Service fees; §291.76, by failing to pay regulatory assessment fees; PENALTY: $1,250; STAFF ATTORNEY: Troy Nelson, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(6) COMPANY: H. D. Adams, Paul Moore and C. O. Cox; DOCKET NUMBER: 2000-0678-IHW- E; TNRCC ID NUMBER: 38027; LOCATION: 6201 Dogwood Street, Manvel, Brazoria County, Texas; TYPE OF FACILITY: industrial hazardous waste; RULES VIOLATED: 30 TAC §335.4(1) and §335.2(a) and 40 Code of Federal Regulations (CFR) §270.1(c), by storing hazardous and industrial waste in a manner so as to cause the threat of discharge into the waters of the state and by storing hazardous and industrial waste on-site at an unpermitted facility; §335.323, by failing to pay the hazardous waste generation fees; PENALTY: $44,000; STAFF ATTORNEY: James Biggins, Litigation Division, MC R-13, (210) 403-4017; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Ste. H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: James Bryan dba Orange Marine Towing & Salvage; DOCKET NUMBER: 2000- 0911-IHW-E; TNRCC ID NUMBER: 52157; LOCATION: 2100 DuPont Drive, Orange, Orange County, Texas; TYPE OF FACILITY: barge building and boat repair; RULES VIOLATED: 30 TAC §335.4 and TWC, §26.121, by failing to prevent the unauthorized discharge of bilge water to Adams Bayou; §335.4 and TWC, §26.121, by failing to prevent the unauthorized discharge of spent sandblasting grit to the ground; §335.62 and 40 CFR §262.11, by failing to perform a hazardous waste determination and waste classification on five drums of waste barge sludge, spent sandblasting grit, and oily wastewater; PENALTY: $9,000; STAFF ATTORNEY: Troy Nelson, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Fwy., Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: K F Management Services Inc. dba Eldridge Shell; DOCKET NUMBER: 1999- 1358-PST-E; TNRCC ID NUMBER: 0071034; LOCATION: 5706 North Eldridge Parkway, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(6) and THSC, §382.085(b), by failing to maintain a record of the Stage II daily inspections; §115.246(3) and THSC, §382.085(b), by failing to maintain a record of maintenance performed on the Stage II system; §115.246(1) and THSC, §382.085(b), by failing to maintain a copy of the applicable California Air Resources Board Executive Order for the Stage II system installed at the station; §115.248 and §115.246(4) and THSC, §382.085(b), by failing to maintain proof of attendance and completion of training as well as documentation of all Stage II training for each employee; §334.50(d)(1)(B) and (4)(A) and TWC, §26.3475, by failing to conduct reconciliation of monthly inventory records each month and in conjunction with automatic tank gauging; §334.93(a) and (b), by failing to demonstrate the required financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); PENALTY: $13,750; STAFF ATTORNEY: Kelly W. Mego, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Ste. H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: KR & KR Investments, Inc. DBA Neighborhood Fina; DOCKET NUMBER: 2000-0584-PST-E; TNRCC ID NUMBER: 0047043; LOCATION: 3464 Big Springs, Garland, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(3) and THSC, §382.085(b), by failing to successfully complete all applicable tests of the Stage II vapor recovery system at least every five years after installation; §115.24 8(2), and THSC, §382.085(b), by failing to replace the Stage II station representative within three months of the departure of the previously trained employee; PENALTY: $3,000; STAFF ATTORNEY: Troy Nelson, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Arlington Regional Office, 1101 East Arkansas Lane, Arlington, Texas 76010- 6499, (817) 469-6750.

(10) COMPANY: Nazir Ahmad Zahra; DOCKET NUMBER: 1999-1360-PST-E; TNRCC ID NUMBER: 17087; LOCATION: 1202 North Ben Wilson, Victoria, Victoria County, Texas; TYPE OF FACILITY: USTs; RULES VIOLATED: 30 TAC §334.48(c), by failing to conduct inventory control procedures in accordance with applicable requirements; §334.93, by failing to demonstrate the required financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: $6,600; STAFF ATTORNEY: Booker Harrison, Litigation Division, MC 175, (512) 239- 4113; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Dr., Ste. 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(11) COMPANY: Scott Hughes dba M & M Recycling; DOCKET NUMBER: 2000-0411-MSW-E; TNRCC ID NUMBER: 27077; LOCATION: Highway 277, seven miles south of the City of Stamford and on the Steve Feagan Farm on Farm-to-Market Road 57, southwest of the City of Hamlin, Jones County, Texas; TYPE OF FACILITY: waste tire management, (sites); RULES VIOLATED: 30 TAC §§328.57(c)(3), 328.60(a), and 328.56(a), by storing more than 500 used or scrap tires on each of the sites without authorization from the TNRCC; §328.57(d)(1) and (2) and §328.58(b), by failing to properly maintain records, specifically, to correct manifest changes, attach justification notes to changed manifests, complete manifest with the number and type of tires, complete the manifest adjustment boxes and return manifests to generators within 60 days; PENALTY: $5,000; STAFF ATTORNEY: Gitanjali Yadav, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Blvd., Abilene, Texas 79602-7833, (915) 698-9674.

(12) COMPANY: Trinity Aqua Systems, Inc.; DOCKET NUMBER: 1999-1183-WOC-E; TNRCC ID NUMBER: 20211; LOCATION: 520 Northwest Lorna Street, Burleson, Johnson County, Texas; TYPE OF FACILITY: wastewater treatment company; RULES VIOLATED: 30 TAC §325.7 and TWC, §26.0301, by failing to obtain wastewater facility operations company certification; PENALTY: $3,750; STAFF ATTORNEY: Joshua M. Olszewski, Litigation Division, MC 175, (512) 239-3400; REGIONAL OFFICE: Arlington Regional Office, 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

TRD-200103760
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: July 2, 2001

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 13, 2001**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the AOs should be sent to the attorney designated for the AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 13, 2001**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: The Kirk Company; DOCKET NUMBER: 2001-0718-MSW-E; TNRCC ID NUMBER: 455150005; LOCATION: intersection of Iowa Road and U.S. Highway 281, Edinburg, Hidalgo County, Texas; TYPE OF FACILITY: unauthorized waste disposal; RULES VIOLATED: 30 TAC §330.4 and §330.5 and TWC, §26.121, by causing, suffering, allowing or permitting the dumping of municipal solid waste without the written authorization of the commission; PENALTY: $1,250; STAFF ATTORNEY: James Biggins, Litigation Division, MC R-13, (210) 403- 4017; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Ave., Harlingen, Texas 78550-5247, (956) 425-6010.

(2) COMPANY: Firestone Polymers, A Division of Bridgestone/Firestone, Inc; DOCKET NUMBER: 2000-0072-AIR-E; TNRCC ID NUMBER: OC-0010-U; LOCATION: 5713 Farm-to- Market Road 1006, Orange, Orange County, Texas; TYPE OF FACILITY: synthetic rubber manufacturing plant; RULES VIOLATED: 30 TAC §101.6(a)(1) and Texas Health & Safety Code (THSC), §382.085(b), by failing to notify the TNRCC within 24 hours of discovery of a reportable upset; §101.6(a)(2)(C) and (b)(3) and THSC, §382.085(b), by failing to submit and maintain complete reports of a reportable upset; §116.115(b)(2)(G) and (c), THSC, §382.085(b), and TNRCC Air Permit Number 292, Special Condition Number 1, by failing to maintain actual emission limits at the plant below the emission limits specified in the permit's Maximum Allowable Emission Rates Table; PENALTY: $7,700; STAFF ATTORNEY: Dan Joyner, Litigation Division, MC 175, (512) 239-6366; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Fwy., Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-200103759
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: July 2, 2001

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Notice Of Receipt of Application for Municipal Solid Waste Management Facility

For the Period of June 22, 2001

APPLICATION. The City of Meadow, P.O. Box 156, Meadow, Texas 79345, a municipal city government, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new Type I-AE permit, to authorize a municipal solid waste landfill. The facility is proposed to be located two miles southeast of Meadow and 1.5 miles from the intersection of U.S. Highway 82 and County Road 250 in Terry County, Texas. This application was submitted to the TNRCC on April 18, 2001. The permit application is available for viewing and copying at the Meadow City Hall, 906 First Street, Meadow, Texas 79345. The TNRCC executive director has determined the application is administratively complete and will conduct a technical review of the application. After completion of the technical review, the TNRCC will issue a Notice of Application and Preliminary Decision. PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments on this application. The TNRCC will hold a public meeting on this application. Information concerning this meeting will be given in another public notice. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. A public meeting is not a contested case hearing. Written public comments must be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, Texas 78711-3087. ADDITIONAL NOTICE. After technical review of the application is complete, the executive director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list or the mailing list for this application. That notice will contain the final deadline for submitting public comments. OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for public comments, the executive director will consider the comments and prepare a response to all relevant and material, or significant public comments. The response to comments, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments or who is on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the executive director's decision and for requesting a contested case hearing. A contested case hearing is a legal proceeding similar to a civil trial in state district court. A contested case hearing will only be granted based on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised during the public comment period and not withdrawn. MAILING LIST. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: (1) the mailing list for this specific application;

(2) the permanent mailing list for a specific applicant name and permit number; and/or (3) the permanent mailing list for a specific county. Clearly specify which mailing list(s) to which you wish to be added and send your request to the TNRCC Office of the Chief Clerk at the address below. Unless you otherwise specify, you will be included only on the mailing list for this specific application. INFORMATION. If you need more information about this permit application or the permitting process, please call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TNRCC can be found at our web site at www.tnrcc.state.tx.us. Further information may also be obtained from the City of Meadow at the address stated above or by calling Mr. Jean Shotts, City Attorney at (806) 767-0976.

TRD-200103717
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 29, 2001

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Texas Department of Public Safety

Public Notice to Comment on Proposed Interlocal Cooperation Contract Relating to the Failure to Appear Program

The Texas Department of Public Safety (DPS) is providing an opportunity for written public comment on the Proposed Interlocal Cooperation Contract relating to the Failure to Appear Program. Texas Transportation Code Chapter 706 provides that local political subdivisions may contract with the DPS to provide information necessary to deny renewal of the driver license of a person who fails to appear for a complaint or citation or fails to pay or satisfy a judgement ordering payment of a fine or court cost involving any offense within the jurisdiction of the justice or municipal court.

Comments regarding the proposed Interlocal Cooperation Contract may be submitted to Angela Parker, Director of Legal Staff, Driver License Division, 5805 North Lamar Blvd, Box 4087, Austin, Texas 78773-0380 or by fax to (512) 424-7171. Comments must be received by July 26, 2001.

Interlocal Cooperation Contract

STATE OF TEXAS §
§
COUNTY OF _____ §

I. Parties

This Interlocal Cooperation Contract ("Contract") is made and entered into between the Texas Department of Public Safety ("TDPS"), a political subdivision of the State of Texas, and the _____ of _____, a local political subdivision of the State of Texas.

II. Overview

The purpose of this Contract is to implement the provisions of Texas Transportation Code Chapter 706. A local political subdivision may contract with the TDPS to provide information necessary to deny renewal of the driver license of a person who fails to appear for a complaint or citation or fails to pay or satisfy a judgement ordering payment of a fine or cost in the manner ordered by the court in a matter involving any offense within the jurisdiction of the justice or municipal court.

The TDPS has authority to contract with a private vendor ("Vendor") pursuant to Texas Transportation Code §706.008. The Vendor will provide the necessary goods and services to establish an automated system ("FTA System") whereby information regarding violators subject to the provisions of Texas Transportation Code Chapter 706 may be accurately stored and accessed by the TDPS. Utilizing the FTA System as a source of information, the TDPS may deny renewal of a driver license to a person who is the subject of an FTA System entry.

Each local political subdivision contracting with the TDPS will pay monies to the Vendor based on a fee certain established by this Contract. The TDPS will make no direct or indirect payments to the Vendor. The Vendor will ensure that accurate information is available to the TDPS, political subdivisions and persons seeking to clear their licenses at all reasonable times.

III. Definitions

"Complaint" means notice of an offense as defined in Article 27.14(d) or Article 45.019, Code of Criminal Procedure.
"Department" or "TDPS" means the Texas Department of Public Safety.

"Failure to Appear Program" or "FTA Program" refers to the implementation efforts of all parties, including those system components provided by the TDPS, local political subdivisions and the Vendor, including the FTA System.

"Failure to Appear System" or "FTA System" refers to the goods and services, including all hardware, software, consulting services, telephone and related support services, supplied by the Vendor.

"FTA Software" refers to computer software developed or maintained now or in the future by the Vendor to support the FTA System.

"Originating Court" refers to the court in which an applicable violation has been filed for which a person has failed to appear or failed to pay or satisfy a judgement and which has submitted an appropriate FTA Report.

"State" refers to the State of Texas.

"Local political subdivision" refers to a city or county of the State of Texas.

Unless otherwise defined, terms used herein shall have the meaning assigned by Texas Transportation Code Chapter 706 or other relevant statute. Terms not defined in this Contract or by other relevant statutes shall be given their ordinary meanings.

IV. Governing Law

This Contract is entered into pursuant to Texas Government Code Chapter 791 and is subject to the laws and jurisdiction of the State of Texas and shall be construed and interpreted accordingly.

V. Venue

The parties agree that this contract is deemed performable in Travis County, Texas, and that venue for any suit arising from the interpretation or enforcement of this Contract shall lie in Travis County, Texas.

VI. Application and Scope of Contract

This Contract applies to each FTA Report submitted to the TDPS or the Vendor by the local political subdivision pursuant to the authority of Texas Transportation Code Chapter 706.

VII. Required Warning on Citation for Traffic Law Violations

A peace officer authorized to issue citations within the jurisdiction of the local political subdivision shall issue a written warning to each person to whom the officer issues a citation for a traffic law violation. This warning shall be provided in addition to any other warnings required by law. The warning must state in substance that if the person fails to appear in court for the prosecution of the offense or if the person fails to pay or satisfy a judgement ordering the payment of a fine and cost in the manner ordered by the court, the person may be denied renewal of the person's driver license. The written warning may be printed on the citation or on a separate instrument.

VIII. FTA Report

If the person fails to appear, the local political subdivision may submit an FTA Report containing the following information:

(1) the jurisdiction in which the alleged offense occurred;
(2) the name of the local political subdivision submitting the report;
(3) the name, date of birth and Texas driver license number of the person who failed to appear or failed to pay or satisfy a judgement;
(4) the date of the alleged violation;
(5) a brief description of the alleged violation;
(6) a statement that the person failed to appear or failed to pay or satisfy a judgement as required by law;
(7) the date that the person failed to appear or failed to pay or satisfy a judgement; and
(8) any other information required by the TDPS.

There is no requirement that a criminal warrant be issued in response to the person's failure to appear. The local political subdivision must make reasonable efforts to ensure that all FTA Reports are accurate, complete and non-duplicative.

IX. Clearance Reports

The originating court that files the FTA Report has a continuing obligation to review the report and promptly submit appropriate additional information or reports to the Vendor or the TDPS. The clearance report shall identify the person, state whether or not a fee was required, advise the TDPS to lift the denial of renewal and state the grounds for the action. All clearance reports must be submitted within five business days of the time and date that the originating court receives appropriate payment or other information that satisfies the citizen's obligation to that court.

To the extent that a local political subdivision utilizes the FTA Program by submitting an FTA Report, there is a corresponding obligation to collect the statutorily required $30.00 administrative fee. If the person is acquitted of the underlying offense for which the original FTA Report was filed, the originating court shall not require payment of the administrative fee. The local political subdivision shall promptly file a clearance report advising the TDPS to lift the denial of renewal and identifying the grounds for the action.

The local political subdivision must promptly file a clearance report upon payment of the administrative fee and:

(1) the perfection of an appeal of the case for which the warrant of arrest was issued or judgement arose;
(2) the dismissal of the charge for which the warrant of arrest was issued or judgement arose;
(3) the posting of a bond or the giving of other security to reinstate the charge for which the warrant was issued;
(4) the payment or discharge of the fine and cost owed on an outstanding judgement of the court; or
(5) other suitable arrangement to pay the fine and cost within the court's discretion.

The TDPS will not continue to deny renewal of the person's driver license after receiving notice from the local political subdivision that the FTA Report was submitted in error or has been destroyed in accordance with the local political subdivision's record retention policy.

X. Compliance with Law

The local political subdivision understands and agrees that it will comply with all local, state and federal laws in the performance of this Contract, including administrative rules adopted by the TDPS.

XI. Accounting Procedures

An officer collecting fees pursuant to Texas Transportation Code §706.006 shall keep separate records of the funds and shall deposit the funds in the appropriate municipal or county treasury. The custodian of the municipal or county treasury may deposit such fees in an interest-bearing account and retain the interest earned thereon for the local political subdivision. The custodian shall keep accurate and complete records of funds received and disbursed in accordance with this Contract and the governing statutes.

The custodian shall remit $20.00 of each fee collected pursuant to Texas Transportation Code §706.006 to the Comptroller on or before the last day of each calendar quarter and retain $10.00 of each fee for payment to the Vendor and credit to the general fund of the municipal or county treasury.

XII. Payments to Vendor

The TDPS has contracted with OmniBase Services, Inc. ("Vendor"), a corporation organized and incorporated under the laws of the State of Texas, with its principal place of business in Austin, Texas, to assist with the implementation of the FTA Program.

Correspondence to the Vendor may be addressed as follows:

OmniBase Services, Inc.

6101 W. Courtyard Drive, Building 3, Suite 210
Austin, Texas 78730
(512) 346-6511 ext. 100; (512) 346-9312 (fax)

The local political subdivision must pay the Vendor a fee of $6.00 per person for each violation which has been reported to the Vendor and for which the local political subdivision has subsequently collected the statutorily required $30.00 administrative fee. In the event that the person has been acquitted of the underlying charge, no payment will be made to the Vendor or required of the local political subdivision.

If the person makes partial payment of the statutorily required $30.00 administrative fee, then the local political subdivision may make partial payment to the Vendor as received.

The parties agree that payment shall be made by the local political subdivision to the Vendor by the last day of the month following the close of the calendar quarter in which the payment was received by the local political subdivision.

XIII. Litigation and Indemnity

In the event that the local political subdivision is aware of litigation in which this Contract or Texas Transportation Code Chapter 706 is subject to constitutional, statutory, or common-law challenge, or is struck down by judicial decision, the local political subdivision shall notify the TDPS immediately.

Each party may participate in the defense of a claim or suit affecting the FTA Program, but no costs or expenses shall be incurred for any party by the other party without the other parties written consent. To the extent authorized by law, the local political subdivision agrees to indemnify and hold harmless the TDPS against any claims, suits, actions, damages and costs of every nature or description arising out of or resulting from the performance of this Contract, and the local political subdivision further agrees to satisfy any final judgement awarded against the local political subdivision or the TDPS arising from the performance of this Contract, provided said claim, suit, action, damage, judgement or related cost is not attributed by the judgement of a court of competent jurisdiction to the sole negligence of the TDPS.

It is the agreement of the parties that any litigation involving the parties to this Contract may not be compromised or settled without the express consent of the TDPS, unless such litigation does not name the TDPS as a party and/or in the sole judgement of the TDPS its interests are not implicated, infringed upon, or compromised by the litigation.

This section is subject to the statutory rights and duties of the Attorney General for the State of Texas.

XIV. Contract Modification

No modifications, amendments or supplements to, or waivers of, any provision of this Contract shall be valid unless made in writing and executed in the same manner as this Contract.

XV. Severability

If any provision of this Contract is held to be illegal, invalid or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable. This Contract shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, and the remaining provisions shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance therefrom.

XVI. Multiple Counterparts

This agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes and all of which constitutes, collectively, one agreement. But, in making proof of this agreement, is shall not be necessary to produce or account for more than one such counterpart.

XVII. Effective Date of Contract

This contract shall be in effect from and after the date that the final signature is set forth below. This contract shall automatically renew on a yearly basis. However, either party may terminate this agreement upon thirty days written notice to the other party. Notice may be given at the following addresses:

Local Political Subdivision
_____
_____
_____
_____

Texas Department of Public Safety
Project Administrator, FTA Program
5805 North Lamar Boulevard
Austin, Texas 78773-0001
(512) 424-5948 [fax]

Notice is effective upon receipt or three days after deposit in the U. S. mail, whichever occurs first. After termination, the local political subdivision has a continuing obligation to report dispositions and collect fees for all violators in the FTA System at the time of termination.

TEXAS DEPARTMENT OF PUBLIC SAFETY

_____
Tom Haas
Chief of Finance

_____
Date

LOCAL POLITICAL SUBDIVISION

_____
Authorized Signature

_____
Title

_____
Date

TRD-200103720
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Filed: June 29, 2001

♦ ♦ ♦

Public Utility Commission of Texas

Public Notice Of Amendment To Interconnection Agreement

On June 28, 2001, Southwestern Bell Telephone Company and Texas RSA 15B2 Limited Partnership, a Limited Partnership doing business as Five Star Wireless, 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 24317. 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 24317. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 24, 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 24317.

TRD-200103770
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 2, 2001

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Public Notice of Amendment to Interconnection Agreement

On June 28, 2001, Southwestern Bell Telephone Company and Vartec Telecom, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24318. 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 24318. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 24, 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 24318.

TRD-200103771
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 2, 2001

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Public Notice of Amendment to Interconnection Agreement

On June 29, 2001, Southwestern Bell Telephone Company and R Tex Communications Group, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24324. 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 24324. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 24, 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 24324.

TRD-200103799

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 2, 2001

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Public Notice of Interconnection Agreement

On June 28, 2001, United Telephone Company of Texas, Inc., doing business as Sprint, Central Telephone Company of Texas doing business as Sprint (collectively, Sprint), and Western Wireless Corporation, 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 24316. 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 24316. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 24, 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 24316.

TRD-200103769
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 2, 2001

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Texas Racing Commission

Notice of Application Period

The Texas Racing Commission announces that the Commission will accept applications for a Class 2 or Class 3 horse racetrack license for Webb County. Under the Texas Racing Commission rules, the Commission may designate an application period of not more than 60 days in which applications for a racetrack license may be filed. On June 27, 2001, the Commission established one 60-day application period. The application period begins at 8:00 a.m., September 1, 2001, and ends at 5:00 p.m., October 30, 2001. For more information, contact Jean Cook, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 833-6699, fax (512) 833-6907, or 8505 Cross Park Dr., #110, Austin, Texas 78754-4594.

TRD-200103687
Judith L. Kennison
General Counsel
Texas Racing Commission
Filed: June 27, 2001

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Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, Section 6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

Angelina and Neches River Authority, P.O. Box 387, 210 Lufkin Avenue, Lufkin, Texas, 75902-0387, received May 29, 2001, application for financial assistance in the amount of $3,100,000 from the Clean Water State Revolving Fund.

Town of Combes, P.O. Box 280, 306 Templeton Street, Combes, Texas, 78535, received June 4, 2001, application for financial assistance in the amount of $324,000 from the Colonia Plumbing Loan Program.

City of Fort Worth, 1000 Throckmorton, Fort Worth, Texas, 76102, received May 31, 2001, application for financial assistance in the amount of $34,310,000 from the Clean Water State Revolving Fund.

Golden Water Supply Corporation, P.O. Box 148, Golden, Texas, 75444-0148, received June 13, 2001, application for financial assistance in the amount of $133,000 from the Drinking Water State Revolving Fund.

Harris County Water Control and Improvement District No. 36, 903 Hollywood, Houston, Texas, 77015, received June 1, 2001, application for financial assistance in the amount of $5,690,000 from the Clean Water State Revolving Fund and the Texas Water Development Funds.

City of Loraine, 202 South Main Street, Loraine, Texas, 79532, received May 30, 2001, application for financial assistance in the amount of $665,000 from the Clean Water State Revolving Fund.

Lower Colorado River Authority, P.O. Box 220, Austin, Texas, 78767-0220, received May 1, 2001, application for financial assistance in the

amount of $14,040, 000 from the State Participation Account of the Texas Water Development Funds.

New Caney Municipal Utility District, P.O. Box 5624, Kingwood, Texas 77325, received May 30, 2001, application for financial assistance in the amount of $3,475,000 from the Clean Water State Revolving Fund.

City of Odem, 14916 Main, Odem, Texas, 78052, received June 20, 2001, application for financial assistance in the amount of $1,940,000 from the Clean Water State Revolving Fund.

Upper Trinity Regional Water District (Lakeview Regional Water Reclamation System), P.O. Drawer 305, Lewisville, Texas, 75067, received May 3, 2001, application for financial assistance in the amount of $6,685,000 from the Clean Water State Revolving Fund.

Webb County, 1000 Houston Street, 2nd Floor, Laredo, Texas, 78040, received May 23, 2001, application for financial assistance in an amount not to exceed $150,000 from the Research and Planing Fund.

TRD-200103816
Gail L. Allan
Director of Project-Related Legal Services
Texas Water Development Board
Filed: July 3, 2001

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How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

Texas Register
Services

The *Texas Register* offers the following services. Please check the appropriate box (or boxes).

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❑ **Chapter 334** $40 ❑ update service $25/year *(Underground/Aboveground Storage Tanks)*
❑ **Chapter 335** $30 ❑ update service $25/year *(Industrial Solid Waste/Municipal Hazardous Waste)*

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Texas Workers Compensation Commission, Title 28

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