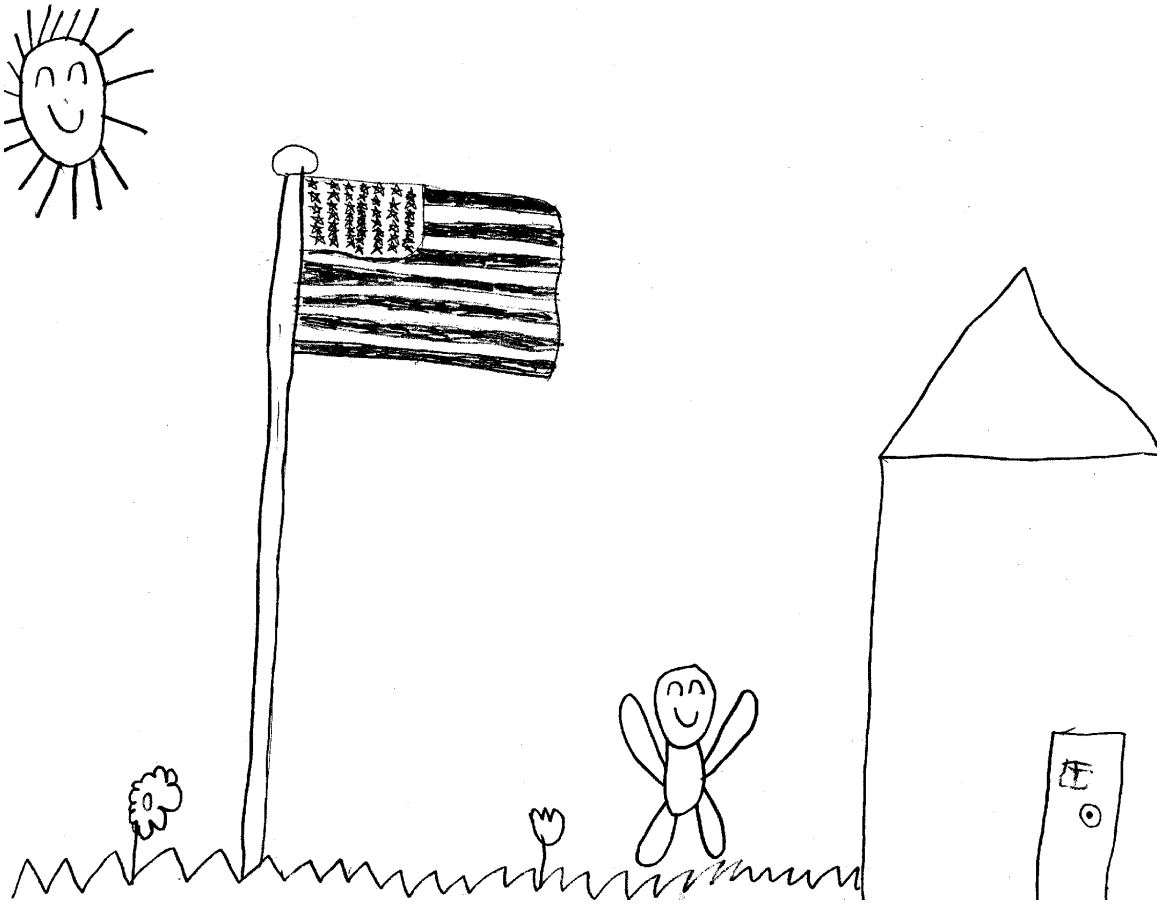
TEXAS REGISTER

Volume 26 Number 29 July 20, 2001 *Pages 5303-5528*



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.*

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

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

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

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

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

Customer Relations
Leti Benavides
LaKiza Fowler-Sibley

Texas Administrative Code
Dana Blanton
Roberta Knight

Texas Register
Carla Carter
Melissa Dix
Ann Franklin
Kris Hogan
Diana Muniz-Franklin
Crystal Ritchey

Circulation/Marketing
Jill S. Ledbetter

ATTORNEY GENERAL

Request for Opinions 5309

PROPOSED RULES

OFFICE OF THE GOVERNOR

CRIMINAL JUSTICE DIVISION

1 TAC §§3.1, 3.3, 3.5, 3.7, 3.11 5311
1 TAC §3.13, §3.15 5312
1 TAC §3.51 5313
1 TAC §3.57 5313
1 TAC §§3.73, 3.75, 3.79, 3.81 5313
1 TAC §3.307 5315
1 TAC §3.507 5315
1 TAC §3.703, §3.713 5316
1 TAC §3.707 5317
1 TAC §3.807 5317
1 TAC §3.907 5317
1 TAC §3.1107 5318
1 TAC §3.1207 5318
1 TAC §3.1403, §3.1413 5318
1 TAC §3.1507 5319
1 TAC §§3.2007, 3.2013, 3.2021 5319
1 TAC §§3.2501, 3.2507, 3.2511, 3.2513, 3.2521 5320
1 TAC §3.2601 5321
1 TAC §3.2605, §3.2607 5321

TEXAS DEPARTMENT OF AGRICULTURE

MARKETING AND PROMOTION DIVISION

4 TAC §§17.51, 17.52, 17.55, 17.57, 17.58 5322
4 TAC §§17.301, 17.302, 17.308 5325

NURSERY PRODUCTS AND FLORAL ITEMS

4 TAC §§22.1, 22.4, 22.6 5326

STATE BOARD OF DENTAL EXAMINERS

FEES

22 TAC §102.1 5328

PROFESSIONAL CONDUCT

22 TAC §108.6 5329
22 TAC §108.7 5330
22 TAC §108.8 5331

TEXAS STATE BOARD OF MEDICAL EXAMINERS

GENERAL PROVISIONS

22 TAC §161.1 5333

LICENSURE

22 TAC §§163.1, 163.9, 163.10 5336

PHYSICIAN REGISTRATION

22 TAC §§166.2 - 166.4, 166.6 5339

REINSTATEMENT AND REISSUANCE

22 TAC §§167.1 - 167.8 5342
22 TAC §167.3 5345

BOARD OF TAX PROFESSIONAL EXAMINERS

REGISTRATION AND CERTIFICATION

22 TAC §623.12 5345
22 TAC §623.14 5346

TEXAS NATURAL RESOURCE CONVERSATION COMMISSION

GENERAL AIR QUALITY RULES

30 TAC §101.27 5347

CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

30 TAC §§14.410, 114.412, 114.416, 114.417, 114.419 5353
30 TAC §§114.432, 114.436, 114.437, 114.439 5353
30 TAC §§114.470, 114.472, 114.476, 114.477, 114.479 5354
30 TAC §§114.482, 114.486, 114.487, 114.489 5354
30 TAC §§114.600 - 114.602, 114.609 5359
30 TAC §§114.610 - 114.612, 114.616, 114.618, 114.619 5360
30 TAC §§114.620 - 114.622, 114.626, 114.629 5362

EMPLOYEES RETIREMENT SYSTEM OF TEXAS

HEARINGS ON DISPUTED CLAIMS

34 TAC §67.47 5367

CREDITABLE SERVICE

34 TAC §71.17 5367

BENEFITS

34 TAC §73.11, §73.17 5368
34 TAC §73.19 5368

HAZARDOUS PROFESSION DEATH BENEFITS

34 TAC §75.2 5369

INSURANCE

34 TAC §§81.1, 81.3, 81.7, 81.11 5369

FLEXIBLE BENEFITS

34 TAC §85.9 5375

TEXAS COMMISSION ON FIRE PROTECTION

FIRE INVESTIGATION

37 TAC §431.201 5375

MINIMUM STANDARDS FOR DRIVER/OPERATOR - PUMPER

37 TAC §433.1, §433.3 5376

FIRE OFFICER

37 TAC §451.1 5377

37 TAC §451.201 5377

ADOPTED RULES

TEXAS DEPARTMENT OF LICENSING AND REGULATION

TALENT AGENCIES

16 TAC §78.10, §78.30 5379

TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

GENERAL ADMINISTRATIVE DUTIES

22 TAC §577.18 5379

TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

MEDICAID PROGRAMS

25 TAC §409.531, §409.541 5380

MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

25 TAC §419.177, §419.178 5381

25 TAC §419.203 5392

25 TAC §§419.211, 419.213 - 419.219 5394

25 TAC §§419.223 - 419.227 5396

25 TAC §§419.236 - 419.249 5398

25 TAC §§419.255, 419.256, 419.260 5401

25 TAC §419.269 5401

25 TAC §419.299 5401

25 TAC §419.212 5403

25 TAC §419.273 5403

25 TAC §419.223 5404

25 TAC §419.262 5404

25 TAC §419.299 5404

25 TAC §419.673, §419.674 5404

TEXAS HEALTH CARE INFORMATION COUNCIL

HEALTH CARE INFORMATION

25 TAC §§1301.11 - 1301.13, 1301.16 - 1301.20 5408

TEXAS PARKS AND WILDLIFE DEPARTMENT

FISHERIES

31 TAC §57.135 5422

WILDLIFE

31 TAC §§65.3, 65.10, 65.11, 65.26, 65.27, 65.29 - 65.33 5425

31 TAC §§65.29 - 65.32 5429

31 TAC §§65.42, 65.44, 65.62, 65.64 5429

31 TAC §65.72, §65.78 5434

COMPTROLLER OF PUBLIC ACCOUNTS

TAX ADMINISTRATION

34 TAC §3.291 5434

34 TAC §3.291 5434

TEXAS JUVENILE PROBATION COMMISSION

TEXAS JUVENILE PROBATION STANDARDS

37 TAC §§341.1 - 341.12, 341.21 - 341.23 5435

TEXAS JUVENILE PROBATION COMMISSION STANDARDS

37 TAC §341.1 5435

37 TAC §§341.2 - 341.6 5436

37 TAC §§341.13 - 341.17 5436

37 TAC §§341.24 - 341.31 5436

37 TAC §§341.38 - 341.42 5436

37 TAC §§341.48 - 341.53 5437

37 TAC §§341.58 - 341.62 5437

37 TAC §341.68 5437

37 TAC §341.75 5437

37 TAC §§341.82 - 341.92 5438

37 TAC §§341.98 - 341.109 5438

37 TAC §341.113, §341.114 5439

37 TAC §§341.121 - 341.125 5439

37 TAC §§341.132 - 341.137 5439

37 TAC §§341.138 - 341.143 5439

37 TAC §341.150 5439

37 TAC §341.157, §341.158 5439

TEXAS DEPARTMENT OF HUMAN SERVICES

NURSING FACILITY ADMINISTRATORS

40 TAC §§18.1, 18.8, 18.9 5440

TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

DEFINITIONS

40 TAC §362.1 5440

REQUIREMENT FOR LICENSURE

40 TAC §§364.1 - 364.4 5440

CONTINUING EDUCATION

40 TAC §§367.1 - 367.3....5441

LICENSE RENEWAL

40 TAC §370.1....5442

PROVISION OF SERVICES

40 TAC §372.1....5442

SUPERVISION

40 TAC §§373.1 - 373.3....5443

DISCIPLINARY ACTIONS/DETRIMENTAL PRACTICE/COMPLAINT PROCESS/CODE OF ETHICS

40 TAC §§374.1 - 374.3....5444

EXEMPT FILINGS

Texas Department of Insurance....5447

RULE REVIEW

Proposed Rule Review

Texas Department of Health....5449

Texas Health Care Information Council....5450

Adopted Rule Review

Texas Health Care Information Council....5450

TABLES AND GRAPHICS

Tables and Graphics

Tables and Graphics....5451

IN ADDITION

Texas Department on Aging

Public Policy Roundtables....5473

Office of the Attorney General

Texas Water Code Enforcement Settlement Notice....5473

Texas Bond Review Board

Biweekly Report of the 2001 Private Activity Bond Allocation Program....5474

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program....5474

Comptroller of Public Accounts

Notice Of Request For Proposals....5476

Office of Consumer Credit Commissioner

Interpretations....5476

Notice of Rate Ceilings....5476

Texas Department of Criminal Justice

Notice of Award....5477

Notice of Award....5477

Notice of Bid Cancellation....5477

Notice of Contract Award....5477

Texas Commission for the Deaf and Hard of Hearing

Notice of Request for Proposals....5477

Texas Education Agency

Correction of Error....5478

Request for Applications Concerning Activities under IDEA-B, 2001-2003....5478

Request for Applications Concerning Technology Activities in Connection with School Repair and Renovation, 2001-2003....5478

Texas Department of Health

Licensing Actions for Radioactive Materials....5479

Notice of Request for Proposals for Human Immunodeficiency Virus (HIV) Administrative Agencies in Three Texas HIV Planning Areas....5482

Texas Health and Human Services Commission

Community Planning Forum and Public Hearing....5483

Community Planning Forum and Public Hearing....5483

Public Hearing on Proposed Nursing Facility Payment Rates for State Veterans Homes....5484

Public Hearing on Proposed Payment Rates for Nursing Facilities, Swing Beds, and Hospice-Nursing Facilities....5484

Texas Department of Human Services

Request for Proposal for Community Living Assistance and Support Services (CLASS) Case Management Services Statewide....5485

Request for Proposal for Community Living Assistance and Support Services (CLASS) Direct Services Statewide....5485

Texas Department of Insurance

Insurer Services....5486

Notice....5486

Notice of Hearing....5487

Third Party Administrator....5487

Third Party Administrator Applications....5487

Third Party Administrator Applications....5487

Texas Lottery Commission

Instant Game No. 208 "BINGO"....5488

Instant Game No. 209 "Cash Explosion"....5497

Instant Game No. 241 "Texas BBQ Bucks"....5501

Instant Game No. 242 "7-11-21"....5506

Texas Natural Resource Conservation Commission

Enforcement Orders....5510

Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions 5513

Notice of Opportunity to Participate in Permitting Matters 5516

Notice of Public Hearing (Chapter 101) 5517

Notice of Public Hearing (Chapter 114 and State Implementation Plan) 5517

Notice of Water Quality Applications.....5518

Notice of Water Quality Applications. 5519

Notice of Water Right Application 5521

Private Sector Prison Industries Oversight Authority

Request for Proposals to Receive Crime Victims Compensation Funds.....5524

Texas Public Finance Authority

Invitation to Bid for Insurance Policy.....5524

Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority 5524

Notice of Application for Amendment to Service Provider Certificate of Operating Authority 5525

Notice of Application to Amend Certificated Service Area Boundaries 5525

Public Notice of Amendment to Interconnection Agreement.....5525

Public Notice of Amendment to Interconnection Agreement.....5526

Public Notice of Amendment to Interconnection Agreement.....5526

Public Notice of Interconnection Agreement 5527

Public Notice of Interconnection Agreement 5527

Texas A&M University System, Board of Regents

Public Notice.....5528

Texas Department of Transportation

Revised Request for Proposals - Aviation Professional Consulting Services 5528

Open Meetings

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

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

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

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

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

•••

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

OFFICE OF THE ATTORNEY GENERAL

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

Request for Opinions

RQ-0394-JC. Ms. Pallie Wallace, Kleberg County Auditor, 700 East Kleberg Street, Kingsville, Texas 78363, regarding authority of a county with regard to establishment of a sick leave pool, and related questions (Request Number 0394-JC).

Briefs requested by August 2, 2001

RQ-0395-JC. The Honorable Michael A. Stafford, Harris County Attorney, 1019 Congress Avenue, 15th Floor, Houston, Texas 77002-1700, regarding whether a state representative may be employed as an assistant county attorney (Request Number 0395-JC).

Briefs requested by July 29, 2001

RQ-0396-JC. Mr. Howard D. Graves, Chancellor, Texas A&M University System, John B. Connally Building, Sixth Floor, 301 Tarrow, College Station, Texas 77840-7896, regarding authority of state university to offer to its employees an opportunity to participate in the kind of program described by §83 and §457(f) of the Internal Revenue Code (Request Number 0396-JC).

Briefs requested by July 29, 2001

RQ-0397-JC. The Honorable Susan D. Reed, Bexar County Criminal District Attorney, 300 Dolorosa, Fifth Floor, San Antonio, Texas 78205-3030, regarding responsibilities of a county under House Bill 178, 77th Legislature, Regular Session (2001), amending Chapter 41 of the Government Code by adding subsection D, which requires longevity pay for certain assistant prosecutors (Request Number 0397-JC).

Briefs requested by August 2, 2001

RQ-0398-JC. The Honorable David M. Motley, Kerr County Attorney County Courthouse, Suite BA-103, Kerrville, Texas 78028, regarding whether a county may provide direct financial assistance to various nonprofit social service programs (Request Number 0398-JC).

Briefs requested by August 10, 2001

RQ-0399-JC. The Honorable Kim Brimer, Chair, Business & Industry Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, regarding constitutionality of §101.201, which bans the use of testimonials in advertising by health care professionals (Request Number 0399-JC).

Briefs requested by August 10, 2001

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

TRD-200103988
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: July 11, 2001

♦ ♦ ♦

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 3. CRIMINAL JUSTICE DIVISION

The Office of the Governor proposes amendments to Chapter 3, Subchapter A, §§3.1, 3.3, 3.5, 3.7, and 3.11; Subchapter B, §§3.51, 3.73, 3.75, 3.79, and 3.81; Subchapter C, §§3.703, 3.713, 3.1403, and 3.1413; Subchapter D, §§3.2007, 3.2013, and 3.2021; Subchapter E, §§3.2501, 3.2507, 3.2511, 3.2513, and 3.2521; and Subchapter F, §3.2601. The revisions clarify existing provisions and add new general and fund-specific requirements.

The proposed amendments provide processes and procedures relating to grants made through the Criminal Justice Division and include, but are not limited to, general grant applicability and definitions, grant submission, selection, appeals and acceptance processes, community plans, grant budget requirements, confidential funds certification, pre-approval requirements for procurement, grant officials and grant adjustments, financial reports, program monitoring; and, fund-specific policies relating to criminal justice and victim grants. Subchapter A concerns General Grant Program Provisions. Subchapter B concerns General Grant Program Policies. Subchapter C concerns Fund-Specific Grant Policies. Subchapter D concerns Conditions of Grant Funding. Subchapter E concerns Administering Grants. Subchapter F concerns Program Monitoring and Audits.

The Office of the Governor also proposes the repeal of Chapter 3, Subchapter A, §3.13 and §3.15; Subchapter B, §3.57; Subchapter C, §§3.307, 3.507, 3.707, 3.807, 3.907, 3.1107, 3.1207, and 3.1507; Subchapter F, §3.2605 and §3.2607.

The Office of the Governor reviewed the rules affecting the Criminal Justice Division grant processes and procedures with the goal of increasing efficiency and updating the rules to address changes in the administration process. The review disclosed that a number of the rules required further clarification and simplification. As a result, the Office of the Governor has determined that the sections in the Texas Administrative Code identified above should be amended and repealed.

Tom Jones, Director of Accounting for the Criminal Justice Division, has determined that for the first five year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Jones also has determined that for the first five-year period that the sections are in effect the public benefit anticipated as a result of enforcing the sections will be more efficient processes and procedures and the current rules will be more easily understood. There will be no anticipated economic cost to persons or small businesses for complying with the sections. There will be no anticipated economic costs to persons who are required to comply with the proposed amendments.

Comments on the proposed amendments and repeals may be submitted to Heather Morgan at the Criminal Justice Division of the Governor's Office, P.O. Box 12428, Austin, Texas 78711, (512) 463-1919.

SUBCHAPTER A. GENERAL GRANT PROGRAM PROVISIONS

1 TAC §§3.1, 3.3, 3.5, 3.7, 3.11

The amendments are proposed under the Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement the Texas Government Code, Title 7, §772.066(a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

§3.1. Applicability.

Subchapters A through F of this chapter apply to all applications for funding and grants submitted to the Criminal Justice Division (CJD), Office of the Governor. Subchapter A covers the general provisions for grant funding. Subchapter B addresses general eligibility and budget rules for grant funding. Subchapter C outlines specific eligibility and budget rules applicable to various funding sources available to CJD;

these rules are in addition to all other general rules in this chapter. Subchapter D provides rules detailing the conditions CJD may place on grants. Subchapter E sets out the rules related to administering grants. Subchapter F specifies rules regarding program monitoring and audits.

§3.3. Definitions.

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

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

(9) special condition: a condition placed on a grant because of a need for information, clarification, or submission of an outstanding requirement of the grant; [~~and~~]

(10) UGMS: the Uniform Grant Management Standards promulgated by the Governor's Office of Budget and Planning at 1 TAC §§5.141 - 5.167; [~~.~~]

(11) Standard budget categories: personnel, contractual and professional services, travel, supplies and direct operating expenses, equipment, and indirect costs; and

(12) applicant: an agency or organization that has submitted a grant application or grant renewal documentation.

§3.5. Grant Submission Process.

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

(c) Once CJD awards a grant that has been submitted under subsections (a) and (b), it is within the discretion of CJD to renew that grant. If CJD chooses to exercise this option, then the COG or CJD will notify the grantee of any documentation needed to renew the award. Submission of this documentation, within the timelines provided by the COG or CJD, is a requirement of renewed funding.

§3.7. Selection Process.

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

(d) For grants being renewed under §3.5(c) of this chapter, CJD will review the renewal documentation for eligibility, reasonableness, and cost effectiveness; will determine if the grantee is currently in good standing; and will make recommendations to the executive director. The executive director will make the final decision regarding grant renewals.

(e) [~~(d)~~] For applications seeking funding through a COG from the State Criminal Justice Planning Fund, the Juvenile Justice and Delinquency Prevention Act Fund, or the Safe and Drug-Free Schools and Communities Act Fund, CJD will allocate funding to the COGs through a formula based upon population figures and crime rates. No set funding allocation exists for applications submitted to COGs that seek grants from other funding sources.

(f) [~~(e)~~] During the staff review of an application, CJD may request that the applicant submit additional information necessary to complete grant review. CJD may request the applicant to provide any outstanding forms and documents to clarify or justify any part of the application, to disclose other funding sources related to the project, or to explain any proposed decrease in services by the grantee. Such requests for information, including the issuance of a preliminary review report, do not mean that CJD will fund an application.

(1) If CJD needs additional information on an application submitted through a COG, CJD will send the report requesting the necessary information to the COG, and the applicant must provide the response to the COG by a COG-established deadline.

(2) If CJD needs additional information on an application submitted directly to CJD, CJD will send the report directly to the applicant, and the applicant must provide a response by a CJD-established deadline.

(g) [~~(f)~~] CJD will inform applicants of funding decisions on their grant applications through either a Statement of Grant Award or a notification of denial. For applications submitted to (but not recommended by) a COG, COG notification of a decision against funding serves as the notification of denial.

(h) All funding decisions made by the Executive Director are final and are not subject to appeal.

§3.11. Grant Acceptance.

Each grantee must accept or reject a grant award within 45 days of the date upon which CJD issues a Statement of Grant Award. CJD may extend this deadline upon request from the applicant. The authorized official designated under §3.2501 of this c

(a) An applicant must prove that it possesses or can acquire the required matching funds (or in-kind match) to satisfy the matching funds requirement. An applicant's use of matching funds must comply with the same rules and guidelines applicable to the use of CJD grant funds.

(b) If CJD places a matching funds requirement on a grant[~~applies~~], then the grantee must provide matching funds equal to the required matching funds percentage multiplied by the total project expenditures.

(c) A contractor may contribute toward the matching funds requirement, but the applicant bears the ultimate responsibility for satisfying the matching funds requirement.

(d) Applicants may use any funds received through legal asset forfeiture toward fulfilling the matching funds requirement.

(e) If an applicant applies for a grant under a funding source that allows in-kind contributions to satisfy part of the matching funds requirement, then the following rules apply:

(1) In-kind contributions may consist of volunteer time, professional services, travel, building space, non-expendable equipment, materials, and supplies contributed during the grant period to the applicant by a third party.

(2) In-kind contributions may include depreciation and use fees for buildings or equipment acquired by the applicant before the start of the grant period and used in the grant project. However, the applicant may only count depreciation that will occur during the grant period as an in-kind contribution. Use fees qualify as an in-kind contribution only if supported by cost and depreciation records maintained by the applicant.

(3) Applicants must maintain records of all in-kind contributions that include at least the following:

(A) a full description of the item or service claimed;

(B) the area, expressed in square feet, of any donated building space;

(C) the name of the contributor;

(D) the date of the contribution;

(E) the fair market value of the contribution and how its value was determined; and

(F) in the case of a discount given, the contributor's signature on an affidavit of worth stating that the donor gave the discount because of the project's purpose.

§3.75. Personnel.

(a) CJD will determine the reasonableness of requested salaries and reserves the right to limit the CJD-financed portion of any salary. In determining reasonableness, the following rules apply: [~~Salaries for grant-funded positions must comply with the applicant's salary classification schedule for employees of the applicant agency. Salaries for persons assigned to the grant project from agencies other than the applicant must be reimbursed in accordance with the assigning agency's salary classification schedule. Applicants must submit all grant-funded salaries for CJD approval. If the applicant or assigning agency does not have a classification schedule, then the proposed salary must be commensurate with similarly situated employees who work in the same geographic area. CJD will determine the reasonableness of requested salaries and reserves the right to limit the CJD-financed portion of any salary.~~]

(1) Salaries for grant-funded positions must comply with the grantee's or applicant's salary classification schedule for employees of the applicant agency. Salaries for persons assigned to the grant project from agencies other than the applicant must be reimbursed in accordance with the assigning agency's salary classification schedule.

(2) If the applicant or assigning agency does not have a classification schedule, then the proposed salary must be commensurate with that paid for similar work in other activities of the grantee, applicant, or assigning agency. For nonprofit agencies, in cases where such work is not found within the agency, CJD will consider reasonableness based on that paid for similar work in the labor market in which the applicant competes for the kind of employees involved.

(3) CJD will not pay any portion of the salary of or any other compensation for an elected or appointed government official.

(4) CJD will not approve a grant-paid salary that is in excess of that of the top-ranking official or employee of the organization, agency or assigning agency.

(b) For law enforcement and prosecution grants, the grantee must maintain time sheets that indicate an employee's actual time worked and the project's case or cause number (or other indicators of assignment). This requirement applies to personnel whose primary function is investigating or enforcing laws or prosecuting alleged offenders.

(c) Salaries for staff assigned to a grant project who expend less than 25 percent of their time on the project may not be charged against the grant. If the job descriptions for multiple employees who all work on the grant are identical, however, grantees may add together the time expended by each of these employees on the grant for the purpose of meeting this requirement. The executive director may grant exemptions to this rule for individuals working on multiple grants. Grants to COGs are exempt from this rule.

(d) Grantees may not use grant funds to provide overtime pay. Overtime pay is remuneration for hours worked in excess of full time on a grant project. Full time is 40 hours per week. Grants under the Extraordinary Costs of Prosecuting Capital Murder and Hate Crimes [~~Cases~~] program are exempt from this rule.

(e) A grantee may reallocate excess personnel funds created by a vacancy under either of the following circumstances: [~~CJD will not approve any grant adjustments requesting a reallocation of unexpended personnel funds created by a vacancy unless the grantee requests the reallocation within 90 days of the vacancy's occurrence.~~]

(1) The reallocation is in accordance with §3.2513(b)(1), including the requirement that the amount of the reallocation not exceed 90 days of the budgeted salary for the vacant position.

(2) The grantee requests a grant adjustment from CJD within the first 90 days of the vacancy and CJD approves the request through a written grant adjustment notice.

(f) If approved by CJD (and in accordance with a grantee's policy), grantees may use grant funds to pay staff members leaving employment for accrued compensatory time and compensated absences. These payments may only fund compensatory time and compensated absences accrued during the current grant period. The proportion of grant funds paid for compensatory time and compensated absences cannot exceed the proportion of grant funds used to pay the staff member's salary. Grantees may not carry forward compensatory time and compensated absences from one grant period to another.

(g) CJD may only approve the use of on-call services to meet [~~in-kind~~] match requirements. Grantees must justify a demonstrated need for on-call services and have an on-call policy that is approved by

their governing board [~~submit to CJD, as part of the grant application, the grantee's on-call policy approved by its governing board~~].

§3.79. Transportation, Travel and Training.

(a) Grant funds used for travel expenses must be limited to the grantee agency's established mileage, per diem, and lodging policies. Federal regulations applicable to the relevant funding source may limit mileage reimbursement rates. If a grantee does not have established mileage, per diem, and lodging policies, then the grantee must use state travel guidelines. Funds requested by TNCP task forces for meals and lodging are allowable only for travel to points at least 50 miles from the grantee agency's headquarters.

(b) Grantees using grant funds to develop and provide training through conferences or academies may not use grant funds to pay for transportation, lodging, per diem, or any related costs for participants. Crime Stoppers training projects are exempt from this rule [~~The use of grant funds for out-of-state travel requires advance written approval by CJD through the original grant award or a grant adjustment. CJD exempts law enforcement agencies actively involved in an investigation if the out-of-state travel is immediately necessary to the investigation. In these cases, grantees must request a grant adjustment in writing upon returning from the investigative trip~~].

[~~(c) Grantees using grant funds to develop and provide training through conferences or academies may not use grant funds to pay for transportation, lodging, per diem, or any related costs for participants. The executive director in his or her discretion, may exempt grants for Crime Stoppers training from this rule.~~]

(c) [~~(d)~~] A person attending training courses paid for with grant funds must complete the course. If the person does not complete the course, the grantee must justify the failure to CJD in writing. If CJD does not approve the justification, then the grantee must reimburse CJD. Grantees must maintain records that properly document the completion of all grant-funded training courses.

§3.81. Equipment.

(a) CJD defines equipment as any tangible, non-expendable personal property with a useful life of more than one year and an acquisition cost of $1000 or more per unit, and any other item, regardless of cost, that the grantee chooses to capitalize in its own accounting records.

(b) Applicants must submit with their grant applications a list of all proposed equipment purchases to CJD for approval. Grantees must [~~can~~] request any additional equipment purchases through grant adjustments. Grantees are not authorized to purchase any equipment until they have received written approval to do so from CJD. CJD will authorize in writing the purchase of equipment through either the original grant award or a subsequent grant adjustment notice. CJD may refuse any request for equipment. Decisions regarding equipment are made based on whether or not [~~if~~] the grantee has demonstrated that the requested equipment is necessary, essential to the successful operation of the grant project, and reasonable in cost.

(c) CJD may approve equipment-only grants to fund innovative, cutting edge technology used in the investigation of crime, to preserve public safety, or to remedy crisis situations. The Local Law Enforcement Block Grant program and the Juvenile Accountability Incentive Block Grant program are exempt from this rule.

(d) CJD will not approve grant funds to purchase vehicles or equipment for governmental agencies that are standard issue or for general agency use. The Local Law Enforcement Block Grant program is exempt from this rule.

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 9, 2001.

TRD-200103910
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 463-6789

♦ ♦ ♦

SUBCHAPTER C. FUND-SPECIFIC GRANT POLICIES

DIVISION 3. TITLE V DELINQUENCY PREVENTION

1 TAC §3.307

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

The repeal of this rule is proposed under the Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The repealed rule implements the Texas Government Code, Title 7, §772.066(a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

§3.307. Matching Funds Policy.

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

Filed with the Office of the Secretary of State, on July 9, 2001.

TRD-200103918
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 463-6789

♦ ♦ ♦

DIVISION 5. VICTIMS OF CRIME ACT FUND

1 TAC §3.507

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

The repeal of this rule is proposed under the Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The repealed rule implements the Texas Government Code, Title 7, §772.066(a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

§3.507. Matching Funds Policy.

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

Filed with the Office of the Secretary of State, on July 9, 2001.

TRD-200103919
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 463-6789

♦ ♦ ♦

DIVISION 7. TEXAS NARCOTICS CONTROL PROGRAM

1 TAC §3.703, §3.713

The amendment of these rules is proposed under the Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement the Texas Government Code, Title 7, §772.066(a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

§3.703. Project Requirements.

All projects must meet at least one of the following purpose areas.

(1) Multi-jurisdictional and multi-county task force projects that integrate federal, state and local drug law enforcement agencies and prosecutors for the purpose of enhancing interagency coordination, acquiring intelligence information, and facilitating multi-jurisdictional investigations. TNCP task forces must use the Texas Narcotics Information System (TNIS) and provide input of task force drug intelligence information into the System;

(2) projects designed to target the domestic sources of controlled and illegal substances, such as precursor chemicals, diverted pharmaceuticals, clandestine laboratories, and cannabis cultivation;

(3) projects that will improve the operational effectiveness of law enforcement through the use of crime analysis techniques, street sales enforcement, schoolyard violator projects, and gang related and low income housing drug control projects;

(4) law enforcement and prevention projects that address problems with gangs or youth who are at risk of becoming involved in gangs;

(5) financial investigation projects that target the identification of money-laundering operations and assets obtained through illegal drug trafficking, including the development of proposed model legislation, financial investigative training, and financial information sharing systems;

(6) projects that improve the operational effectiveness of the court process by expanding prosecution, defender, and judicial resources and by implementing court delay-reduction programs;

(7) criminal justice information systems, including automated fingerprint identification systems, that assist law enforcement, prosecution, courts and corrections' organizations;

(8) innovative projects that demonstrate new and different approaches to the enforcement, prosecution, and adjudication of drug offenses and other serious crimes;

(9) drug control evaluation projects that state and local units of government may use to evaluate projects directed at state drug-control activities;

(10) projects to develop and implement antiterrorism training projects and to procure equipment for use by local law enforcement authorities; [~~or~~]

(11) improving or developing forensic laboratory capability to analyze DNA samples; [~~.~~]

(12) demand reduction education programs in which law enforcement officers participate;

(13) career criminal prosecution programs including the development of proposed model drug control legislation;

(14) improving the operational effectiveness of the court process, by expanding prosecutorial, defender and judicial resources, and implementing court delay reduction programs;

(15) programs designed to provide additional public correctional resources and improve the corrections system, including treatment in prisons and jails, intensive supervision programs, and long-range corrections and sentencing strategies;

(16) providing prison industry projects designed to place inmates in a realistic working and training environment which will enable them to acquire marketable skills and to make financial payments for restitution to their victims, for support of their own families, and for support of themselves in the institution;

(17) providing programs which identify and meet the treatment needs of adult and juvenile drug-dependent and alcohol-dependent offenders;

(18) developing and implementing programs which provide assistance to jurors and witnesses, and assistance (other than compensation) to victims of crimes;

(19) developing programs to improve drug control technology, such as pretrial drug testing programs, programs which provide for the identification, assessment, referral to treatment, case management and monitoring of drug dependent offenders, and enhancement of State and local forensic laboratories;

(20) improving the criminal and juvenile justice system's response to domestic and family violence, including spouse abuse, child abuse, and abuse of the elderly; or

(21) providing alternatives to prevent detention, jail, and prison for persons who pose no danger to the community.

§3.713. Personnel.

(a) CJD will not approve grant funds or program income for salary increases unless the grantee provides adequate justification for the increase and proves that the increase is reasonable. CJD will determine whether the justification provided is sufficient and the requested increase is reasonable.

(b) CJD may approve requests to pay overtime only for law enforcement officers assigned to a multi-jurisdictional task force and only from program income that is not used as cash-match.

(c) Salaries for grant-funded positions must comply with the classification schedule of the agency from which personnel are assigned and be found reasonable by CJD [~~must approve them as reasonable~~].

(d) Personnel assigned to a TNCP project must be assigned and compensated commensurate with the rank and authority of the assigning agency and must be based upon the salary the assignee would receive from the assigning agency in the absence of a grant.

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 9, 2001.

TRD-200103911
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 463-6789

♦ ♦ ♦

1 TAC §3.707

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

The repeal of these rules are proposed under the Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The repealed rules implement the Texas Government Code, Title 7, §772.066(a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

§3.707. Matching Funds Policy.

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

Filed with the Office of the Secretary of State, on July 9, 2001.

TRD-200103920
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 463-6789

♦ ♦ ♦

DIVISION 8. LOCAL LAW ENFORCEMENT BLOCK GRANT PROGRAM

1 TAC §3.807

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

The repeal of these rules are proposed under the Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The repealed rules implement the Texas Government Code, Title 7, §772.066(a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

§3.807. Matching Funds Policy.

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

Filed with the Office of the Secretary of State, on July 9, 2001.

TRD-200103921
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 463-6789

♦ ♦ ♦

DIVISION 9. VIOLENCE AGAINST WOMEN ACT FUND RULE

1 TAC §3.907

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

The repeal of these rules are proposed under the Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The repealed rules implement the Texas Government Code, Title 7, §772.066(a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

§3.907. Matching Funds Policy.

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

Filed with the Office of the Secretary of State, on July 9, 2001.

TRD-200103922
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 463-6789

♦ ♦ ♦

DIVISION 11. RESIDENTIAL SUBSTANCE ABUSE TREATMENT FOR STATE PRISONERS GRANT PROGRAM

1 TAC §3.1107

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

The repeal of these rules are proposed under the Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The repealed rules implement the Texas Government Code, Title 7, §772.066(a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

§3.1107. Matching Funds Policy.

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

Filed with the Office of the Secretary of State, on July 9, 2001.

TRD-200103923
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 463-6789

♦ ♦ ♦

DIVISION 12. JUVENILE ACCOUNTABILITY INCENTIVE BLOCK GRANT PROGRAM

1 TAC §3.1207

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

The repeal of these rules are proposed under the Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The repealed rules implement the Texas Government Code, Title 7, §772.066(a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

§3.1207. Matching Funds Policy.

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

Filed with the Office of the Secretary of State, on July 9, 2001.

TRD-200103924
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 463-6789

♦ ♦ ♦

DIVISION 14. RURAL DOMESTIC VIOLENCE AND CHILD VICTIMIZATION ENFORCEMENT PROGRAM

1 TAC §3.1403, §3.1413

The amendment of these rules are proposed under the Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement the Texas Government Code, Title 7, §772.066(a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

§3.1403. Project Requirements.

(a) The following are the program areas eligible for funding:

(1) projects that implement, expand, and establish cooperative efforts and projects between law enforcement officers, prosecutors, victim advocacy groups, and other related parties to investigate and prosecute incidents of domestic violence, dating violence, and child abuse [~~develop and implement policies, protocols, and services designed to promote the early identification, intervention, and prevention of domestic violence and child victimization~~];

(2) projects that provide treatment, counseling and assistance to victims of domestic violence, dating violence, and child abuse, including in immigration matters; and [~~increase victims' safety and access to services, such as shelters, counseling, and advocacy;~~]

(3) projects that work in cooperation with the community to develop education and prevention strategies directed toward such issues.[~~enhance the investigation and prosecution of domestic violence and child abuse cases; and~~]

[~~(4) projects that develop and implement innovative and comprehensive strategies that draw upon a rural jurisdiction's unique characteristics and resources to enhance the community's understanding of domestic violence and child victimization.~~]

(b) The Office of Justice Programs seeks to support new projects (or the continuation or expansion of currently funded rural projects) that propose to do the following:

(1) decrease the impact of geographic isolation on victims and on the criminal justice system's capacity to ensure victims' services;

(2) develop a coordinated community response to domestic violence and child victimization;

(3) implement policies and protocols to enhance the criminal justice system's response to victims of domestic violence and child victimization;

(4) develop partnerships among child protection workers, victim advocates, and the criminal justice system;

(5) serve diverse and traditionally under-served populations in rural communities; and

(6) increase enforcement of intra- and interstate protective orders.

§3.1413. Grant Period.

The grant period for any grant awarded under this program is 15 [~~18~~] months.

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 9, 2001.

TRD-200103912
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 463-6789

♦ ♦ ♦

DIVISION 15. CLOSED CIRCUIT TELEVISING OF TESTIMONY PROGRAM

1 TAC §3.1507

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

The repeal of these rules are proposed under the Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The repealed rules implement the Texas Government Code, Title 7, §772.066(a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

§3.1507. Matching Funds Policy.

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

Filed with the Office of the Secretary of State, on July 9, 2001.

TRD-200103925
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 463-6789

♦ ♦ ♦

SUBCHAPTER D. CONDITIONS OF GRANT FUNDING

1 TAC §§3.2007, 3.2013, 3.2021

The amendment of these rules are proposed under the Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement the Texas Government Code, Title 7, §772.066(a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

§3.2007. Confidential Funds Certification.

Any applicant proposing a project that may require the expenditure of confidential funds must sign and return with their application a copy of a Confidential Funds Certification. For Texas Narcotics Control Program grants, the rules adopted by reference in §3.19 apply to the control and use of confidential funds except where they conflict with the rules in §3.717, in which case the rules in this chapter shall apply [~~By signing, the applicant certifies he or she has read and agreed to comply with the CJD rules regarding the control and use of confidential funds found this Code~~].

§3.2013. Pre-Approval Requirements for Procurement.

(a) Prior to obligating or expending grant funds, grantees must submit to CJD all related procurement documentation, such as requests for proposals or invitations for bids, and independent cost estimates, when the procurement is expected to exceed $100,000. [~~:~~]

[~~(1) The procurement is expected to exceed $50,000;~~]

[~~(2) The procurement is expected to exceed $25,000 and will be awarded without competition or only one bid or offer is received in response to a solicitation;~~]

[~~(3) The procurement, which is expected to exceed $25,000, specifies a "brand name" product;~~]

[~~(4) The proposed award over $25,000 will be awarded to someone other than the apparent low bidder under a sealed bid procurement; or~~]

[~~(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than $25,000.~~]

(b) Grantees may not divide purchases or contracts for the purposes of avoiding this rule. For purposes of determining compliance, CJD will consider groups of contracts with a single vendor or groups of purchases for the same or similar items as a single procurement.

(c) Grantees may not obligate or expend grant funds for procurement contracts covered by subsection (a) without written approval from CJD.

(d) For the purposes of this section, submittal of a proposed procurement described under subsection (a) through inclusion in a grant application or grant adjustment shall not be considered approval of the procurement by CJD.

§3.2021. Resolutions.

Except for applications from state agencies, each application must include a resolution from the applicable governing body, such as the city council, county commissioners' court, school board, or board of directors, that contains the following:

(1) authorization for the submission of the application to CJD that clearly identifies the project for which funding is requested;

(2) a commitment to provide for any applicable cash match (if the applicant is not providing all of the matching funds, then

the other participating entities, that are providing portions of any cash match, must also submit resolutions);

(3) if the grantee organization chooses to designate an authorized official who is not the chief executive officer, the resolution must provide the designee with the power to accept, reject, or alter a grant; and

(4) a written assurance that, in the event of loss or misuse of CJD funds, the governing body will return all funds to CJD, unless the applicant is required to secure a fidelity bond pursuant to § 3.2515 of this chapter.

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

Filed with the Office of the Secretary of State, on July 9, 2001.

TRD-200103913
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 463-6789

♦ ♦ ♦

SUBCHAPTER E. ADMINISTERING GRANTS

1 TAC §§3.2501, 3.2507, 3.2511, 3.2513, 3.2521

The amendment of these rules are proposed under the Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement the Texas Government Code, Title 7, §772.066(a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

§3.2501. Grant Officials.

Each grant must have three different persons designated to serve as grant officials:

(1) The project director. This person must be (at the applicant's option) an employee of the applicant agency or be from the contractor organization that will be responsible for project operation or monitoring and who will serve as the point-of-contact regarding the project's day-to-day operations. In Crime Stoppers Programs this person can be an employee of a law enforcement agency who will act as the coordinator;

(2) The financial officer. This person must be the chief financial officer of the applicant agency. A county auditor, city treasurer, comptroller, or the treasurer of a nonprofit corporation's board may serve as the project's financial officer; and

(3) The authorized official. This person must be authorized to apply for, accept, decline, or cancel the grant for the applicant agency. The executive director of a state agency, county judge, mayor, city manager, [~~assistant city manager,~~] chairman of a nonprofit board, director of a community supervision and corrections department, or a designee authorized by the governing body in its resolution may serve as the authorized official.

§3.2507. Expenditure Reports.

Each grantee must submit financial expenditure reports to CJD each calendar quarter. CJD will provide the appropriate forms and instructions for the reports along with deadlines for their submission. The grantee's financial officer must sign and submit each expenditure report. CJD will place a financial hold on a grantee's funds if the grantee fails to submit timely expenditure reports. Submission of an expenditure report does not generate a grant payment. Section 3.2511, Request for Funds sets forth rules for requesting payments.

§3.2511. Requests for Funds.

(a) After a grant has been accepted and if there are no outstanding special conditions or other deficiencies, a grantee may request funds on a cost reimbursement basis. Submission of an expenditure report does not generate a grant payment. All grant payment requests must be submitted to CJD on a Request for Funds form in accordance with the instructions provided on that form.

(b) Grantees must ensure that CJD receives their final requests for funds postmarked no later than the 90th calendar day after the end of the grant period or funds will lapse and revert to the grantor agency. If this date falls on a weekend or federal holiday, then CJD will honor receipt or a postmark on the next business day. If grant funds are on hold for any reason, these funds will lapse at the end of the above-referenced period and the grantee cannot recover them. Under no circumstances will CJD make payments to grantees that submit their request for funds with a postmark after the above-referenced [~~90-day~~] deadline.

§3.2513. Grant Adjustments.

(a) One of the three designated grant officials [~~The person designated in the grantee acceptance notice to request grant adjustments or the authorized official~~] must sign all requests for grant adjustments.

(b) Budget Adjustments. Grant adjustments consisting of increases in the amount of a grant or the reallocation of funds among or within budget categories are considered budget adjustments, and, except as provided by paragraph (1) of this subsection, are allowable only with prior CJD approval. The following rules apply to budget adjustments:

(1) During a grant period, grantees may transfer funds among or within the standard CJD budget categories, except the indirect costs and equipment categories and more than 90 days of any salary, without prior CJD approval as long as the amount transferred does not exceed a cumulative total of ten percent of the total grant award during that year and the action does not change the scope of the project. All proposed equipment purchases must be submitted to CJD for prior approval in accordance with § 3.81 of this chapter. All budget adjustments must comply with all relevant rules in this chapter. The grantee must maintain accurate records that show all budget adjustments.

(2) CJD will not approve more than four budget adjustments each grant year.

(3) CJD will not approve budget adjustments requests submitted within 30 days of the end of the grant period unless the executive director grants an exception. The executive director will base exceptions upon a substantiated request submitted by the grantee.

(4) For supplemental grant awards, the grantee must accept or reject any additional award within 45 days of the date upon which CJD issues a Grant Adjustment Notice and follow all rules in accordance with §3.11 of this chapter.

(c) Non-Budget Grant Adjustments. The following rules apply to non-budget grant adjustments: [~~Requests to revise the scope, target, or focus of the project, or alter project activities require advance written approval from CJD.~~]

(1) Requests to revise the scope, target, or focus of the project, or alter project activities require advance written approval from CJD.

(2) [~~(d)~~] The grantee shall notify CJD in writing of any change in the designated project director, financial officer, or authorized official within five days following the change. When the notice addresses a change of financial officer, the letter must include a sample signature of the new official. When the notice addresses a change of authorized official, the governing body, such as the board, city council, or commissioners' court, must submit the request.

(3) [~~(e)~~] A grantee may submit a written request for a grant extension. The executive director will approve such requests only in extraordinary circumstances.

§3.2521. Payment of Outstanding Liabilities.

Grantees must [~~properly obligate and~~] expend all outstanding liabilities no later than 90 days after the end of the grant period. CJD will not reimburse any grantee unless the final Request for Funds is postmarked by the 90th day after the end of the grant period. If the 90th day falls on a weekend or federal holiday, then CJD will honor receipt or a postmark on the next business day. All payments made after the completion of the grant period must relate to obligations incurred before the end of the grant period.

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

Filed with the Office of the Secretary of State, on July 9, 2001.

TRD-200103914
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 463-6789

♦ ♦ ♦

SUBCHAPTER F. PROGRAM MONITORING AND AUDITS

1 TAC §3.2601

The amendment of these rules are proposed under the Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement the Texas Government Code, Title 7, §772.066(a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

§3.2601. Monitoring.

(a) CJD will monitor the activities of grantees as necessary to ensure that grant funds are used for authorized purposes in compliance with laws, regulations, and the provisions of grant agreements, and that grantees achieve grant purposes.

(b) The monitoring program may consist of formal audits, monitoring reviews, and technical assistance. CJD may implement monitoring through on-site review at the grantee and/or subgrantee location or through a desk review based on grantee reports. In addition, CJD may request grantees to submit relevant information to CJD, pursuant to Section 3.2529 of this chapter, to support any monitoring review. The monitoring program may include work performed by CJD staff, CJD contractors, or other external reviewers.

(c) Grantees must make available to CJD or its agents all requested records relevant to a monitoring review. CJD may make unannounced monitoring visits at any time. Failure to provide adequate documentation upon request may result in disallowed costs or other remedies for non-compliance as detailed under Section 3.2517.

(d) After a monitoring review, the grantee will be notified in writing of any noncompliance identified by CJD in the form of a draft report.

(e) The grantee shall respond to the draft report and the deficiencies, if any, and submit a plan of corrective action, if necessary, to CJD within a time frame specified by CJD.

(f) The corrective action plan shall include:

(1) the titles of the persons responsible for implementing the corrective action plan;

(2) the corrective action to be taken; and

(3) the anticipated completion date.

(g) If the grantee believes corrective action is not required for a noted deficiency, the response shall include an explanation and specific reasons.

(h) CJD shall approve the corrective action plan and may require modifications prior to approval. The grantee's replies and the approved correction action plan, if any, shall become part of the final report.

(i) The grantee shall correct deficiencies identified in the final report within the time frame specified in the corrective action plan.

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 9, 2001.

TRD-200103915
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 463-6789

♦ ♦ ♦

1 TAC §3.2605, §3.2607

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

The repeal of these rules are proposed under the Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The repealed rules implement the Texas Government Code, Title 7, §772.066(a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

§3.2605. Initial Determination.

§3.2607. Management Decision.

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 9, 2001.

TRD-200103926
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 463-6789

♦ ♦ ♦

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION DIVISION

SUBCHAPTER C. TAP, TASTE OF TEXAS, VINTAGE TEXAS, TEXAS GROWN, NATURALLY TEXAS AND GO TEXAN AND DESIGN MARKS

4 TAC §§17.51, 17.52, 17.55, 17.57, 17.58

The Texas Department of Agriculture (the department) proposes amendments to the department's promotional marketing program rules for application and registration to use TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, and GO TEXAN and Design mark, Chapter 17, Subchapter C, §17.51, concerning Definitions, §17.52, concerning Application for Registration To Use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design Mark, §17.55, concerning Registration of Those Entitled To Use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design Mark, §17.57, concerning Associate GO TEXAN Members, and §17.58, concerning the GO TEXAN Beef Program.

The amendments are proposed to implement Senate Bill 571, as enacted by the 77th Legislature, 2001, and to incorporate new provisions for use of the GO TEXAN and Design mark into existing rules. Amended §17.51 makes the definition of Texas agricultural product consistent with §46.002 of the Texas Agriculture Code, and adds a definition of equine species. Amended §17.52 establishes standards for GO TEXAN lamb or goat meat(s), expands the list of Texas agricultural products with which GO TEXAN and Design can be used, deletes inapplicable fee language, and restricts the use of GO TEXAN and Design on products that are marketed as products from other states, countries, and cities outside of Texas. Amended §17.55 deletes inapplicable fee language for the GO TEXAN Associate program, and imposes an annual fee limit of $50 for GO TEXAN membership. Amended §17.57 adds livestock shows, festivals that promote Texas agricultural products, and organizations that promote equine-related activities to the GO TEXAN Associate member category, and removes inapplicable fee language. Amended §17.58 modifies the GO TEXAN Beef Program requirements for processing facilities.

Delane Caesar, Assistant Commissioner for Marketing and Promotion, has determined for the first five-year period that the amended sections are in effect, there will be fiscal implications for state government as a result of enforcing or administering the sections. By expanding the eligibility criteria for the GO TEXAN program, there may be a slight increase in GO TEXAN applications to be processed by department staff. In addition, the proposed amendments add a $25 membership fee for the GO TEXAN Associate program, which may involve increased time for processing applications and fees. The increase in cost or revenue due to both changes is difficult to quantify, because membership in the program is voluntary, although it is expected that the impact upon staff will be very small. There will be no fiscal implications for local government as a result of enforcing or administering the amended sections.

Ms. Caesar has also determined that for the first five years that the proposal is in effect the public benefit resulting from enforcing and administering the sections will be increased awareness of and sales of Texas agricultural products due to the expansion of the department's promotional marketing programs. The effect on microbusinesses, small businesses and individuals required to comply with the amended sections for the first five- year period will be an increase of $25 in the annual registration free for GO TEXAN Associate members.

Comments may be submitted to Delane Caesar, Assistant Commissioner for Marketing and Promotion, 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 (the Code) §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code; and §12.0175 of the Code, which authorizes the department to establish programs to promote and market agricultural products grown or processed in the state or products made from ingredients grown in the state and to charge a membership fee for participation in such programs..

The code that will be affected by this proposal is the Texas Agriculture Code, Chapter 46.

§17.51. Definitions.

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

(1) Associate GO TEXAN members/licensees--Persons who apply and are granted limited use of the mark by the department for assistance in the promotion and implementation of the GO TEXAN program.

(2) Commissioner--Commissioner of Agriculture, Texas Department of Agriculture.

(3) Department--The Texas Department of Agriculture.

(4) Equine species-A horse, pony, mule or donkey that was foaled in Texas or has resided in Texas for at least one year.

(5) [~~(4)~~] Food--Agricultural products produced or processed in Texas for human consumption. One hundred percent fresh beef and processed 100% beef products must comply with the requirements of §17.58 of this title (relating to GO TEXAN Beef Program).

(6) [~~(5)~~] GO TEXAN and Design mark--The following mark being a certification mark pending final registration approval with the United States Patent and Trademark Office and also with the Texas Secretary of State's office by the department. GO TEXAN and Design is a certification mark of the Texas Department of Agriculture.
Figure: 4 TAC §17.51(6) [~~(5)~~]

(7) [~~(6)~~] Horticulture products--Nursery, floral and greenhouse plants or plant products produced in Texas from seeds, rootings, cuttings, tissue cultures, seedlings or other propagation materials. Non-Texas plants being produced for such a period during which they are transplanted or increased in plant size and volume of container. Texas and non-Texas produced plant- based horticulture products processed in Texas.

(8) [~~(7)~~] Livestock feed, feed supplements and pet food--agricultural products produced or processed in Texas for animal consumption.

(9) [~~(8)~~] Natural fibers--Fibers which have been produced from Texas crops or shorn from Texas livestock, and which are used in textiles, apparel, and other goods. The term "natural fibers" also includes leather made from the hides of animals and reptiles.

(10) [~~(9)~~] Natural woods--Forestry products produced from Texas hardwood and softwood timber and may include, but not be limited to, furniture, home furnishings, building construction materials, pulp and paper.

(11) [~~(10)~~] Naturally Texas mark--A mark bearing the icons (or symbols) representative of leather, wool, mohair, and cotton and bearing the words "Naturally TEXAS," such mark being a certification mark registered with the United States Patent and Trademark Office, and also being registered with the Secretary of State's office by the department.
Figure: 4 TAC §17.51 (11) [~~(10)~~]

(12) [~~(11)~~] Person--An individual, firm, partnership, corporation, governmental entity, or association of individuals.

(13) [~~(12)~~] Processed food product--Non-Texas agricultural food product which has undergone a value-added procedure in Texas to change or add to its physical characteristics, including, but not limited to, cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, distilling, eviscerating, preserving, packaging, dehydrating, washing, culling or freezing. For purposes of this subchapter, the department shall have the sole discretion to determine whether a product qualifies as being a processed food product. One hundred percent fresh beef and processed 100% beef products must comply with the requirements of 17.58 of this title (relating to GO TEXAN Beef Program).

(14) [~~(13)~~] Processed natural fiber or natural wood product--Non-Texas raw, natural fiber or natural wood which has undergone mechanical or physical changes in Texas resulting in a finished, distinct product. For purposes of this subchapter, the department shall have the sole discretion to determine whether a product qualifies as being a processed natural fiber and wood product.

(15) [~~(14)~~] Produced in Texas--An agricultural product is produced in Texas if:

(A) the agricultural product is grown, raised, nurtured, sown, or cultivated within the state; or

(B) the agricultural product has been altered by a mechanical or physical value-added procedure in Texas to change or add to its physical characteristics.

(C) Products produced in Texas, but processed out of Texas do not meet GO TEXAN program requirements.

(16) [~~(15)~~] Producer--Any person who:

(A) produces agricultural product(s) grown, raised, nurtured, sown, or cultivated in the State of Texas;

(B) produces Texas processed agricultural product(s); or

(C) produces Texas product(s) that is/are not processed outside of Texas.

(17) [~~(16)~~] Texas processed agricultural product--Non-Texas agricultural product, excluding processed food product and processed natural wood and natural fiber product, which has undergone a value added procedure in Texas that changes or adds to its physical characteristics. For purposes of this subchapter, the department shall have the sole discretion to determine whether a product qualifies as being a Texas processed agricultural product.

(18) [~~(17)~~] TAP mark--The term "Texas Agricultural Product" or the following mark embracing the same, such mark being registered with the Secretary of State's office by the department.
Figure: 4 TAC §17.51 (18) [~~(17)~~]

(19) [~~(18)~~] Taste of Texas mark--A flag-shaped mark bearing the words "Taste of Texas," so colored as to model closely the flag of the State of Texas, such mark being registered with the Secretary of State's office by the department.
Figure: 4 TAC §17.51 (19) [~~18~~]

(20) [~~(19)~~] Texas agricultural product--An agricultural, apicultural, horticultural, silvicultural, viticultural, or vegetable product, either in its natural or processed state, that has been produced, processed, or otherwise had value added to the product in this state, including:

(A) equine species [~~bees~~];

(B) feed for use by livestock or poultry [~~honey~~];

(C) fish or other aquatic species [~~seafood~~];

[~~(D) a forestry product;~~]

(D) [~~(E)~~] livestock, [~~or~~] a livestock product, or a livestock by-product;

(E) [~~(F)~~] planting seed; [~~or~~]

(F) [~~(G)~~] poultry, [~~or~~] a poultry product [~~products.~~] , or a poultry by-product; or

(G) wildlife processed for food or by-products.

(21) [~~(20)~~] Texas Grown mark--A vertical and rectangular mark which features a native Texas mountain laurel branch in bloom over an outline of the state of Texas with the word "Texas" at the top and the word "Grown" at the bottom of the rectangle, such mark being registered with the Secretary of State's office by the department.
Figure: 4 TAC §17.51 (21) [~~20~~]

(22) [~~(21)~~] Vintage Texas mark--A vertical, rectangular mark consisting of a cluster of six grapes loosely forming a triangle and topped by a single grape leaf, all centered in the middle of a five-pointed star. Coming from behind the top center point of the star is a short curlicue line representing a grapevine. One horizontal line intersects with the tip of the center point of the star, and a parallel horizontal line intersects the two bottom points of the star. The word "VINTAGE" appears above the top parallel line, and the word

"TEXAS" appears below the bottom parallel line, such mark being registered with the Secretary of State's office by the department.
Figure: 4 TAC §17.51 (22) [~~21~~]

§17.52. Application for Registration To Use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design Mark.

(a) (No change.)

(b) Unless permission is otherwise granted by the department, the GO TEXAN and Design mark may only be used by registrants and licensees to certify and promote the following Texas agricultural products:

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

(7) lamb or goat meat(s). In order to be certified as [~~a~~] "GO TEXAN" lamb or goat meat(s), lamb or goat meat(s) must be from a lamb or goat that has been fed in Texas for at least 30 days and[~~meet the following requirements~~]:

(A) [~~meat(s) shall~~] be from a lamb or goat that has been slaughtered in Texas; or

(B) [~~meat(s) shall~~] be from a lamb or goat slaughtered and fabricated in Texas;

(C) (No Change.)

(8) livestock or poultry feed(s), feed supplement(s) and pet food(s);

(9) fish, shellfish, or other aquatic species [~~oysters~~] in their raw form or processed form;

(10) - (12) (No change.)

(13) processed natural fiber and natural wood product(s); [~~and~~]

(14) wildlife processed for food or by-products;

(15) equine species; and

(16) [~~(14)~~] Texas processed agricultural product(s).

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

(f) If approved, applicants [~~who are producers~~]shall remit the required registration fee within 30 days of notification of approval. [~~Pursuant to the Texas Agriculture Code Annotated, §12.0175, applicants, who are not producers and who meet the requirements of §17.57 of this title (relating to Associate GO TEXAN Members), shall not be required to pay a registration fee and may be granted an Associate GO TEXAN membership.~~]

(g) Upon receipt of the registration fee [~~(if required)~~], the department shall mail to the registrant or licensee a certificate of registration, which shall expire on August 31 following the year of issuance. The department shall also enclose copies of the mark, suitable for reproduction. If the certificate is for less than one full year, registration fees will be assessed on a pro rata basis.

(h) - (k) (No change.)

(l) The nature and quality of the goods sold by registrants in connection with the mark shall conform to any standards which may be set from time to time by the department. Registrants shall cooperate with the commissioner by permitting reasonable inspection of the registrant's operation and supplying the commissioner with specimens of use of the mark upon request. Registrants shall not use the mark on goods sold or marketed as products from another country or state, or as products from a city or region outside of Texas, unless prior written authorization is received from the department.

(m) - (o) (No change.)

§17.55. Registration of Those Entitled To Use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design Mark.

(a) (No change.)

(b) Procedure for annual renewal of registration of persons authorized to use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design mark.

(1) Between August 1 and August 31, annually, the department shall mail to each person previously registered or licensed to use the GO TEXAN and Design mark a statement setting forth the amount due as an annual registration fee [~~for producers. Non- producers shall be required to verify that they remain exempt from payment of registration fees~~].

(2) (No change.)

(3) Within 30 days of receipt by the department of the renewal statement, together with the annual registration fee [~~(if required)~~], the department will mail to the registrant a renewal certificate of registration.

(4) (No change.)

(c) An annual registration fee of $25 for registration in the GO TEXAN and GO TEXAN Associate program shall be paid to the department.

(d) (No change.)

(e) Annual GO TEXAN and GO TEXAN Associate registration fees charged by the department shall not exceed $50.

§17.57. Associate GO TEXAN Members.

(a) Statement of purpose; Applicability. The Associate GO TEXAN Member Program is established to provide a marketing program that allows persons interested in assisting the department with the promotion and implementation of the GO TEXAN program use of the Texas Department of Agriculture's GO TEXAN and Design mark only on promotional items that meet standards and rules. In addition to the certification of [~~media outlets and~~] retailers to use the GO TEXAN and Design mark in their efforts to promote the program, this section provides thatlivestock shows[~~printers~~] and other entities may be certified as associate GO TEXAN members if they meet requirements of this section.

(b) (No change.)

(c) Eligibility Requirements and Membership Categories.

(1) Eligibility requirements. All [~~media entities,~~] retailers, livestock shows [~~printers~~] and other entities meeting the requirements of the Texas Agriculture Code (the Code), §46.004, and administrative rules promulgated to implement Chapter 46 of the Code, interested in assisting the department with the promotion and implementation of the GO TEXAN program may apply for Associate GO TEXAN membership.

(2) (No change.)

(3) Livestock Shows and Festivals. [~~Media.~~] A licensee's use of the mark is limited to promotion of the GO TEXAN program at livestock shows and festivals in Texas that promote Texas agricultural products; [~~in print, television and radio mediums~~];

(4) (No change.)

(5) Equine-related Entities. A licensee's use of the mark is limited to promotional activities for equine species. [~~Printers. A~~

~~licensee's use of the mark is limited to reproduction of the mark for use by program members on their products;~~]

(6) (No change.)

(d) (No change.)

(e) Printers and media. Printers' and media companies' use of the mark is limited to reproduction of the mark for use by program members on their products. Printers and media companies are not eligible for the GO TEXAN Partner Program. [~~Fees. Applicants shall not pay an annual fee to enroll in the "Associate GO TEXAN" member program.~~]

§17.58. GO TEXAN Beef Program.

(a) (No change.)

(b) Product Requirements and Membership Categories.

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

(3) Processing facilities. In order to be certified as a "GO TEXAN" processing company, a processing company must meet the following requirements:

(A) The owner or operator of the processing facility must sign an affidavit confirming that raw materials used will be of 100% beef sourced back to a TDH or USDA inspected slaughter facility, and that such raw materials will meet the of requirements of §17.58(b)(2)(A-C) of this section.

(B) (No change.)

(4) (No change.)

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

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

Filed with the Office of the Secretary of State, on July 9, 2001.

TRD-200103902
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 463-4075

♦ ♦ ♦

SUBCHAPTER G. GO TEXAN PARTNER PROGRAM RULES

4 TAC §§17.301, 17.302, 17.308

The Texas Department of Agriculture (department) proposes amendments to the department's GO TEXAN Partner Program rules, §17.301, concerning Definitions, §17.302, concerning Administration, and §17.308, concerning Use of Funds. The amendments are proposed to implement Senate Bill 571, as enacted by the 77th Legislature, 2001, and to incorporate new provisions for the GO TEXAN Partner Program. Amended §17.301 makes the definition of Texas agricultural product consistent with §46.002 of the Texas Agriculture Code, and adds donations to allowable funding sources for the GO TEXAN Partner Program account. Amended §17.302 clarifies that the GO TEXAN Partner Program involves both marketing and promotional activities for Texas agricultural products, and adjusts the membership of the GO TEXAN Partner Program Advisory Board to include representatives with expertise in Internet websites or electronic commerce, and economic analysis. Amended §17.308 allows the department to use up to $5,000 in a state fiscal year for the purchase of food and beverages for GO TEXAN promotional events, deletes language restricting the size of projects for the first six months of the program, and increases the amount of approved project funds that will be allocated to the department's GO TEXAN program.

Delane Caesar, Assistant Commissioner for Marketing and Promotion, has determined for the first five-year period that the proposed sections are in effect, there will be fiscal implications for state government as a result of enforcing or administering the sections. By expanding the eligibility criteria for the GO TEXAN Partner Program, there may be a slight increase in GO TEXAN Partner Program applications to be processed by department staff. The increase as a result of the change is difficult to quantify, because application for funding under the GO TEXAN Partner Program is voluntary, although it is expected that the impact upon staff will be very small. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Ms. Caesar has also determined that for the first five years that the proposal is in effect the public benefit resulting from enforcing and administering the sections will be increased awareness of and sales of Texas agricultural products due to the expansion of the department's promotional marketing programs and an increase in the number of businesses that can apply to the GO TEXAN Partner Program. Other than the costs associated with application to the program for new applicants, there are no anticipated cost to microbusinesses, small businesses or individuals required to comply with the amended sections.

Comments may be submitted to Delane Caesar, Assistant Commissioner for Marketing and Promotion, 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 (the Code) §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code; §12.0175 of the Code, which authorizes the department to establish programs to promote and market agricultural products grown or processed in the state or products made from ingredients grown in the state; and §46.012 of the Code, which authorizes the department to adopt rules to administer the GO TEXAN Partner Program. The code that will be affected by this proposal is the Texas Agriculture Code, Chapter 46.

§17.301. Definitions.

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

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

(6) GO TEXAN Partner Program Account -- An account in the state general revenue fund composed of legislative appropriations, gifts, grants, donations, and matching funds received under Texas Agriculture Code, Chapter 46, money required to be deposited in the account under §502.2761, Transportation Code, and other money required by law to be deposited in the account.

(7) - (9) (No change.)

(10) Texas agricultural product -- An agricultural, apicultural, horticultural, silvicultural, viticultural, or vegetable product, either in its natural or processed state, that has been produced, processed, or otherwise had value added to the product in this state, including:

(A) equine species [~~bees~~];

(B) feed for use by livestock or poultry [~~honey~~];

(C) fish or other aquatic species [~~seafood~~];

[~~(D) forestry product;~~]

(D) [~~(E)~~] livestock, [~~or~~] a livestock product , or a livestock by-product;

(E) [~~(F)~~] planting seed; [~~or~~]

(F) [~~(G)~~] poultry , [~~or~~] a poultry product [~~products.~~], or a poultry by- product; or

(G) wildlife processed for food or by-products.

§17.302. Administration.

(a) The department's responsibilities under this subchapter are as follows.

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

(4) Department staff shall receive project requests, submitted by eligible applicants, for advertising or promotional campaigns for specific Texas agricultural products.

(5) - (6) (No change.)

(7) Department staff may establish guidelines on advertising or promotional activities by applicants.

(8) - (10) (No change.)

(b) The board's responsibilities under this subchapter are as follows.

(1) The board shall be composed of the following members appointed by the commissioner:

(A) one [~~two~~] department representative [~~representatives~~];

(B) one United States Department of Agriculture Commodity Credit Corporation representative , who shall serve as a nonvoting member of the board and is not a member for purposes of establishing a quorum;

(C) - (F) (No change.)

(G) one consumer representative; [~~and~~]

(H) one higher education representative with expertise in marketing and promotion; [~~.~~]

(I) one representative from the Internet website or electronic commerce industry; and

(J) one representative with demonstrated expertise in economic analysis.

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

§17.308. Use of Funds.

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

(c) The department may use funds received under this subchapter in an amount not to exceed $5,000 in a state fiscal year for the purchase of food and beverage refreshments at "GO TEXAN" promotional events. [~~For the first six months of Fiscal Year 2000, the board shall not approve project requests in excess of $30,000, including matching funds.~~]

(d) (No change.)

(e) Projects funded shall meet all state purchasing and bidding requirements.

(f) 80% [~~85%~~]of all funds for each approved and contracted project shall be expended to promote the specific product(s) of applicants and 20%[~~15%~~] of all funds for each approved and contracted project shall be expended on the department's GO TEXAN Program. [~~If feasible and practical, the 15% portion of funds for each individual project request will be expended in a manner that directly or indirectly promotes the specific product(s) of applicant.~~]

(g) Upon the completion or cancellation of a project, the department will refund to the successful applicant the applicant's share of any unexpended funds approved and contracted for the project, minus the 20% portion of funds allocated to the department's GO TEXAN program. A refund will be made after quantification information required by the project contract has been submitted to the department.

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

Filed with the Office of the Secretary of State, on July 9, 2001.

TRD-200103903
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 463-4075

♦ ♦ ♦

CHAPTER 22. NURSERY PRODUCTS AND FLORAL ITEMS

4 TAC §§22.1, 22.4, 22.6

The Texas Department of Agriculture (the department) proposes an amendment to §22.1 concerning definitions used in Chapter 22, an amendment to §22.4 concerning stop-sale orders issued under the department's nursery/floral program, and new §22.6, concerning developing an integrated pest management (IPM) plan for entities holding nursery/floral program certificates. The amendment to § 22.1 establishes definitions for a plant pest, beneficial organism, and an IPM plan. Amendments to §22.4 provide exceptions for the issuance of a stop-sale order as well as an appeals process for a stop-sale.

New §22.6 establishes requirements and procedures for implementing an IPM plan. IPM is a system of managing pests through the use of multiple control tactics and has been used in various production systems for more than 30 years. However with the loss of some pesticides and an increased concern about the environment, there has been an interest by producers to incorporate IPM practices into their production practices to better manage pests and diseases. In the Texas Nursery/Floral Industry, the use of IPM practices is limited. These proposed rules will allow a producer, on a voluntary basis, to develop and implement an IPM plan for the production of nursery products and floral items. Producers who have an approved IPM plan will not be subject to a stop-sale order during production, when a plant pest is detected on plants, plant products, or plant

production areas, and provided the plants are not subject to sale within 48 hours of the pest detection.

David Kostroun, assistant commissioner for regulatory programs, has determined that for the first five year period the amendments and new section are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections, as proposed.

Mr. Kostroun has also determined that for each of the first five years the proposed amendments and new section are in effect, the public benefit will be greater availability of nursery products and floral items produced under IPM practices. There may be costs to businesses or to persons required to comply with the proposal if they chose to implement an IPM plan. In the proposed rule, an IPM plan is defined as a department-approved plan for controlling plant pests during plant production. Implementing an IPM plan is not required but may be implemented voluntarily at the discretion of the producer. Under a plan, the producer must: agree to use multiple approved control tactics to manage, mitigate, or eliminate plant pests; list the control tactics to be used; list the scientific name of beneficial organisms used, if any, as a control tactic; specify threshold levels, if available, for each plant pest and plant type combination that will result in the use of one or more approved control tactics; specify the methods to be used for monitoring the occurrence of plant pests; and describe the general sanitation practices to be used in the production of regulated plants. Costs associated with implementing an IPM plan will vary due to the wide range of control tactics used. In some circumstances, the use of current practices or equipment by a producer may be approved in the plan, thereby minimizing costs to those affected by the proposed rule. Because each plan may be unique and situation specific, costs associated with implementing an IPM plan cannot be determined at this time.

Comments on the proposal may be submitted to David Kostroun, Assistant Commissioner for Regulatory 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 and new section are proposed in accordance with Texas Agriculture Code (the Code), §71.042, which provides the department with the authority to adopt rules for the immunity and protection of plants from diseases and insect pests; and § 71.060 which provides the department with the authority to issue and enforce a stop-sale order.

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

§22.1. Definitions.

In addition to the definitions set out in the Texas Agriculture Code, §71.041, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Beneficial organism- Any pathogen, arthropod, or other biological organism that is a predator, parasite, or pathogen of a plant pest and which causes only minor or incidental damage, if any, to nursery products and/or floral items subject to regulation under the Texas Agriculture Code, Chapter 71.

(2) [~~(1)~~] Distribute- Offer for sale, hold for sale, sell, barter, or supply.

(3) [~~(2)~~] Event permit- A registration issued by the department for the operation of a business holding a valid registration certificate for the purpose of selling nursery products and/or floral items at a temporary location, during any portion of a 24 hour period.

(4) Integrated pest management plan - A department-approved plan for the management of plant pests during plant production.

(5) Plant pest- Any pathogen, arthropod, or other non-vertebrate biological organism that is detrimental to plants or plant products. subject to regulation under the Texas Agriculture Code, Chapter 71.

(6) [~~(3)~~] Temporary location- A non-permanent location where nursery products and/or floral items are sold, offered for sale or lease, grown for the purpose of sale or lease, or offered as an enticement to promote the sale or lease of other items.

§22.4. Stop-sale Order and Appeal.

(a) Except as provided in Subsection (b) or (c) of this section, nursery [~~Nursery~~] products and/or floral items that are [~~diseased, pest~~] infested or infected with a plant pest, or sold from unregistered locations are subject to a stop-sale order.

(b) Nursery products and/or floral items shall not be placed under a stop-sale order when a plant pest is detected on the plants, plant products, or plant production areas if:

(1) the certificate holder is operating under an integrated pest management plan approved by the department, and

(2) sale of the nursery products and/or floral items infested, infected, or within an infested or infected plant production area, is not scheduled to take place within 48 hours.

(c) Beneficial organisms are a control method of integrated pest management and do not constitute a basis for the issuance of a stop-sale order.

(d) The certificate holder or employee of the certificate holder may appeal a stop-sale order by submitting a written appeal to the department or to the inspector at the time the stop-sale order is issued. The written appeal must be submitted by means that provides proof of the date and time of delivery, except that proof of date and time of delivery is not required for hand-delivery to the department's inspector at the time of inspection. All appeals submitted by electronic mail must be sent to appeal.order@agr.state.tx.us.

(e) An appeal of a stop-sale order must be received by the department within 48 hours after the stop-sale order is issued. If the appeal is not received within the specified time period, the stop-sale order may be removed by re-inspection.

(f) The department shall review the appeal and issue a decision to rescind or continue the stop-sale order by the close of business on the third working day after the day the request is received.

§22.6. Integrated Pest Management Plans.

(a) To meet the minimum requirements for department approval of an integrated pest management plan, the certificate holder must:

(1) agree to use multiple approved control tactics to manage, mitigate, or eliminate plant pests;

(2) list the control tactics to be used;

(3) list the scientific name of beneficial organisms used, if any, as a control tactic;

(4) specify threshold levels, if available, for each plant pest and plant type combination that will result in the use of one or more approved control tactics;

(5) specify the methods to be used for monitoring the occurrence of plant pests; and

(6) describe the general sanitation practices to be used in the production of regulated plants.

(b) An integrated pest management plan must be submitted to the department in a legible written request. The department shall mail a written notice of plan approval or denial to the certificate holder within 30 calendar days after its receipt. However, failure of the department to meet the preceding deadline shall not affect the plan's status as pending, approved, or denied.

(c) If the department determines that an integrated pest management program is not being implemented as described in the approved plan, the department may withdraw approval for the plan by written notice delivered to the certificate holder by United States mail to the certificate holder's last known mailing address as shown in department records, last known facsimile transmission number as shown in department records, last known electronic mail address as shown in department records, or by hand-delivery to the certificate holder or employee of the certificate holder.

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 5, 2001.

TRD-200103847
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 463-4075

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 102. FEES

22 TAC §102.1

The State Board of Dental Examiners proposes amendments to §102.1, Fee Schedule. The amendments are required to comply with funding requirements to implement new legislation passed by the 77th Legislature and a program to administer the permitting process for mobile and portable dental services. The fees for administration of the program for sedation/anesthesia permit applications are also included in this rule inasmuch as the Board is of the opinion that it is appropriate to place those fees with other fees in the Fee Schedule.

Licensing agencies are required to pass along increased operating expenses to the regulated individuals by increasing fees. Accordingly, subsection (a), paragraph (2) is amended to increase the annual dental registration fee from $71 to $88. Similarly, dental hygienists' annual fee is increased, in subsection (b) paragraph (2), from $42 to $52.

The increases necessary for the 2002-2003 Biennium total $521,048. Appropriations for one (1) additional FTE and increased payments to the Health Professions Council total $96,394. Employee salary increases total $67,396. Longevity increases total $14,800. Senate Bill 539 will require inspections of and advisory opinions about the procedures of those dental providers who administer enteral sedation/anesthesia in their offices. The sum of those expenses is $20,000. House Bill 3507 will require two (2) additional FTE's, expenses for an advisory committee, extra meetings of the Board and Dental Hygiene Advisory Committee and upgrades to computer software programs. The increased expenses to develop this program are $171,965. House Bill 609 requires all state agencies, including smaller agencies, to retain internal auditors. That expense is estimated at $24,000. Direct and Indirect Costs, such as employee benefits and bonded indebtedness will increase from the 2000-2001 Biennium by a total of $126,493.

It is estimated that 10,916 dentists will renew their licenses in Fiscal Years 2002 and 2003. It is expected that 7,865 dental hygienists will renew in the same time period. Revenue realized from the increased fees for those renewals will total $528,444, more than enough to cover the increased expenses.

New §§108.40 - 108.43, of this title (relating to Mobile Dental Facilities) require that, effective September 1, 2001, every mobile dental facility and portable dental unit, with certain exceptions, must have a permit. Subsection (e) provides for an initial fee of $50.00 and renewal fee of $50.00 to recover the cost of administering the permitting program. Implementation will require enhanced databases and verification methods.

Application fees for sedation/anesthesia permits are presently found in §108.33(e), of this title (relating to Sedation/Anesthesia Permit). The Board is of the opinion that it is appropriate to include these fees in §102.1 so that similar fees are located in the same chapter.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined for the first five-year period the amended rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the amended rule is in effect the public benefit anticipated as a result of amending the rule is that new legislation intended for the protection of the public will be implemented in a cost-effective manner.

There will be fiscal implications for both large and small dental offices. The costs of renewing licenses for both dentists and dental hygienists will increase commensurate with the size of the staff of professionals in each office. There will be no impact on dental laboratories. There will not be an adverse economic impact on small businesses compared to large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered, all written comments must be received by the State Board of Dental Examiners on or before August 20, 2001.

The amended rule is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to

perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

The proposed amended rule does not affect other statutes, articles, or codes.

§102.1. Fee Schedule.

(a) Dentists:

(1) Application for licensure by examination:

(A) initial application/examination: $150; and

(B) initial assessment by the Texas Legislature for deposit to the General Revenue Fund: $200.

(2) annual registration: $88.[~~$71.~~]

(3) Annual peer assistance: $9.00.

(4) Annual assessment by Texas Legislature for deposit to the General Revenue Fund: $200.

(5) Application for licensure by credentials: $2,000.

(6) Duplicate license: $15.

(7) Duplicate renewal certificate: $15.

(8) Reactivate a retired license: $250.

(b) Dental Hygienists:

(1) application for licensure by examination: $70;

(2) annual registration: $52; [~~$42;~~]

(3) annual peer assistance: $2.00;

(4) application for licensure by credentials: $475;

(5) duplicate license: $15;

(6) duplicate renewal certificate: $15; and

(7) reactivate a retired license: $250.

(c) Dental laboratories:

(1) initial application: $100; and

(2) annual registration: $100.

(d) Application for faculty member exception tracking (identification) number: $75.

(e) Application for dental intern or resident exception tracking (identification) number: $25.

(f) Mobile Dental Facilities or Portable Dental Units:

(1) initial application: $50; and

(2) annual renewal: $50.

(g) Sedation/Anesthesia Permit Application:

(1) initial application: $28.75; and

(2) annual renewal: $5.00.

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

Filed with the Office of the Secretary of State, on July 10, 2001.

TRD-200103953

Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 475-0972

♦ ♦ ♦

CHAPTER 108. PROFESSIONAL CONDUCT
SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.6

The State Board of Dental Examiners proposes amendments to §108.6, Report of Patient Death or Injury requiring Hospitalization. The amendment clarifies that the standard of care used to evaluate death or injury resulting from the use of sedation/anesthesia will be the standard that applies to the patient's state of consciousness during the procedure. This language existed in the former §109.177, which was supplanted by §108.6 and was inadvertently omitted in the new rule. Paragraph (3) of the rule is amended in two respects. The first is the addition of new language providing that "In the evaluation of sedation/anesthesia morbidity or mortality, the State Board of Dental Examiners shall consider the standard of care necessary to be that applicable to the patient's state of consciousness during the procedure." The second is that language in the former paragraph (3) is dropped in its entirety. The paragraph provided that a report would not be considered as a complaint unless the Board's Enforcement Committee determines that an investigation should be conducted. The former paragraph (3) was adopted to address a problem that did not exist; i.e., marring a dentist's record with a reported complaint when the doctor was not at fault. Complaints that are dismissed are reported in a fashion that does not identify the doctor; only complaints resulting in a board order are reported under a doctor's name.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined for the first five-year period the amended rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the amended rule is in effect the public benefit anticipated as a result of amending the rule will be a clearer understanding of the protocol for review of any incident involving injury or death of a dental patient as a result of use of sedation/anesthesia. Dropping the language of former paragraph (3) will bring this rule into harmony with the manner in which complaints are handled and it will eliminate a needless complication in the processing of self-reports.

The fiscal implications for small or large businesses will be minimal or none at all. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small businesses when compared to large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered, all written comments must be received by the State Board of Dental Examiners on or before August 20, 2001.

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

The proposed amended rule does not affect other statutes, articles, or codes.

§108.6. Report of Patient Death or Injury Requiring Hospitalization. A dentist must submit a written report to the Board as provided below:

(1) The death of a dental patient which may have occurred as a consequence of the receipt of dental services from the reporting dentist must be reported within 72 hours of the death, or such time as the dentist becomes aware or reasonably should have become aware of the death;

(2) An injury to a dental patient requiring admission to a hospital, as a possible consequence of receiving dental services from the reporting dentist must be reported within 30 days of the injury.

(3) In the evaluation of sedation/anesthesia morbidity or mortality, the State Board of Dental Examiners shall consider the standard of care necessary to be that applicable to the patient's state of consciousness during the procedure.[~~The receipt of the report shall not be considered in the nature of a complaint unless the Enforcement Committee determines that the circumstances surrounding the patient death or injury should be investigated 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 July 9, 2001.

TRD-200103899
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 463-6400

♦ ♦ ♦

22 TAC §108.7

The State Board of Dental Examiners proposes amendments to §108.7, Minimum Standard of Care, General. The amendment results from an effort by the Board and several interested entities, including the three Texas dental schools, the Health and Human Services Commission, and the Texas Department of Health to develop standards for the contents of records required to be maintained by dentists in Texas pertaining to the dental services rendered to patients. The language of paragraph (1) has been modified to drop references to required records, and to refer to rule 108.8, Records of the Dentist, where specifics are shown. Paragraph (6) has been changed to add the words "...treatment plans and..." as well as "...treatment plans or..." to clarify the requirement for informed consent.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined for the first five-year period the amended rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the amended rule is in effect the public benefit anticipated as a result of amending the rule will be that only one §108.8, defines records keeping requirements and that an informed consent must include knowledge of treatment plans.

There will be no fiscal implications for small or large businesses. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small businesses when compared to large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered, all written comments must be received by the State Board of Dental Examiners on or before August 20, 2001.

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

The proposed amended rule does not affect other statutes, articles, or codes.

§108.7. Minimum Standard of Care, General.

Each dentist licensed by the State Board of Dental Examiners and practicing in Texas shall conduct his/her practice in a manner consistent with that of a reasonable and prudent dentist under the same or similar circumstance. Further, each dentist:

(1) Shall maintain patient records that meet the requirements set forth in rule 108.8 of this title (relating to Records of the Dentist). [~~a patient record:~~]

[~~(A) from which a diagnosis may be made;~~]

[~~(B) which includes a description of treatment rendered;~~]

[~~(C) includes the date on which treatment is performed; and~~]

[~~(D) which includes any information a reasonable and prudent dentist in the same or similar circumstances would include~~]

(2) Shall maintain and review an initial medical history and perform limited physical evaluation for all dental patients to wit:

(A) The initial medical history shall include, but shall not necessarily be limited to, known allergies to drugs, serious illness, current medications, previous hospitalizations and significant surgery, and a review of the physiologic systems obtained by patient history. A "check list", for consistency, may be utilized in obtaining initial information. The dentist shall review the medical history with the patient at any time a reasonable and prudent dentist in the same or similar circumstances would so do.

(B) The initial limited physical examination should include, but shall not necessarily be limited to, blood pressure and pulse/heart rate as may be indicated for each patient.

(3) Shall obtain and review an updated medical history and limited physical evaluation when a reasonable and prudent dentist under the same or similar circumstances would determine it is indicated.

(4) Shall, for office emergencies:

(A) maintain a positive pressure breathing apparatus including oxygen which shall be in working order.

(B) maintain other emergency equipment and/or currently dated drugs as a reasonable and prudent dentist with the same

or similar training and experience in the same or similar circumstances would maintain;

(C) provide training to dental office personnel in emergency procedures which shall include, but not necessarily be limited to, basic cardiac life support, inspection and utilization of emergency equipment in the dental office, and office procedures to be followed in the event of an emergency as determined by a reasonable and prudent dentist in the same or similar circumstances; and

(D) shall adhere to generally accepted protocols and/or standards of care for management of complications and emergencies.

(5) Shall successfully complete a current course in basic cardiopulmonary resuscitation given or approved by either the American Heart Association or the American Red Cross.

(6) Should maintain a written informed consent signed by the patient, or a parent or legal guardian of the patient if the patient is a minor, or a legal guardian of the patient if the patient has been adjudicated incompetent to manage the patient's personal affairs. Such consent is required for all treatment plans and procedures where a reasonable possibility of complications from the treatment plan or procedure exists, and such consent should disclose risks or hazards that could influence a reasonable person in making a decision to give or withhold consent.

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 9, 2001.

TRD-200103900
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 463-6400

♦ ♦ ♦

22 TAC §108.8

The State Board of Dental Examiners proposes amendments to §108.8 Records of the Dentist. The proposed amendments are the result of several meetings with representatives from the Texas Department of Health, the Health and Human Services Commission, the three Texas dental schools, National Heritage Insurance Corporation and members of the Board and staff to discuss records keeping requirements for dentists. The effect of the amendments is to provide more specific rules for dental practitioners to follow in making and maintaining dental records. Vague and redundant language has been deleted and replaced with clearer, more definite requirements.

Former subsection (a), with changes, has been relocated to subsection (b). Former subsection (b) has been relocated, verbatim, to subsection (a). The new subsection (a) defines the term "dental records" and requires documentation of information obtained. Language in the former subsection (b) mentioned "x-rays" and "radiographs." The terms are synonymous making the clause redundant. The word "x-ray(s)" is deleted where used and the word "radiograph" and its permutations is substituted.

The new subsection (b) places an affirmative duty upon a practitioner to make, maintain and keep adequate records. The sentence in the former subsection which read "...Adequate records are records from which diagnoses can be made and which clearly and accurately document all of the facts related to the treatment of a dental patient, including diagnoses, treatments and progress of care..." has been deleted because of vagueness. Subsequent language in the new subsection and subsection (c) provides specificity to the elements that comprise an "adequate" dental record.

New language in subsection (b) clearly sets out what must be contained in all dental records, whether a patient receives dental services or not. The language also requires, as a minimum, that vital signs, including, but not limited to blood pressure and heart rate be obtained unless there is a reason not to do so. Paragraph (5) requires an explanation if vital signs are not taken.

New subsection (c) clarifies what must be documented when dental services are provided. Language of the former rule could be interpreted to require accounting for all these elements, even though no dental treatment was rendered. Language in new subsection (c), paragraph (9) repeats verbatim the language found in the former subsection (c) except that the last sentence has been deleted. That sentence read "...all such drugs and substances which are kept in the dental office or under the control of the dentist are to be maintained by a centralized inventory which shall indicate dates acquired, description and quantity of drugs, date, method, quantity dispensed, and the patient to whom the drug is dispensed..." In view of the language of new subsection (c), paragraph (10), formerly subsection (d), repeated verbatim, the former language is redundant, because the mentioned requirements are found in the Texas Controlled Substances Act.

Paragraph (2) subparagraph (B) of new subsection (c) recommends adherence to guidelines for prescribing dental radiographs. Paragraph (4) now requires preparation of a treatment plan if dental services are provided. Paragraph (8) requires that informed consent, conforming to the requirements of §108.7(6) of this title (relating to Minimum Standard of Care, General), be obtained in writing. Reading §108.7 (6) in conjunction with §108.8 (c)(4) and (8) clarifies that a treatment plan is an important part of a patient's dental records. Paragraph (11) addresses the need to be able to identify the individual who provided dental services and the person who made the entries in a dental record. Occasions arise, especially in group practices, where a patient is seen by more than one provider. It is important to know who provided dental services to a patient at each visit. Paragraph (12) recognizes that there may be times when, in the judgment of a dental provider, certain procedures are not done. In those instances paragraph (12) removes the possibility that a procedure was done, but not documented.

Former subsection (c) is repeated verbatim in paragraph (9) with the exception of the last sentence, which has been deleted, as explained above.

Former subsection (d) is repeated verbatim in paragraph (10).

Former subsections (e) (f) (g) and (H) have been redesignated as (d), (e), (f) and (g) and are repeated verbatim, except for substitution of the word "radiograph" for "x-ray."

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined for the first five-year period the amended rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the amended rule is in effect the public benefit anticipated

as a result of amending the rule will be that the standards for dental records will be clearer, and that the quality of dental records will improve.

There will be fiscal implications for small or large businesses. The Board cannot assess the magnitude of the impact, but it is not expected to be significant. Whatever the impact, it will tend to affect large and small businesses at similar percentages of cost increase, if any. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small businesses when compared to large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered, all written comments must be received by the State Board of Dental Examiners on or before August 20, 2001.

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

The proposed amended rule does not affect other statutes, articles, or codes.

§108.8. Records of the Dentist.

(a) The term "dental records" includes, but is not limited to documentation of: identification of practitioner providing treatment; medical and dental history; limited physical examination; radiographs; dental and periodontal charting; diagnoses made; treatment plans; informed consent statements or confirmations; study models, casts, molds, impressions; cephalometric diagrams; narcotic drugs, dangerous drugs, controlled substances dispensed, administered or prescribed; anesthesia records; pathology and medical laboratory reports; progress and completion notes; materials used; dental laboratory prescriptions; billing and payment records; appointment records; consultations and recommended referrals; and post treatment recommendations.

[(a) A Texas dental licensee practicing dentistry in Texas shall make, maintain, and keep adequate records of the diagnoses made and the treatments performed for and upon each dental patient for reference, identification, and protection of the patient and the dentist. Adequate records are records from which diagnoses can be made and which clearly and accurately document all of the facts related to the treatment of a dental patient, including diagnoses, services, treatments and progress of care. Records shall be kept for a period of not less than five (5) years]

(b) A Texas dental licensee practicing dentistry in Texas shall make, maintain, and keep adequate records of the diagnoses made and the treatments performed for and upon each dental patient for reference, identification, and protection of the patient and the dentist. Records shall be kept for a period of not less than five (5) years. Records must include documentation of the following:

(1) Patients name;

(2) Date of visit

(3) Reason for visit;

(4) Vital signs, including but not limited to blood pressure and heart rate if taken;

(5) If not recorded, an explanation why vital signs were not obtained.

[(b) The term "dental records" includes, but is not limited to documentation of: identification of practitioner providing treatment; medical and dental history; limited physical examination; x-rays and radiographs; dental and periodontal charting; diagnoses made; treatment plans; informed consent statements or confirmations; study models, casts, molds, impressions; cephalometric diagrams; narcotic drugs, dangerous drugs, controlled substances dispensed, administered or prescribed; anesthesia records; pathology and medical laboratory reports; progress and completion notes; materials used; dental laboratory prescriptions; billing and payment records; appointment records; consultations and recommended referrals; and post treatment recommendations.]

(c) Further, records must include documentation of the following when services are rendered:

(1) Written review of medical history and limited review of medical exam;

(2) Findings and charting of clinical and radiographic oral examination;

(A) Documentation of radiographs taken and findings deduced from them, including radiograph films or digital reproductions.

(B) Use of radiographs at a minimum, should be in accordance with guidelines set forth on "Dental Radiographic Examinations" published by the United States Department of Health and Human Services, October 1987, as amended or reprinted from time to time.

(3) Diagnosis,(es);

(4) Treatment plan, recommendation, and options;

(5) Treatment provided;

(6) Medication and dosages given to patient;

(7) Complications;

(8) Written informed consent that meets the provisions of rule 108.7(6) (of this title relating to Minimum Standard of Care, General);

(9) The dispensing, administering, or prescribing of all medications to or for a dental patient shall be made a part of such patient's dental record. The entry in the patient's dental record shall be in addition to any record keeping requirements of the DPS or DEA prescription programs.

(10) All records pertaining to Controlled Substances and Dangerous Drugs shall be maintained in accordance with the Texas Controlled Substances Act.

(11)) Confirmable identification of licensed dentist, and confirmable identification of person making record entries if different from provider dentist;

(12) When any of the items in paragraphs (1) through (11) of this section are not indicated, the record must include an explanation why the item is not recorded.

[(c) The dispensing, administering, or prescribing of narcotic drugs, dangerous drugs, or controlled substances to or for a dental patient shall be made a part of such patient's dental record. The entry in the patient's dental record shall be in addition to any record keeping requirements of the DPS or DEA prescription programs. All such drugs and substances which are kept in the dental office or under the control of the dentist are to be maintained by a centralized inventory

~~which shall indicate dates acquired, description and quantity of drugs, date, method, quantity dispensed, and the patient to whom the drug is dispensed.~~]

[~~(d) All records pertaining to Controlled Substances and Dangerous Drugs shall be maintained in accordance with the Texas Controlled Substances Act.~~]

(d) [~~(e)~~] Dental records are the sole property of the dentist who performs the dental service. Such records shall be available for inspection by the patient after and upon appointment with a dentist. This shall not prohibit the transfer of a copy of records to the patient, or to an agreed designated consultant for ascertainment of facts, nor transfer of original records to another Texas dental licensee who will provide treatment to the patient. The transferring dentist shall retain a copy of the written record if such original transfer is made.

(e) [~~(f)~~] A dentist who leaves a location or practice, whether by retirement, sale, transfer, termination of employment or otherwise, shall either maintain all dental records belonging to him or her, make a written transfer of records to the succeeding dentist, or make a written agreement for the maintenance of records, and the State Board of Dental Examiners shall be notified within fifteen (15) days of any such event, giving full information concerning the dentists and location(s) involved. A maintenance of records agreement shall not transfer ownership of the dental records, but shall require: that the dental records be maintained in accordance with the laws of the State of Texas and the Rules of the State Board of Dental Examiners; and that the dentist(s) performing the service(s) recorded shall have access to and control of the records for purposes of inspection and copying. A transfer of records may be made by agreement at any time in an employment or other working relationship between a dentist and another entity. Such transfer of records may apply to all or any part of the dental records generated in the course of the relationship, including future dental records.

(f) [~~(g)~~]Dental records shall be made available for inspection and reproduction on demand by the officers, agents, or employees of the State Board of Dental Examiners. The patient's privilege against disclosure does not apply to the Board in a disciplinary investigation or proceeding under the Dental Practice Act.

(g) [~~(h)~~] A dentist shall furnish copies of dental records to a patient who requests his or her dental records. Requested copies including radiographs shall be furnished within thirty (30) days of the date of the request, provided however, that copies need not be released until payment of copying costs has been made. Records may not be withheld based on a past due account for dental care or treatment previously rendered to the patient.

(1) A dentist providing copies of patient dental records is entitled to a reasonable fee for copying which shall be no more than $25 for the first 20 pages and $0.15 per page for every copy thereafter.

(2) Fees for radiographs, which if copied by an radiograph [~~x-ray~~] duplicating service, may be equal to actual cost verified by invoice.

(3) Reasonable costs for radiographs duplicated by means other than by a radiograph [~~an x-ray~~] duplicating service shall not exceed the following charges:

(A) a full mouth radiograph series: $15.00;

(B) a panoramicradiograph [~~x-ray~~]: $15.00;

(C) a lateral cephalometric radiograph [~~cephalogram~~]: $15.00;

(D) a single extra-oral radiograph [~~x-ray~~]: $5.00;

(E) a single intra-oral radiograph [~~x-ray~~]: $5.00.

(4) State agencies and institutions will provide copies of dental health records to patients who request them following applicable agency rules and directives.

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 9, 2001.

TRD-200103901
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 463-6400

♦ ♦ ♦

PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

CHAPTER 161. GENERAL PROVISIONS

22 TAC §161.1

The Texas State Board of Medical Examiners proposes an amendment to §161.1, concerning general provisions. The amendment will update the Occupations Code cites and clarify responsibilities of certain board committees.

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

Ms. Shackelford also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be updated Occupations Code cites and clarification of certain board committees responsibilities. There will be no effect on small businesses. There will be no effect to individuals required to comply with the section as proposed.

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

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

The Occupations Code, §§152.009, 153.005, and 162.001 are affected by the amendment.

§161.1. Meetings.

(a) The board shall meet at least four times a year. It shall consider such matters as may be necessary.

(b) Special meetings shall be called by the president of the board or by resolution of the board or upon written request signed by three members of the board.

(c) It is a ground for removal from the board if a board member is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year. If the executive director of the board has knowledge that a potential ground

for removal exists due to a member's failure to attend an adequate number of regularly scheduled board meetings, the executive director shall notify the president of the board of the ground. The president shall then notify the governor that a potential ground for removal exists. A board member shall be considered to have been absent from a regularly scheduled board meeting if the member fails to attend at least a portion of either a full board session or a portion of a regularly scheduled committee meeting to which the member is assigned during such board meeting. Any dispute or controversy as to whether or not an absence has occurred shall be submitted to the full board for resolution by a majority vote after giving the purported absentee an opportunity to be heard and after allowing discussion by other members of the board.

(d) Board and committee meetings shall be conducted pursuant to the provisions of Robert's Rules of Order Newly Revised unless the board by rule adopts a different procedure.

(e) All elections and any other issues requiring a vote of the board shall be decided by a simple majority of the members present. A quorum for transaction of business by the board shall be one more than half the board's membership at the time of the meeting. If more than two candidates contest an election, and if no candidate receives a majority on the first ballot, a second ballot will be conducted between the two candidates receiving the highest number of votes.

(f) At a meeting of the board, the board shall elect from its membership a vice-president and secretary treasurer.

(g) The following are standing and permanent committees of the board, as established by the board in accordance with the Medical Practice Act. The responsibilities and authority of these committees include those duties and powers as set forth below and such other responsibilities and authority which the board may from time to time delegate to these committees. In order to handle the heavy workload of the Licensure Committee, the President of the Board or the Chairman of the Licensure Committee may divide the Licensure Committee into two subcommittees, each of whom will make recommendations to the Board.

(1) Disciplinary Process Review Committee:

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

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

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

(D) carry out the tasks and duties set forth in Chapter 187 of this title (relating to Procedure);

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

(2) Executive Committee:

(A) review agendum for board meetings;

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

(C) delegate tasks to other committees;

(D) take actions on matters of urgency that may arise between board meetings;

~~[(E) make recommendations concerning reactivation of licenses for physicians on retired status;]~~

(E) [~~(F)~~] review contract negotiations;

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

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

(3) Finance Committee:

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

(B) present budget needs to the Legislature and other state officials;

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

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

(4) Legislative/Long Range Planning Committee:

(A) study and make recommendations to the board regarding changes to the Medical Practice Act;

(B) review and make recommendations to the board regarding proposed legislative changes for the regulation of medicine;

(C) provide reports and recommendations to the board in regard to changes or proposed changes regarding the Medical Practice Act and the laws regulating the practice of medicine;

(D) establish communication with members of the Legislature;

(E) assist in the organization, preparation, and delivery of information and testimony to the Legislature and committees of the Legislature;

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

(G) study and make recommendations to the board regarding the role and responsibility of the board offices and committees;

(H) study and make recommendations to the board regarding the role and responsibility of individuals retained by the board;

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

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

(K) make recommendations to the board regarding matters brought to the attention of the legislative/long range planning committee.

(5) Licensure Committee:

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

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

(C) determine that the board approves each examination administered;

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

(E) report results of examinations to the board for its approval;

(F) be available for consultation with representatives of medical schools regarding issues related to performance on examinations;

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

(H) maintain communication with medical schools;

(I) be available for assistance with problems relating to medical school issues which may arise within the purview of the board;

(J) plan and make visits to medical schools at specified intervals, with the goal of promoting opportunities to meet with the students so that they may become aware of the board and its functions;

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

(L) study and make recommendations regarding documentation and verification of records from international medical schools;

(M) coordinate cooperative efforts with the Educational Commission for Foreign Medical Graduates;

(N) make recommendations concerning reactivation of licenses for physicians on retired status;

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

(6) Non-Profit Health Organizations Committee:

(A) review applications for approval and certification of non-profit health organizations pursuant to the Medical Practice Act, Tex. Occ. Code Ann. §162.001 [~~§5.01~~];

(B) review applications and reports for continued approval and certification of non-profit health organizations pursuant to the Medical Practice Act, Tex. Occ. Code Ann. §162.001 [~~§5.01~~] ;

(C) make initial determinations and recommendations to the board regarding approval, denial, revocation, decertification, or continued approval and certification of non-profit health organizations pursuant to the Medical Practice Act, Tex. Occ. Code Ann. §162.001[~~§5.01~~];

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

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

(7) Public Information/Physician Profile Committee:

(A) develop informational brochures for distribution to the public;

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

(C) exhibit display booths at conventions;

(D) study and make recommendations to the board regarding all aspects of public information or public relations;

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

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

(8) Standing Orders Committee:

(A) oversee and make recommendations to the board regarding any aspect of standing orders;

(B) review applications for acudetox specialist certification, make a determination of eligibility and report to the board its recommendations as provided by the Medical Practice Act;

(C) review and make recommendations to the board regarding board rules pertaining to standing orders, acudetox specialist certification, and continuing auricular acupuncture education;

(D) make recommendations to the board regarding issues concerning or referred by the Board of Acupuncture Examiners or other acupuncture issues;

(E) make recommendations to the board regarding issues concerning or referred by the Board of Physician Assistant Examiners;

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

(G) draft, revise, and propose written statements, guidelines, and newsletter articles pertaining to medical ethics;

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

(9) Telemedicine Committee:

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

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

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

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

(h) The board shall contract with an executive director to act as the chief executive and administrative officer of the board. The executive director's duties shall be to assist in conducting meetings of the board and to carry out other responsibilities as provided by the Medical Practice Act. The executive director shall be compensated as provided in the Appropriations Act. Any responsibilities or authority of the secretary-treasurer of the board described in any rules of the board may be exercised by the executive director unless the board assigns specific duties or prerogatives exclusively to the secretary-treasurer.

(i) To assist with meetings and functions of the board, the board may direct the executive director to employ a general counsel for the Texas State Board of Medical Examiners. He or she shall be a member of the State Bar of Texas, but may not be a lobbyist registered with the Office of the Secretary of State of Texas. No person required to register personally as a lobbyist representing physicians, health care entities, or health care related professions may be employed by the board in any capacity. The executive director or secretary-treasurer may employ, compensate, and provide for special hearings and meetings, administrative hearing officers, and other professionals as may be found necessary in the executive director's or secretary-treasurer's opinion to provide for legal services.

(j) The board shall authorize the executive director or secretary-treasurer to employ, compensate, and provide administrators, clerks, employees, consultants, professionals, and other persons as may be found necessary in the executive director's or secretary-treasurer's opinion, to carry out the duties related to meetings of the board and other provisions of the Medical Practice Act. The board shall authorize the executive director or secretary-treasurer to reimburse the previously mentioned persons for actual and necessary expenses, including investigation expenses, travel, and other incidental expenses incurred in the performance of official duties as determined by the executive director or secretary-treasurer.

(k) Meetings of the board and of its committees are open to the public unless such meetings are conducted in executive session pursuant to state law and the Medical Practice Act, Tex. Occ. Code Ann. §152.009 [~~Article 4495b~~]. In order that board meetings may be conducted safely, efficiently, and with decorum, members of the public shall refrain at all times from smoking or using tobacco products, eating, or reading newspapers and magazines. Members of the public may not engage in disruptive activity that interferes with board proceedings, including excessive movement within the meeting room, noise or loud talking, and resting of feet on tables and chairs. The public shall remain within those areas of the board's offices designated as open to the public. Members of the public shall not address or question board members during meetings unless recognized by the board's presiding officer pursuant to a published agenda item.

(l) Journalists have the same right of access as other members of the public to board meetings conducted in open session, and are also subject to the rules of conduct described in subsection (k) of this section. Observers of any board meeting may make audio or visual recordings of such proceedings conducted in open session subject to the following limitations. The board's presiding officer may request periodically that camera operators extinguish their artificial lights to allow excessive heat to dissipate. Camera operators may not assemble or disassemble their equipment while the board is in session and conducting business. Persons seeking to position microphones for recording board proceedings may not disrupt the meeting or disturb participants. Journalists may conduct interviews in the reception area of the board's offices or, at the discretion of the board's presiding officer, in the meeting room after recess or adjournment. No interviews may be conducted in the hallways of the board's offices. The board's presiding officer may exclude from a meeting any person who, after being duly warned, persists in conduct described in this subsection and subsection (k) of 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 July 9, 2001.

TRD-200103893

Jerry T. Walker
Interim Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 163. LICENSURE

22 TAC §§163.1, 163.9, 163.10

The Texas State Board of Medical Examiners proposes amendments to §§163.1, 163.9, and 163.10, concerning licensure. The proposal will update Occupation Code cites and clarify requirements relating to relicensure.

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

Ms. Shackelford also has determined that for each year of the first five years the sections as proposed is in effect the public benefit anticipated as a result of enforcing the sections will be updated Occupations Code cites and clarification of requirements relating to relicensure. There will be no effect on small businesses. There will be no effect to individuals required to comply with the sections as proposed.

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

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

The Occupations Code, §§152.002, 155.051, 156.005, 156.006, and 164.051 are affected by the amendments.

§163.1. Definitions.

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

(1) Acceptable approved medical school--A medical school or college located in the United States or Canada that was approved by the Board at the time the degree was conferred.

(2) Acceptable Unapproved medical school--A school or college located outside the United States or Canada that was not approved by the board at the time the degree was conferred but whose curriculum meets the requirements for an Unapproved medical school as determined by a committee of experts selected by the Texas Higher Education Coordinating Board.

(3) Affiliated Hospital--Affiliation status of a hospital with a medical school as defined by the Liaison Committee on Medical Education and documented by the medical school in its application for accreditation.

(4) Applicant--One who files an application as defined in this section.

(5) Application--An application is all documents and information necessary to complete an applicant's request for licensure including the following:

(A) forms furnished by the board, completed by the applicant:

(i) all forms and addenda requiring a written response must be printed in ink;

(ii) photographs must meet United States Government passport standards;

(B) a fingerprint card, furnished by the board, completed by the applicant, that must be readable by the Texas Department of Public Safety;

(C) all documents required under §163.5 of this title (relating to Licensure Documentation); and

(D) the required fee, payable by check through a United States bank.

(6) Eligible for licensure in country of graduation--An applicant must be eligible for licensure in the country in which the medical school is located except for any citizenship requirements.

(7) Examinations accepted by the board for licensure.

(A) United States Medical Licensing Examination (USMLE), with a score of 75 or better on each step, all steps must be passed within seven years;

(B) Federation Licensing Examination (FLEX), after July 1985, passage of both components within seven years with a score of 75 or better on each component;

(C) Federation Licensing Examination (FLEX), prior to June 1985, with a FLEX weighted average of 75 or better in one sitting;

(D) National Board of Medical Examiners Examination (NBME) or its successor all steps must be passed within seven years;

(E) National Board of Osteopathic Medical Examiners Examination (NBOME) or its successor all steps must be passed within seven years;

(F) Medical Council of Canada Examination (LMCC) or its successor, all steps must be passed within seven years;

(G) State board examination, before January 1, 1977, (with the exception of Florida, Virgin Islands, Guam, Tennessee Osteopathic Board or Puerto Rico after June 30, 1963); or

(H) One of the following examination combinations with a score of 75 or better on each part, level, component, or step, all parts, levels, components, or steps must be passed within seven years:

(i) FLEX I plus USMLE 3;

(ii) USMLE 1 and USMLE 2, plus FLEX II;

(iii) NBME I or USMLE 1, plus NBME II or USMLE 2, plus NBME III or USMLE 3;

(iv) NBME I or USMLE 1, plus NBME II or USMLE 2, plus FLEX II;

(v) NBOME I, plus NBOME II, plus FLEX II;

(vi) the NBOME Part I or COMLEX Level I and NBOME Part II or COMLEX Level II and NBOME Part III or COMLEX Level III.

(I) An applicant must pass each part of an examination within three attempts, except that an applicant who has passed all but one part of an examination within three attempts may take the remaining part of the examination one additional time.

(J) Notwithstanding subparagraph (I) of this paragraph, an applicant is considered to have satisfied the requirements of this section if the applicant:

(i) passed all but one part of an examination approved by the board within three attempts and passed the remaining part of the examination within five attempts;

(ii) is specialty board certified by a specialty board that:

(I) is a member of the American Board of Medical Specialties; or

(II) is approved by the American Osteopathic Association; and

(iii) completed in this state an additional two years of postgraduate medical training approved by the board.

(8) Examinations administered by the board for licensure--To be eligible for licensure an Applicant must sit for the Texas medical jurisprudence examination administered by the board and pass. A passing score is 75 or better on the Texas medical jurisprudence examinations. The board shall administer the Texas medical jurisprudence examination in writing at times and places as designated by the board.

(9) Full force--Applicants for licensure who possess a license in another jurisdiction must have it in full force and not restricted for cause, canceled for cause, suspended for cause or revoked. A physician with a license in full force may include a physician who does not have a current, active, valid annual permit in another jurisdiction because:

(A) that jurisdiction requires the physician to practice in the jurisdiction before the annual permit is current; or

(B) that jurisdiction requires the physician, prior to practicing in that jurisdiction, to hold a current professional liability insurance policy before the annual permit is current.

(10) Good professional character - An Applicant for licensure must not be in violation of or committed any act described in the Medical Practice Act, Tex. Occ. Code Ann. §164.051[~~§3.08~~].

(11) One-year training program--Applicants who are graduates of acceptable approved medical schools must successfully complete one year of postgraduate training approved by the board that is:

(A) accepted for certification by an American Specialty board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists; or

(B) accredited by one of the following:

(i) the Accreditation Council for Graduate Medical Education, or its predecessor;

(ii) the American Osteopathic Association;

(iii) the Committee on Accreditation of Preregistration Physician Training Programs, Federation of Provincial Medical Licensing Authorities of Canada;

(iv) the Royal College of Physicians and Surgeons of Canada; or

(v) the College of Family Physicians of Canada; or

(C) a postresidency program, usually called fellowship, for additional training in a medical specialty or subspecialty in a program approved by the Texas State Board of Medical Examiners.

(12) Requisite qualifications--An Applicant who is a graduate of an unapproved acceptable medical school who:

(A) has for the preceding five years been a licensee of another state or a Canadian province;

(B) is not the subject of a sanction imposed by or disciplinary matter pending in any state or Canadian province in which the Applicant is licensed to practice medicine; and

(C) is either specialty board certified by a board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists or successfully passes the Special Purpose Examination (SPEX).

(13) Substantially equivalent to a Texas medical school--A medical school or college located outside the United States or Canada must be an institution of higher learning designed to select and educate medical students; provide students with the opportunity to acquire a sound basic medical education through training in basic sciences and clinical sciences; to provide advancement of knowledge through research; to develop programs of graduate medical education to produce practitioners, teachers, and researchers; and to afford opportunity for postgraduate and continuing medical education. The school must provide resources, including faculty and facilities, sufficient to support a curriculum offered in an intellectual environment that enables the program to meet these standards. The faculty of the school shall actively contribute to the development and transmission of new knowledge. The medical school shall contribute to the advancement of knowledge and to the intellectual growth of its students and faculty through scholarly activity, including research. The medical school shall include, but not be limited to, the following characteristics:

(A) The facilities for basic sciences and clinical training (i.e., laboratories, hospitals, library, etc.) shall be adequate to ensure opportunity for proper education.

(B) The admissions standards shall be substantially equivalent to a Texas medical school.

(C) The basic sciences curriculum shall include the contemporary content of those expanded disciplines that have been traditionally titled anatomy, biochemistry, physiology, microbiology and immunology, pathology, pharmacology and therapeutics, and preventive medicine, as defined by the Texas Higher Education Coordinating Board.

(D) The fundamental clinical subjects, which shall be offered in the form of required patient-related clerkships, are internal medicine, obstetrics and gynecology, pediatrics, psychiatry, and surgery, as defined by the Texas Higher Education Coordinating Board.

(E) The curriculum shall be of at least 130 weeks in duration.

(F) All medical or osteopathic medical education received by the Applicant in the United States must be accredited by an accrediting body officially recognized by the United States Department of Education as the accrediting body for medical education leading to the doctor of medicine degree or the doctor of osteopathy degree in the United States. This subsection does not apply to postgraduate medical education or training.

(G) An applicant who is unable to comply with the requirements of subparagraph (F) of this paragraph is eligible for an unrestricted license if the Applicant:

(i) received such medical education in a hospital or teaching institution Sponsoring or participating in a program of graduate medical education accredited by the Accrediting Council for Graduate Medical Education, the American Osteopathic Association, or the Texas State Board of Medical Examiners in the same subject as the medical or osteopathic medical education if the hospital or teaching institution has an agreement with the applicant's school; or

(ii) is specialty board certified by a board approved by the Bureau of Osteopathic Specialists or the American Board of Medical Specialties.

(14) Three-year training program--Applicants who are graduates of unapproved medical schools must successfully complete three years of postgraduate training in the United States or Canada:

(A) accredited by one of the following:

(i) the Accreditation Council for Graduate Medical Education;

(ii) the American Osteopathic Association;

(iii) the Committee on Accreditation of Preregistration Physician Training Programs, Federation of Provincial Medical Licensing Authorities of Canada;

(iv) the Royal College of Physicians and Surgeons of Canada;

(v) the College of Family Physicians of Canada; and

(vi) all programs approved by the board after August 25, 1984; or

(B) a board-approved program for which a Faculty Temporary Permit was issued; or

(C) a postresidency program, usually called fellowship, for additional training in a medical specialty or subspecialty in a program approved by the Texas State Board of Medical Examiners.

(15) Unapproved medical school--A school or college located outside the United States or Canada that was not approved by the board at the time the degree was conferred.

§163.9. State Health Agency Temporary License.

An applicant may elect to apply for a state health agency temporary license in lieu of licensure.

(1) The executive director of the board may issue such a temporary license to an applicant:

(A) who holds a valid license in another state or Canadian province on the basis of an examination, that is accepted by the board for licensure;

(B) who has passed the Texas medical jurisprudence examination;

(C) whose application has been filed, processed, and found to be in order. The application shall be complete in every detail with the exception of compliance with §163.4(c)(2) of this title (relating to Procedural Rules for all Licensure Applicants); and

(D) who holds a salaried, administrative, or clinical position with an agency of the State of Texas.

(2) The state health agency temporary license shall be requested by the chief administrative officer of the employing state agency and shall be issued exclusively to that agency. The chief administrative officer shall state whether the temporary license is for a:

(A) clinical position. This temporary license will be valid for a one-year period from the date of issuance and will not be renewable. The temporary license is revocable at any time the board deems necessary. To practice beyond one year, the holder of the temporary license must fully comply with §163.4(c)(2) of this title (relating to Procedural Rules for all Licensure Applicants). During the period that the state health agency clinical temporary license is in effect, the physician will be supervised by a licensed staff physician who will regularly review the temporary license holder's skill and performance. This temporary license will be marked "clinical"; or

(B) administrative non-clinical position. This temporary license will be valid for a one-year period from the date of issuance; however, it is revocable at any time the board deems necessary. The temporary license shall automatically expire one year after the date of issuance but may be re-issued annually at the request of the chief administrative officer of the employing state agency and at the discretion of the Texas State Board of Medical Examiners. The holder of a state health agency temporary license, not designated as clinical, shall not practice medicine as that term is defined in the Medical Practice Act, Tex. Occ. Code Ann. §151.002[~~Texas Civil Statutes, Article 4495b, section 1.03(12)(A) and (B)~~]. This temporary license will be marked "administrative."

§163.10. Relicensure.

(a) If a physician's annual registration permit[~~license~~] has been expired for one year due to failure to submit an application for registration and annual registration fee, it is considered to have been canceled, unless an investigation is pending, and the physician may not renew the annual registration permit[~~license~~]. The physician may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(1) The examinations required by this section are:

(A) the Texas jurisprudence examination; and

(B) SPEX, unless the Applicant:

(i) has passed a licensure examination or has obtained specialty certification, recertification, or passed an examination of continued demonstration of qualifications by a board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists within the preceding ten years; or

(ii) has been in a training program approved by the board within six months prior to application for relicensure.

(2) The additional requirements for this new license shall be as required within the following sections:

(A) Section 163.2 of this title (relating to Licensure for United States and Canadian Medical School Graduates);

(B) Section 163.3 of this title (relating to Licensure for Graduates of Unapproved Medical Schools);

(C) Section 163.4 of this title (relating to Procedural Rules for all Licensure Applicants); and

(D) Section 163.5 of this title (relating to Licensure Documentation).

(b) A person may qualify for renewal of his or her original license without reexamination if that person's license is considered canceled for less than two years.[~~person:~~]

[~~(1) held a license previously in this state;~~]

[~~(2) moved to another state;~~]

[~~(3) practiced in that other state for not more than two years since the expiration of his or her Texas license; and~~]

[~~(4) files an application for relicensure under subsection (a)(2) of 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 July 9, 2001.

TRD-200103894
Jerry T. Walker
Interim Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 166. PHYSICIAN REGISTRATION

22 TAC §§166.2 - 166.4, 166.6

The Texas State Board of Medical Examiners proposes amendments to §§166.2-166.4, and 166.6, concerning physician registration. The proposal will update Occupation Code cites and clarify which board committee is responsible for considering a physician's request to return to active status from retired status.

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

Ms. Shackelford also has determined that for each year of the first five years the sections as proposed is in effect the public benefit anticipated as a result of enforcing the sections will be updated Occupations Code cites and clarification of which board committee is responsible for considering a physician's request to return to active status from retired status. There will be no effect on small businesses. There will be no effect to individuals required to comply with the sections as proposed.

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

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

The Occupations Code, §§156.001, 156.002, 156.003, 156.004, 156.005, 156.006, 156.007, 156.008, 156.009, 156.051, 156.052, 156.053, 156.054, 156.055, 164.051, 164.052, and 164.053 are affected by the amendments.

§166.2. Continuing Medical Education.

(a) As a prerequisite to the annual registration of a physician's license, 24 hours of continuing medical education (CME) are required to be completed in the following categories:

(1) At least one-half of the hours are to be from formal courses that are:

(A) designated for AMA/PRA Category 1 credit by a CME sponsor accredited by the Accreditation Council for Continuing Medical Education or a state medical society recognized by the Committee for Review and Recognition of the Accreditation Council for Continuing Medical Education;

(B) approved for prescribed credit by the American Academy of Family Physicians;

(C) designated for AOA Category 1-A credit required for osteopathic physicians by an accredited CME sponsor approved by the American Osteopathic Association; or

(D) approved by the Texas Medical Association based on standards established by the AMA for its Physician's Recognition Award.

(2) Beginning with annual registrations in 1999, at least one of the formal hours of CME which are required by paragraph (1) of this subsection must involve the study of medical ethics and/or professional responsibility. Whether a particular hour of CME involves the study of medical ethics and/or professional responsibility shall be determined by the organizations which are enumerated in paragraph (1) of this subsection as part of their course planning.

(3) The remaining hours may be composed of informal self-study, attendance at hospital lectures or grand rounds not approved for formal CME, or case conferences and shall be recorded in a manner that can be easily transmitted to the board upon request.

(b) A physician must report on the annual registration form if she or he has completed the required continuing medical education during the previous year. A licensee may carry forward CME credit hours earned prior to an annual registration report which are in excess of the 24-hour annual requirement and such excess hours may be applied to the following years' requirements. A maximum of 48 total excess credit hours may be carried forward and shall be reported according to the categories set out in subsection (a) of this section. Excess CME credit hours of any type may not be carried forward or applied to an annual report of CME more than two years beyond the date of the annual registration following the period during which the hours were earned.

(c) A licensee shall be presumed to have complied with this section if in the preceding 36 months the licensee becomes board certified or recertified in a medical specialty and the medical specialty program meets the standards of the American Board of Medical Specialties, the American Medical Association, the Advisory Board for Osteopathic Specialists and Boards of Certification, or the American Osteopathic Association. This provision exempts the physician from all CME requirements, including the requirement for one hour involving the study of medical ethics and/or professional responsibility, as outlined in subsection (a)(2) of this section, and this exemption is valid for one annual renewal period only.

(d) A physician may request in writing an exemption for the following reasons:

(1) catastrophic illness;

(2) military service of longer than one year's duration outside the state;

(3) medical practice and residence of longer than one year's duration outside the United States; or

(4) good cause shown on written application of the licensee that gives satisfactory evidence to the board that the licensee is unable to comply with the requirement for continuing medical education.

(e) Exemptions are subject to the approval of the executive director/medical director and must be requested in writing at least 30 days prior to the expiration date of the license.

(f) A temporary exemption under subsection (d) of this section may not exceed one year but may be renewed annually, subject to the approval of the board.

(g) Subsection (a) of this section does not apply to a licensee who is retired and has been exempted from paying the annual registration fee under §166.3 of this title (relating to Retired Physician Exception).

(h) This section does not prevent the board from taking disciplinary action with respect to a licensee or an applicant for a license by requiring additional hours of continuing medical education or of specific course subjects.

(i) The board may require written verification of both formal and informal credits from any licensee within 30 days of request. Failure to provide such verification may result in disciplinary action by the board.

(j) Physicians in residency/fellowship training or who have completed such training within six months prior to their renewal application will satisfy the requirements of subsection (a)(1) and (2) of this section by their residency or fellowship program.

(k) Unless exempted under the terms of this section, a physician licensee's apparent failure to obtain and timely report the 24 hours of CME as required and provided for in this section shall result in nonrenewal of the license until such time as the physician obtains and reports the required CME hours; however, the executive director of the board may issue to such a physician a temporary license numbered so as to correspond to the nonrenewed license. Such a temporary license shall be issued at the direction of the executive director for a period of no longer than 90 days. A temporary license issued pursuant to this subsection may be issued to allow the board to verify the accuracy of information related to the physician's CME hours and to allow the physician who has not obtained or timely reported the required number of hours an opportunity to correct any deficiency so as not to require termination of ongoing patient care.

(l) The fee for issuance of a temporary license pursuant to the provisions of this section shall be in the amount specified for temporary licenses under §175.1 of this title (relating to Fees); however, the fee need not be paid prior to the issuance of the temporary license, but shall be paid prior to the renewal of a permanent license.

(m) CME hours which are obtained to comply with the CME requirements for the preceding year as a prerequisite for licensure renewal, shall first be credited to meet the CME requirements for the previous year. Once the previous year's CME requirement is satisfied, any additional hours obtained shall be credited to meet the CME requirements for the current year.

(n) An intentionally false report or intentionally false statement to the board by a licensee regarding CME hours reportedly obtained shall be a basis for disciplinary action by the board pursuant to the Act, Tex. Occ. Code Ann. §§164.051 - .053[~~§§3.08(1), (4), (5), 4.01, and 4.12~~]. A licensee who is disciplined by the board for such a violation may be subject to the full range of actions authorized by the Act including suspension or revocation of the physician's medical license, but in no event shall such action be less than an administrative penalty of $500 and a public reprimand.

(o) Administrative penalties for failure to timely obtain and report required CME hours may be determined by the Disciplinary

Process Review Committee of the board as provided for in §187.39 of this title (relating to Administrative Penalties).

(p) Failure to obtain and timely report the CME hours for renewal of a license shall subject the licensee to a monetary penalty for late registration in the amount set forth in §175.2 of this title (relating to Penalties). Any temporary licensure fee and any administrative penalty imposed for failure to obtain and timely report the 24 hours of CME required for renewal of a license shall be in addition to the applicable penalties for late registration or renewal as set forth in §175.2 of this title (relating to Penalties).

§166.3. Retired Physician Exception.

The annual registration fee shall apply to all physicians licensed by the board, whether or not they are practicing within the borders of this state, except retired physicians.

(1) To become exempt from the annual registration fee due to retirement:

(A) the physician's current license must be active and in good standing;

(B) the physician must request in writing on a form prescribed by the board for his or her license to be placed on official retired status.

(2) The following restrictions shall apply to physicians whose licenses are on official retired status.

(A) The physician must not engage in clinical activities or practice medicine in any state.

(B) The physician must not prescribe or administer drugs to anyone, nor may the physician possess a Drug Enforcement Administration or Texas controlled substances registration.

(C) The physician's license may not be endorsed to any other state.

(3) A physician whose license has been placed on official retired status must obtain the approval of the board before returning to active status by submitting a written request to the attention of the Permits Department of the board which indicates the following:

(A) the physician's Texas medical license number;

(B) current mailing address;

(C) proposed practice location;

(D) intended type of medical practice;

(E) length of retired status;

(F) any other medical licenses held;

(G) any condition which adversely affects the physician's ability to practice medicine with reasonable skill and safety;

(H) any current specialty board certifications; and

(I) any formal or informal continuing medical education obtained during the period of retired status.

(4) The request of a physician seeking a return to active status whose license has been placed on official retired status for two years or longer shall be submitted to the Licensure [~~Executive~~] Committee of the board for consideration and a recommendation to the full board for approval or denial of the request. After consideration of the request and the recommendation of the Licensure [~~Executive~~] Committee, the board shall grant or deny the request subject such conditions which the board determines are necessary to adequately protect the public including but not limited to passage of the Special Purpose Examination (SPEX), passage of the Medical Jurisprudence Examination, and/or passage of a specialty board certification examination.

(5) The request of a physician seeking a return to active status whose license has been placed on official retired status for less than two years may be approved by the executive director of the board or submitted by the executive director to the Licensure [~~Executive~~] Committee for consideration and a recommendation to the full board for approval or denial of the request. In those instances in which the executive director submits the request to the Licensure [~~Executive~~] Committee of the board, the Licensure [~~Executive~~] Committee shall make a recommendation to the full board for approval or denial. After consideration of the request and the recommendation of the Licensure [~~Executive~~] Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public including but not limited to passage of the Special Purpose Examination (SPEX), passage of the Medical Jurisprudence Examination, and/or passage of a specialty board certification examination.

(6) In evaluating a request to return to active status, the Licensure [~~Executive~~] Committee or the full board may require a personal appearance by the requesting physician at the offices of the board, and the full board may require a physical or mental examination by one or more physicians or other health care providers approved in advance in writing by the executive director, the secretary-treasurer, the executive committee, or other designee(s) determined by majority vote of the board.

§166.4. Renewal of Expired License.

(a) If a physician's license has expired, the physician may renew the license without monetary penalty during the first 30 days following expiration.

(b) If a physician's license has been expired for longer than 30 days, but less than 91 days, the physician may renew the license by submitting a completed annual registration form and paying to the board the required renewal fee and a fee that is one-half of the annual registration fee as established by the board under the Medical Practice Act, Tex. Occ. Code Ann. §156.005(a)[~~§3.10(b)(7)~~].

(c) If a physician's license has been expired for longer than 90 days but less than one year, the physician may renew the license by submitting a completed annual registration form and paying to the board all unpaid renewal fees and a fee that is equal to the annual registration fee as established by the board under the Medical Practice Act, Tex. Occ. Code Ann. §156.005(b) [~~§3.10(b)(7)~~].

(d) If a physician's license has been expired for one year, it is considered to have been canceled, unless an investigation is pending, and the physician may not renew the license.

§166.6. Exemption from Annual Registration Fee for Retired Physician Providing Voluntary Charity Care.

(a) A retired physician licensed by the board whose only practice is the provision of voluntary charity care shall be exempt from the annual registration fee. To qualify for and obtain such an exemption, a physician must truthfully certify under oath, on a form approved by the board, and received by the board at least 30 days prior to the expiration date of the license, that the following information is correct:

(1) the physician's practice of medicine does not include the provision of medical services for either direct or indirect compensation which has monetary value of any kind;

(2) the physician's practice of medicine is limited to voluntary charity care for which the physician receives no direct or indirect compensation of any kind for medical services rendered;

(3) the physician's practice of medicine does not include the provision of medical services to members of the physician's family; and

(4) the physician's practice of medicine does not include the self-prescribing of controlled substances or dangerous drugs.

(b) A physician who qualifies for and obtains an exemption from the annual registration fee authorized under this section shall obtain and report continuing medical education as required under the Medical Practice Act, Tex. Occ. Code Ann. §§ 156.051 - .055 [~~Article 4495b, §3.025~~] and §166.2 of this title (relating to Continuing Medical Education).

(c) A physician who qualifies for and obtains an exemption from the annual registration fee authorized under this section shall file an application for registration with the board on an annual basis as required under the Medical Practice Act, Tex. Occ. Code Ann. §§156.001-.009 [~~Article 4495b, §3.01~~].

(d) A retired physician who has obtained an exemption from the annual registration fee as provided for under this section, may be subject to disciplinary action under the Medical Practice Act, Tex. Occ. Code Ann. §164.053 [~~Article 4495b, §3.08(4)~~], based on unprofessional or dishonorable conduct likely to deceive, defraud, or injure the public if the physician engages in the compensated practice of medicine, the provision of medical services to members of the physician's family, or the self-prescribing of controlled substances or dangerous drugs.

(e) A physician who attempts to obtain an exemption from the annual registration fee under this section by submitting false or misleading statements to the board shall be subject to disciplinary action pursuant to the Medical Practice Act, Tex. Occ. Code Ann. §164.052(a)(1) [~~Article 4495b, §3.08(4)~~], in addition to any civil or criminal actions provided for by state or federal law.

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 9, 2001.

TRD-200103895
Jerry T. Walker
Interim Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 167. REINSTATEMENT AND REISSUANCE

The Texas State Board of Medical Examiners proposes amendments to §§167.1, 167.2, and 167.4-167.6, the repeal of §167.3, and new §§167.3, 167.7, and 167.8, concerning reinstatement. The proposal will update Occupation Code cites and clarify criteria to be considered when determining whether or not to reinstate a medical license following suspension or to reissue a license following revocation.

Michele Shackelford, Assistant General Counsel, Texas State Board of Medical Examiners, has determined that there will be a fiscal impact for the first five-year period the sections are in effect. Due to the changes in the procedure for reissuing a license following revocation, there will be an increase to those persons required to comply of $450 for the application fee. Further impact to those individuals would be dependent upon the physician's individual qualifications. Revenue increase to the state is estimated at $1350 per fiscal year.

Ms. Shackelford also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be updated Occupation Code cites and clarification in the criteria to be considered when determining whether or not to reinstate a medical license following suspension or to reissue a license following revocation.

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

22 TAC §§167.1 - 167.8

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

The Occupations Code, §§164.003, 164.007, 164.009, 164.101, 164.102, 164.151, 164.152, 164.153, and 164.154 are affected by the amendments.

§167.1. Reinstatement or Reissuance of Medical License Following Suspension or Revocation [~~Cancellation for Cause~~].

(a) Reinstatement of Medical License Following Suspension.[~~The applicant must complete in every detail the application for reinstatement of license for cause, including payment of the required application fee.~~]

(1) [~~(b)~~]The applicant whose license has been suspended must appear before the board to [~~state the~~] request [~~for~~] reinstatement of license.

(2) A person may not apply for reinstatement of a license that was suspended before the first anniversary of the date on which the suspension became effective.

(3) Request [~~(c) Application~~]for reinstatement following suspension [~~cancellation for cause~~] cannot be considered more often than annually unless otherwise specified by Order of the Board.

(b) Reissuance of License Following Revocation.

(1) An applicant whose license has been revoked must complete in every detail the application for reissuance of license, including payment of the required application fee.

(2) The applicant whose license has been revoked must appear before the board to request reissuance of license.

(3) A person may not apply for reissuance of a license that was revoked before the first anniversary of the date on which the revocation became effective.

(4) Application for reissuance following revocation cannot be considered more often than annually.

§167.2. Informal Disposition of Requests for Reinstatement.

Pursuant to the Medical Practice Act, §§154.006, 164.003 and 164.151-.154 [~~§§4.02, 4.025, and 4.10~~], and the Administrative Procedure Act, Government Code, §2001.056, the following rules shall apply to informal dispositions of any requests for reinstatement of a medical license following suspension [~~cancellation for cause, or of any contested case~~].

(1) The board may make an informal disposition of any request for reinstatement of a medical license following suspension [~~cancellation for cause, or of any contested case~~] by stipulation, agreed order, agreed settlement, consent order, or default.

(2) In the event the board makes such a disposition of a request for reinstatement of a medical license following suspension [~~cancellation for cause, or other matter~~], the disposition shall be in writing and, if appropriate, the writing shall be signed by the applicant.

(3) To facilitate the expeditious disposition of requests for reinstatement following suspension [~~cancellation for cause~~], the board may provide an applicant with an opportunity to attend an informal settlement conference.

(4) If the opportunity for an informal settlement conference is provided to an applicant, the applicant shall be provided with [~~a copy of the completed application for reinstatement of license for cause, by certified mail - return receipt requested, overnight or express mail, or registered mail, to the last mailing address of the applicant or the applicant's attorney on file with the board. The applicant shall also be provided with~~] written notice of the time, date, and location of the conference and the rules governing the proceeding by certified mail-return receipt requested, overnight or express mail, or registered mail, to the last mailing address of the applicant or the applicant's attorney on file with the board.

(5) One or more members of the board or a district review committee shall conduct the informal settlement conference as the board's representative(s). When a board member and a district review committee member conduct such a conference, the board member shall serve as chairman of the conference. In the event that the representatives consist of two board members or two district review committee members, the representative who has seniority on the board or committee shall serve as the chairman of the conference. In the event a public member of the board or a district review committee member serves as the only board representative in such a conference, a board consultant or the board's executive director, if the executive director is a physician, may serve as a medical advisor to the representative.

(6) The informal settlement conference shall allow:

(A) the board staff to address whether it is in the best interest of the public and the physician to return to the practice of medicine by presenting [~~to present~~] a synopsis of the allegations and the [~~facts the~~] basis of the suspension [~~cancellation~~] of the applicant's medical license, the facts which the board staff reasonably believes could be proven by competent evidence at a hearing, and whether the applicant has complied with the terms and conditions of the Order suspending his license if applicable;

(B) the applicant to reply to the board staff's presentation and present facts the applicant reasonably believes could be proven by competent evidence at a hearing;

(C) presentation of evidence by the staff and the applicant which may include medical and office records, x-rays, pictures, film recordings of all kinds, audio and video recordings, diagrams, charts, drawings, and any other illustrative or explanatory materials which in the discretion of the board's representative(s) are relevant to the proceeding;

(D) representation of the applicant by counsel;

(E) presentation of oral or written statements by the applicant or the applicant's counsel;

(F) presentation of oral or written statements or testimony by witnesses; and

(G) questioning of witnesses.

(7) The board's representative(s) shall exclude from the informal settlement conference all persons except witnesses during their testimony or presentation of statements, the applicant, the applicant's attorney or representative, board members, district review committee members, and board staff.

(8) During the informal settlement conference, the board's legal counsel or a representative of the Office of the Attorney General shall be present to advise the board's representative(s) or the board's employees.

(9) Except with the agreement of the applicant, during the deliberations of an appropriate settlement, the board's representative(s) at an informal settlement conference shall exclude the board staff which presented the allegations and facts related to the request for reinstatement following suspension [~~cancellation for cause~~], the applicant, the applicant's attorney or representative, any witnesses, and the general public. A board legal counsel or representative of the Office of the Attorney General shall be available to assist the representative(s) in their deliberations.

(10) After an informal settlement conference has been held, the staff of the board and the board's representative(s) shall be subject to the ex parte provisions of the Administrative Procedure Act with regard to contacts with board members and administrative law judges concerning the case.

[~~(11) To the extent possible, board members and district review committee members are required to serve as representatives at informal settlement conferences an equal number of times during a calendar year. In the event a board member or district review committee member has a complaint regarding the frequency or infrequency of service as a representative required for any member, the complaint may be routed in writing to the Director of Hearings for the board who shall then bring the complaint to the attention of the Disciplinary Process Review Committee for a resolution by a majority vote of the committee.~~]

(11) [~~(12)~~] At the informal settlement conference, the board's representative(s) will attempt to mediate disputed matters, and the board's representative(s) may call upon the board staff at any time for assistance in conducting the informal settlement conference.

(12) [~~(13)~~] The board's representative(s) shall prohibit or limit access to the board's investigative file by the applicant, the applicant's attorney or representative, any witnesses, and the public consistent with the Medical Practice Act, §164.007 [~~§4.05(c)~~].

(13) [~~(14)~~] Although notes may be made by the participants, mechanical or electronic recordings shall not be made of settlement discussions, mediation efforts, and the informal settlement conference.

(14) [~~(15)~~] The settlement conference shall be informal and shall not follow the procedures established under Chapter 187 of this title (relating to Procedure) for contested cases.

(15) [~~(16)~~] At the conclusion of the informal settlement conference, the board's representative(s) shall make recommendations for disposition of the request for reinstatement [~~following cancellation for cause~~] which may include deferral pending receipt of additional information, denial of the request, or in accordance with Board Rule 187.38 of this title (relating to Modification/Termination of Agreed Orders and Disciplinary Orders), a modification or termination of the agreed or disciplinary order under which the suspension was originally granted [~~a recommendation regarding the disposition of the case in the absence of a hearing under the provisions of applicable law concerning~~

~~contested cases~~]. The board's representative(s) may make recommendations to the applicant for resolution of the issues. Such recommendations may include any reasonable restrictions authorized by the Act and any other remedial actions in the public interest. These recommendations may be subsequently modified by the board's representative(s) or staff based on new information, a change of circumstance, or to expedite a resolution in the interest of protecting the public. These recommendations may be adopted, modified, or rejected by the duly convened board or through the duly authorized actions of the board's Disciplinary Process Review Committee.

(16) [~~(17)~~] The applicant may either accept or reject the settlement recommendations proposed by the board's representative(s). If the applicant accepts the recommendations, the applicant shall execute the settlement agreement in the form of an agreed order or affidavit as soon thereafter as is practicable. If the applicant rejects the proposed agreement, the applicant shall be given the option of requesting a formal hearing. If the applicant requests a formal hearing, the matter shall be referred to the board's staff for hearing, as described in Chapter 187, Subchapter C of this title (relating to Hearing).

(17) [~~(18)~~] Following acceptance and execution by the applicant of the settlement agreement, the agreement shall be submitted to the board for approval.

(18) [~~(19)~~] The following as stated in subparagraphs (A)-(C) of this paragraph relate to consideration of an agreed disposition by the board.

(A) Upon an affirmative majority vote, the board shall enter an order approving the proposed settlement agreement. The order shall bear the signature of the president of the board or of the officer presiding at such meeting and shall be referenced in the minutes of the board.

(B) If the board does not approve a proposed settlement agreement, the applicant shall be so informed and the matter shall be referred to the board staff for appropriate action to include further negotiation, further investigation, an additional informal settlement conference or a hearing.

(C) To promote the expeditious resolution of any request for reinstatement [~~following cancellation for cause~~], with the approval of the executive director, a member of the Executive Committee, or the Disciplinary Process Review Committee, board staff may present a proposed settlement agreement to the board for consideration and acceptance without conducting an informal settlement conference. If the board does not approve such a proposed settlement agreement, the applicant shall be so informed and the matter shall be referred to the board staff for appropriate action to include further negotiation, further investigation, an informal settlement conference or a hearing.

§167.3. Application for Reissuance of a Revoked License.

Pursuant to the Medical Practice Act, §164.151 and the Administrative Procedure Act, Government Code, §2001.056, the following rules shall apply to the dispositions of any applications for reissuance of a license to practice medicine.

(1) The board may make an informal disposition of any application for reissuance of a medical license following revocation by stipulation, agreed order, agreed settlement or default.

(2) In the event the board makes such a disposition of an application for reissuance of a medical license following revocation, the disposition shall be in writing and, if appropriate, the writing shall be signed by the applicant.

(3) To facilitate the expeditious disposition of an application for reissuance following revocation, the board may provide an applicant with an opportunity to be heard before a committee of the board.

(4) If an opportunity to appear before a committee of the board is provided to an applicant, the applicant shall be provided with a copy of the completed application for reissuance of license by certified mail - return receipt requested, overnight or express mail, or registered mail to the last mailing address of the applicant or the applicant's attorney on file with the board. The applicant shall also be provided with written notice of the time, date and location of the committee hearing and the rules governing the proceeding.

(5) The committee hearing shall allow:

(A) board staff to present a synopsis of the allegations and the facts that supported the revocation of the applicant's medical license, and to address whether it is in the best interest of the public and the physician to return to the practice of medicine;

(B) the applicant the opportunity to reply to the board staff's presentation and offer relevant evidence;

(C) representation of the applicant by counsel; and

(D) presentation of oral or written statements by the applicant or the applicant's counsel.

(6) At the conclusion of the applicant's presentation, the committee shall make a recommendation for disposition of the application for reissuance which may include:

(A) deferral pending receipt of additional information;

(B) denial of the request for reissuance;

(C) reissuance of an unrestricted license; or

(D) reissuance of a restricted license subject to any reasonable restrictions or conditions authorized by the Act and any other remedial actions found to be in the public's best interest.

(7) An applicant who is offered a restricted license may either accept or reject the recommendations proposed by the committee. If the applicant accepts the recommendations, the applicant shall execute the agreement in the form of an agreed order or affidavit as soon thereafter as is practicable. If the applicant rejects the proposed agreement, the applicant shall be given the option of requesting judicial review in the manner provided by §164.009 of the Act.

(8) Following acceptance and execution by the applicant of the agreement to restrictions on the applicant's license, the application for reissuance and the agreed order shall be submitted to the board for approval.

(A) Upon an affirmative majority vote, the board shall enter an order approving the proposed reissuance of licensure subject to restrictions or conditions. The order shall bear the signature of the president of the board or of the officer presiding at such meeting and shall be referenced in the minutes of the board.

(B) If the board does not approve the proposed order or otherwise denies the applicant's application for reissuance, the applicant shall be so informed and the board's decision shall be subject to judicial review in the manner provided by §164.009 of the Act.

§167.4. Best Interests of Physician.

Pursuant to §164.151 of the Act [~~§4.10 of Article 4495b, Texas Revised Civil Statutes~~], a physician may be reissued a medical license or reinstated to the practice of medicine only if the physician demonstrates that the reissuance or reinstatement is in the physician's best interests.

Best interests of the physician may include, but not be limited to, an assessment by the Board as to whether the physician:

(1) understands all issues of competency, technical, educational, training or ethical limitations as found in the Order which led to the revocation [~~,cancellation~~] or suspension of a license; and

(2) demonstrates that risk of further disciplinary proceedings for the revocation[~~, cancellation~~] or suspension of the license of the physician will be minimal or minimized if the physician is returned to the practice of medicine.

§167.5. Best Interests of the Public.

Pursuant to § 164.151 of the Act [~~§4.10 of Article 4495b, Texas Revised Civil Statutes~~], a physician may be reissued a medical license or reinstated to the practice of medicine only if the physician demonstrates that the reissuance or reinstatement is in the best interests of the public. Bests interests of the public may include, but not be limited to, an assessment by the Board as to whether the physician demonstrates:

(1) remediation of any competency, technical, educational, training or ethical limitations as found in the Order leading to revocation[~~, cancellation~~] or suspension of a license or any competency, technical, educational, training or ethical limitations found since the entry of the order;

(2) that risk of further disciplinary proceedings for the revocation[~~, cancellation~~] or suspension of the license will be minimal or minimized if the physician is returned to the practice of medicine and the public will adequately be protected, whether by probationary Order or other terms and conditions as agreed to by the physician or authorized by §§164.101-.102 of the Act [~~§ 4.11 and §4.12 of Article 4495b, Texas Revised Civil Statutes~~];

(3) that an adequate practice plan will be in place to reduce or eliminate the risk of further disciplinary proceedings by the Board; and

(4) continued medical competency such that the physician is able to provide the same standard of medical care as any applicant for a license under Chapter 163 of this title (relating to Licensure). Further, the Board shall require an applicant for reissuance [~~reinstatement~~] to meet the qualifications and requirements set forth in Chapter 163 of this title, including, but not limited to documentation of completion of the process of a current application for licensure.

§167.6. Final Action.

In any contested case proceeding regarding a reinstatement request [~~application~~], the Order revoking, [~~canceling~~] or suspending a license is a final action and shall not be subject to further litigation as to its findings of fact or conclusions of law, provided, however, that the Order may be admissible and relevant for purposes of establishing the basis for the original action and subsequent efforts after the Order by the physician to demonstrate reinstatement of the license is in the best interests of the public and the applicant physician.

§167.7. Judicial Review.

A decision by the board to deny a request for reinstatement or application for reissuance of a medical license is subject to review in the manner provided by §164.009 of the Act.

§167.8. Certain Persons Ineligible for Reinstatement or Reissuance of License.

Except on express determination based on substantial evidence contained in an investigative report indicating that reinstatement or reissuance of the license is in the best interest of the public and of the person whose license has been suspended or revoked, the board may not reinstate or reissue a license to a person who license has been suspended or revoked because of a felony conviction under:

(1) Chapter 481 or 483, Health and Safety Code;

(2) Section 485.033, Health and Safety Code; or

(3) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §801 et seq.)

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 9, 2001.

TRD-200103930
Jerry T. Walker
Interim Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 305-7016

♦ ♦ ♦

22 TAC §167.3

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

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

The Occupations Code, §§164.003, 164.007, 164.009, 164.101, 164.102, 164.151, 164.152, 164.153, and 164.154 are affected by the repeal.

§167.3. Reinstatement of Drug Enforcement Agency Registration Following Surrender for Cause.

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 9, 2001.

TRD-200103896
Jerry T. Walker
Interim Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 305-7016

♦ ♦ ♦

PART 27. BOARD OF TAX PROFESSIONAL EXAMINERS

CHAPTER 623. REGISTRATION AND CERTIFICATION

22 TAC §623.12

The Board of Tax Professional Examiners proposes an amendment to §623.12, Recertification. This amendment will requires registrants certified as an RTC to earn continuing education units for re-certification purposes and increases the number of continuing education units required by RTA or RPA for re-certification purposes.

David E. Montoya, Executive Director of the Board of Tax Professional Examiners, has determined that for the first five-year period the rule is in effect there will be no effect on state or local government.

Mr. Montoya has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be none. There will be no effect on small businesses. The probable economic cost to persons required to comply with the amendment will be zero because registrants are already earning continuing education units in excess of what is required and the amendment does not require the state to do or not do anything that is already being done.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on August 20, 2001. Comments should be addressed to David E. Montoya, Executive Director, Texas State Board of Tax Professional Examiners, 333 Guadalupe, Tower II, Suite 520, Austin, Texas 78701 or faxed to his attention at (512) 305-7304.

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

The amendment is proposed under the authority of Texas Civil Statutes Art 8885 Property Taxation Professional Certification Act, which provide the Board of Tax Professional Examiners with the authority to promulgate rules consistent with the Statute.

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

§623.12. Recertification.

(a) Certification as a registered professional appraiser (RPA) or as a registered Texas assessor/collector (RTA) or registered Texas Collector (RTC) must be renewed on the fifth anniversary date of certification and on each fifth anniversary of recertification so long as the registrant is employed under conditions which require registration with the board. To be recertified as an RPA or an RTA or an RTC the registrant must:

(1) be active in the field of appraising or assessing/collecting or collecting, and renew registration annually with the board for a period of five years (or periods totaling five years) from the date of certification or the date of the last recertification; and

(2) RPA or RTA will be awarded not less than 75 [~~60~~] continuing education units (CEUs) during that five-year period. RTC be awarded not less than 25 continuing education units (CEUs) during that five-year period.

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

(e) All evidence of passing or auditing an education course must be in the form of a certificate, official letter, or transcript entry pertaining to the individual registrant. Group rosters shall not be accepted for education courses. Rosters [~~However, only rosters~~] will be accepted by the board for seminars, workshops, and other noncourse, unexamined group activities. For such an activity, the activity sponsor must submit a consolidated roster on board forms and in accordance with board procedures.

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 6, 2001.

TRD-200103868
David E. Montoya
Executive Director
Board of Tax Professional Examiners
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 305-7300

22 TAC §623.14

The Board of Tax Professional Examiners proposes an amendment to §623.14, Certification and Recertification: General. This amendment adjust time requirements for retakes of failed board examination.

David E. Montoya, Executive Director of the Board of Tax Professional Examiners, has determined that for the first five-year period the rule is in effect there will be no effect on state or local government.

Mr. Montoya has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be none. There will be no effect on small businesses. The probable economic cost to persons required to comply with the amendment will be zero because the amendment merely provides more time between examination.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on August 20, 2001. Comments should be addressed to David E. Montoya, Executive Director, Texas State Board of Tax Professional Examiners, 333 Guadalupe, Tower II, Suite 520, Austin, Texas 78701 or faxed to his attention at (512) 305-7304.

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

The amendment is proposed under the authority of Texas Civil Statutes Art 8885 Property Taxation Professional Certification Act, which provide the Board of Tax Professional Examiners with the authority to promulgate rules consistent with the Statute.

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

§623.14. Certification and Recertification: General.

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

(e) Reexamination of registrants shall be permitted as listed in paragraphs (1)-(4) of this subsection. All reexaminations shall be on application of the registrant.

(1) Class III examination (appraisal) of Class III examination (assessing/collecting). A registrant who fails the first time must be

reexamined within 120 [~~90~~] days of the date of the examination. A registrant who does not pass the Class III examination within four years of their initial application date [~~fails the second time~~], or does not retake the examination within the prescribed time period, shall have the registration cancelled and may apply for reregistration two years after the date of the last failure.

(2) Class III examination (collections). This is a certification examination for the collections field. A registrant who fails the first time must be reexamined within 120 [~~90~~] days of the date of the examination. A registrant who fails the second time must be reexamined within 120 [~~60~~] days of the date of the second examination. A registrant who fails the third time or who fails to take the second or third examination shall have the registration cancelled and may apply for reregistration two years after the date of the last failure.

(3) (No change.)

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

(j) All examinations shall be proctored by the executive director or designee [~~and by a member of the board designated by the board chairman when required by board policies~~].

(k) (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 July 6, 2001.

TRD-200103867
David E. Montoya
Executive Director
Board of Tax Professional Examiners
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 305-7300

♦ ♦ ♦

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS NATURAL RESOURCE CONVERSATION COMMISSION

CHAPTER 101. GENERAL AIR QUALITY RULES

SUBCHAPTER A. GENERAL RULES

30 TAC §101.27

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §101.27, Emissions Fees. The commission proposes these amendments to Chapter 101, General Air Quality Rules; Subchapter A, General Rules; and corresponding revisions to the state implementation plan in order to implement Senate Bill 1 (General Appropriations Act), Article VI (Natural Resources), Rider 30 (Appropriation: Operating Permit Fees) as passed by the 77th Texas Legislature, 2001 (SB 1, Article VI, Rider 30).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission collects operating permit fees (emissions fees) from sources that are subject to the permitting requirements of Title IV or V of the Federal Clean Air Act Amendments of 1990 as required by Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.0621, Operating Permit Fee. The current rule language in §101.27 only includes emissions during normal operations in the calculation of the total emissions from an account upon which the fee is based. Upset and maintenance emissions are not currently included in the basis for calculating the fee due. Senate Bill 1, Article VI, Rider 30 requires that these upset and maintenance emissions be included in the total emissions for each account. Funds generated by the inclusion of upset and maintenance emissions shall be used for enforcement and monitoring activities for air quality permitting, air quality assessment and planning, and enforcement and compliance support.

SECTION BY SECTION DISCUSSION

Section 101.27(c), concerning basis for fees, currently states that the fee applies to emissions during normal operations. These proposed amendments state that emissions during all operational conditions will be included in the fee basis. These proposed amendments also specifically state that all emission events and all emissions from them, including upset, maintenance, start-up, and shutdown conditions are to be included in the fee basis. The intent of these proposed amendments is to include the total of both reportable and non-reportable quantities under commission requirements related to upset and maintenance conditions.

The proposed amendments also add a sentence to clarify that the emissions fee basis is never less than the actual emissions at an account during the basis year.

The proposed amendments reformat the fee table, and delete the definition of "normal operations" which is no longer needed.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for each year of the first five-year period the proposed amendments are in effect, the commission will experience an increase in revenues estimated to be $1.1 million each year in air emissions fees. These revenues are dependent on the magnitude and number of upset and maintenance emissions events by facilities paying annual operating permit fees. There will be fiscal implications which are not anticipated to be significant, for units of state and local government which pay annual operating permit fees to the commission, as a result of administration or enforcement of the proposed amendments. The proposed amendments will require accounts that remit air emissions fees to the commission to pay emissions fees based on emissions resulting from upset, maintenance, start-up, and shutdown events, as well as allowable levels and/or actual emissions at the account. Units of state and local government that experience these emission events are anticipated to pay an additional $500 to $1,000 per account annually to comply with the proposed amendments.

The proposed amendments are intended to implement SB 1, Article VI, Rider 30. This rider requires the commission to include upset and maintenance emissions when calculating the emissions fees. Emissions fees are currently determined by multiplying the current rate ($26 per emission ton) by the annual amount of emissions at an account. The fee basis has a maximum of 4,000 tons per regulated pollutant. The commission currently includes only emissions resulting from normal operations, not upset, maintenance, start-up, or shutdown emissions in the calculation of the fee basis. The inclusion of upset and maintenance

emissions into the calculation will increase the emissions fees for those accounts that experience these emission events.

The proposed amendments will affect new or existing accounts that are subject to the current rule which experience these emissions events. The agency estimates that there are approximately 1,800 accounts subject to the current rule. Of these, the agency estimates that less than 5% of the total number of accounts are owned and operated by units of state and local government. Examples of state and local government sites that could be affected by the proposed amendments include: landfills, boilers, and power plants at universities or municipalities.

Only accounts that experience upset, maintenance, start-up, or shutdown emissions will be required to pay additional fees. Based on analysis of 1998 emissions inventory data, the commission estimates there are less than ten accounts that are owned by units of state and local governments that will be impacted each year and required to pay the additional $500 - $1,000 to comply with the proposed amendments.

The commission's costs to enforce and monitor the inclusion of upset, maintenance, start-up, and shutdown emissions into an account's fee basis will be included within the estimated annual $1.1 million additional revenues received from emissions fees.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined for each of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of implementing the proposed amendments will be a potential decrease in emissions from the increased fees that may result from improved maintenance activities.

The proposed amendments are intended to implement SB 1, Article VI, Rider 30 which requires the commission to include upset and maintenance emissions when calculating emissions fees. Emissions fees are currently determined by multiplying the current rate ($26 per emission ton) by the annual amount of emissions from an account. The fee basis has a maximum of 4,000 tons per regulated pollutant. The commission currently includes only emissions resulting from normal operations, not upset, maintenance, start-up, or shutdown emissions in the calculation of the fee basis. The inclusion of upset and maintenance emissions into the calculation will increase the emissions fees for those accounts that experience these emission events.

The proposed amendments will affect new or existing accounts which experience these emissions. The commission estimates that there are approximately 1,700 nongovernmentally owned and operated accounts that are required to pay emissions fees. Examples of accounts affected by the proposed amendments include: oil refineries, chemical plants, large oil and gas operations, and steam electric power plants.

Only accounts that experience upset, maintenance, start-up, or shutdown emissions will be required to pay additional fees beyond what is currently owed to the commission. The commission estimates that the majority of accounts that experience upset, maintenance, start-up, or shutdown emissions will pay additional fees averaging between $3,000 and $5,000 annually per account to comply with the proposed amendments. There will be accounts, however, that may pay over $50,000 annually per account to comply with the amendments. These accounts include large oil refineries and electric generating facilities.

SMALL BUSINESS AND MICRO BUSINESS ASSESSMENT

There will be adverse economic effects, which are not anticipated to be significant, to small or micro-business as a result of the implementation of the proposed amendments. The proposed amendments require accounts that remit air emissions fees to the commission to include in the basis for the fee emissions from upset, maintenance, start-up, and shutdown conditions in addition to emissions from normal operations.

The proposed amendments will affect new or existing accounts which experience these emissions. The commission estimates that there are approximately 1,700 nongovernmentally owned and operated accounts that are required to pay emissions fees, some of which will be small or micro-businesses. Examples of small and micro-businesses that could be affected by the proposed amendments include: cotton seed oil mills; landfills; furniture manufacturing; asphalt batch plant operators; and small manufacturers with coatings operations.

The commission estimates that although there are small or micro-businesses affected by the proposed amendments, very few are likely to have upset, maintenance, start-up, or shutdown emissions. Only accounts that experience upset or maintenance emissions will be required to pay additional fees beyond what is currently owed to the commission. The commission estimates that less than 20 small and micro-businesses will experience these emissions each year. They may pay additional fees less than $100 annually on average to comply with the amendments.

The following is an analysis of the cost per employee for small or micro-businesses affected by the proposed amendments. Small and micro-business are defined as having fewer than 100 or 20 employees respectively. A small business that reports annual upset, maintenance, start-up, or shutdown emissions totaling five tons would incur additional costs of approximately $130 or $1.30 per employee. A micro-business that emits the same amount of upset, maintenance, start-up, or shutdown emissions would incur additional costs of approximately $130 or $6.50 per employee. The overall cost per employee will vary depending on the annual amount of upset, maintenance, start-up, or shutdown emissions, and the number of persons employed by an affected business. The cost per ton would be the same for larger businesses affected by the proposed rulemaking.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking considering the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed amendments do not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule that: 1) has the specific intent to protect the environment or reduce risks to human health from environmental exposure; and 2) may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. While the proposed amendments are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, there could be a benefit to the environment from both how the fees are utilized (for enforcement monitoring activities) and some deterrent effect for companies who desire to avoid increased fees, where possible. The intent of the proposed amendments is to include the total of both reportable and non-reportable quantities under commission requirements related to upset and maintenance conditions for the

purpose of calculating the total emission fees owed to the commission. While this may result in a larger amount of fees collected by the commission, fee collection does not provide protection for the environment or reduce risks to human health from environmental exposure. The commission does not believe that these rule amendments will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the proposed amendments do not change the existing provision "capping" the total fees owed to the agency.

Additionally, even if the proposed amendments did meet the definition of a major environmental rule, the requirement to conduct a regulatory analysis would not apply. A regulatory analysis is only required if an agency adopts a major environmental rule: 1) which exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) which exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) which exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) solely under the general powers of the agency instead of under a specific state law.

Title V of the Federal Clean Air Amendments of 1990 contains the statutory requirements for the federal operating permit program, which these fees are collected to support. The commission collects emissions fees under the specific authority in the TCAA, §382.0621, Operating Permit Fee. Senate Bill 1, Article VI, Rider 30 requires that upset and maintenance emissions be included in the total emissions for each account. The requirements of the federal operating permit program, 40 Code of Federal Regulations (CFR) Part 70, for which the commission has been granted interim approval, do not contain any requirement prohibiting the collection of fees for upset and maintenance emissions. Therefore, the proposed amendments do not exceed a standard set by federal law; do not exceed an express requirement of state law; do not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and are not proposed solely under the general powers of the agency instead of under a specific state law.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission reviewed the proposed amendments considering the requirements of Texas Government Code, Chapter 2007. The following assessment is provided in compliance with the requirements of Texas Government Code, Chapter 2007. The intent of the proposed amendments is to include the total emissions of both reportable and non-reportable quantities under commission requirements related to upset and maintenance conditions for the purpose of calculating the total emission fees owed to the commission. The expansion of the fees to include upset and maintenance conditions will meet the express requirement contained in SB 1, Article VI, Rider 30. There are no alternative actions that would meet the express requirement contained in SB 1, Article VI, Rider 30. The calculation of total emissions upon which fees must be based will not burden private real property, since they do not affect private real property, and therefore does not constitute a taking under the Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). The specific purpose of this rulemaking action is to include the total emissions of both reportable and non-reportable quantities under commission requirements related to upset and maintenance conditions for the purpose of calculating the total emission fees owed to the commission. The expansion of the fees to include upset and maintenance conditions will meet the express requirement contained in SB 1, Article VI, Rider 30. No new sources of air contaminants will be authorized as a result of these rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 CFR, to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR 51. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal on August 13, 2001, at 2:00 p.m., Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Building F, Room 2210, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, agency staff members will be available to discuss the proposal 30 minutes prior to the hearing, and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs, and who are planning to attend the hearing, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Lola Brown, 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 2001-030-101-AI. Comments must be received by 5:00 p.m., August 13, 2001. This proposal is available on the commission's web site at

http://www.tnrcc.state.tx.us/oprd/rules/propadopt.html. For further information, please contact Paul Henry at (512) 239-1527 or Alan Henderson at (512) 239-1510.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103 and §5.105, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under the Texas Health and Safety Code, TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under TCAA, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.0335, concerning Air Control Account, which authorizes the commission to collect money from any source to carry out its duties under TCAA; and §382.0621, concerning Operating Permit Fee, which requires the commission to adopt, charge, and collect an annual fee based on emissions for each source; and SB 1, Article VI, Rider 30, which requires upset and maintenance emissions be included in the calculation of fees collected under TCAA, §382.0621.

The proposed amendment implements TCAA, §§382.011, 382.012, and 382.0621; TWC, §5.103 and §5.105; and SB 1, Article VI, Rider 30.

§101.27. Emissions Fees.

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

(c) Basis for fees.

(1) The emissions fee shall be based on allowable levels and/or actual emissions at the account during the last full calendar year preceding the beginning of the fiscal year for which the fee is assessed. For purposes of this section, the term "allowable levels" are those limits as specified in an enforceable document such as a permit or Commission Order which are in effect on the date the fee is due. Under no circumstances shall the fee basis be less than the actual emissions at the account. The fee applies to the tonnage of regulated pollutant emissions [~~pollutants~~] at the account, including those emissions from point and fugitive sources [~~during normal operations~~]. The fee basis shall include emissions during all operational conditions. For upset, maintenance, start-up, and shutdown conditions, the basis shall include all events and all quantities. Although certain fugitive emissions are excluded for applicability determination purposes under subsection (a) of this section, all fugitive emissions must be considered for fee calculations after applicability of the fee has been established. A maximum of 4,000 tons of each regulated pollutant will be used for fee calculations except as provided in paragraph (2) of this subsection. The fee for each fiscal year is set at the following rates.
Figure: 30 TAC §101.27(c)(1)

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

(4) For purposes of this section, the term "regulated pollutant" shall include any VOC, any pollutant subject to the FCAA, §111, any pollutant listed as a hazardous air pollutant under the FCAA, §112, each pollutant for which a national primary ambient air quality standard has been promulgated (including carbon monoxide), and any other air pollutant subject to requirements under commission rules, regulations, permits, orders of the commission, or court orders. [~~The term "normal operations" shall mean all operations other than those documented under §101.6 of this title (relating to Upset Reporting and Recordkeeping Requirements) or §101.7 of this title (relating to Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements).~~]

(d) - (f) (No change).

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

Filed with the Office of the Secretary of State, on July 11, 2001.

TRD-200103976
Ramon Dasch
Acting Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 239-0348

♦ ♦ ♦

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES
SUBCHAPTER I. NON-ROAD ENGINES

The Texas Natural Resource Conservation Commission (commission) proposes the repeal of Subchapter I, Non-Road Engines; Division 2, Heavy Equipment Fleets - Compression-Ignition Engines; §§114.410, 114.412, 114.416, 114.417, and 114.419; Division 4, Construction Equipment Operating Limitations; §§114.432, 114.436, 114.437, and 114.439; Division 8, Houston/Galveston Heavy Equipment Fleets - Compression-Ignition Engines; §§114.470, 114.472, 114.476, 114.477, and 114.479; Division 9, Houston/Galveston Construction Equipment Operating Restrictions; §§114.482, 114.486, 114.487, and 114.489; and corresponding revisions to the state implementation plan (SIP). These repeals are being proposed as part of the implementation of Senate Bill (SB) 5 (relating to the Texas Emission Reduction Plan) of the 77th Texas Legislature, 2001.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED REPEALS

The rules under Divisions 2 and 4 being proposed for repeal were originally adopted on April 19, 2000 as part of the SIP control strategy for the Dallas/Fort Worth (DFW) ozone nonattainment area to achieve attainment with the national ambient air quality standard (NAAQS) for ozone. The rules under Divisions 8 and 9 being proposed for repeal were originally adopted on December 6, 2000 as part of the SIP control strategy for the Houston/Galveston (HGA) ozone nonattainment area to achieve attainment with the ozone NAAQS. The purpose of the rules in Divisions 4 and 9 was to establish a restriction on the use of construction and industrial equipment (non-road, heavy-duty diesel equipment rated at 50 horsepower (hp) and greater) as an air pollution control strategy to delay the emissions of nitrogen oxides (NO_x), a key ozone precursor, until later in the day, thus limiting ozone formation. By delaying the hours of operation during the effective time period, the NO_x emissions will not mix in the atmosphere with other ozone-causing compounds until later in the day. The critical time for the mixing (chemical reactions) of NO_x and volatile organic compounds (VOC) is early in the day, and thus, higher ozone levels occur most frequently on hot summer afternoons. By delaying the operation of the affected equipment, the NO_x emissions are less likely to mix in the atmosphere with other ozone-forming compounds until after the critical mixing time has

passed. Therefore, production of ozone will be stalled until later in the day when optimum ozone formation conditions no longer exist, ultimately minimizing the peak level of ozone produced.

The purpose of the rules in Divisions 2 and 8 was to achieve a reduction of ozone levels by requiring the owners or operators of diesel-powered construction, industrial, commercial, and lawn and garden equipment 50 hp and above to replace their affected equipment with newer Tier 2 and Tier 3 equipment. The rules would have required that the portion of the fleet with affected equipment in the range from 50 hp to 100 hp would be 100% Tier 2 by the end of the calendar year 2007. For the portion of the fleet in the 100 hp to 750 hp range, 50% of such equipment would be Tier 3 and the remaining Tier 2 by the end of the calendar year 2007. Finally, for the portion of the fleet greater than 750 hp, 100% of such equipment would be Tier 2 by the end of calendar year 2007. Tier 2 and Tier 3 equipment emit less NO_x and VOC than Tier 1 and unregulated equipment, therefore formation of ozone would be reduced.

Recently, the 77th Legislature of the State of Texas passed SB 5. Section 18 of SB 5 requires the commission to submit a SIP revision to the United States Environmental Protection Agency (EPA) deleting the requirements of these rules from the SIP no later than October 1, 2001. If adopted, these rule repeals will be submitted to EPA as a SIP revision, thus implementing this legislative requirement.

The diesel emission reduction incentive program contained in SB 5 will replace the existing rules and result in a similar level of emission reductions. Therefore, the NO_x reductions previously claimed in the DFW Attainment Demonstration SIP will, as a result of this rulemaking, be achieved through an alternate, but equivalent federally enforceable mechanism.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications to units of state or local government as a result of implementation of the proposed amendments, which are intended to repeal the construction equipment operating limitations rules and the accelerated purchase of Tier 2/Tier 3 diesel equipment rules for the DFW nonattainment area adopted by the commission in April 2000, and adopted for the HGA nonattainment area in December 2000.

Because the adopted April 2000 and December 2000 rules did not require emission reductions until 2004, the commission estimates there have been no significant fiscal expenditures to units of state and local government to comply with the adopted rules which are now proposed for repeal.

The existing rules would have: 1) prohibited owners and operators of diesel-powered construction and industrial equipment 50 hp and above from operating their affected equipment during the ozone season from 6:00 a.m. - 10:00 a.m. in DFW and 6:00 a.m. - noon in HGA beginning in 2005; and 2) required owner/operators in DFW and HGA to replace their diesel-powered construction, industrial, commercial, and lawn and garden equipment 50 hp and above with newer Tier 2 and Tier 3 equipment beginning in December 2004.

The existing rules would have affected units of state and local government with ongoing or future construction projects and those units that owned and operated diesel equipment 50 hp and larger used in the construction, general industrial, lawn and garden, utility, and material handling categories in the DFW and HGA ozone nonattainment areas. Examples of equipment in the construction category include backhoes, bore/drill rigs, cement mixers, crawler tractors, excavators, graders, off-highway trucks, pavers, paving equipment, plate compactors, rollers, rubber-tire dozers, rubber-tire loaders, scrapers, signal boards, skid-steer loaders, trenchers, and feller/bunchers. Examples of equipment in the general industrial category include concrete/industrial saws, crushing equipment, oil field equipment, refrigeration/air conditioning units, scrubber/sweepers, and rail maintenance equipment. Examples of equipment used in the lawn and garden category include garden tractors, rear engine mowers, and chipper/grinders. Examples of equipment in the utility category include air compressors, hydro-power units, pressure washers, pumps, generator units, irrigation units, and welders. Examples of equipment in the material handling category include aerial lifts, cranes, forklifts, and rough-terrain forklifts.

The commission estimated at the proposal of the original rules that it would have cost affected owners and operators in DFW an estimated $50 - $70 million a year (actual cost was only derived for the Tier 2/3 rules) and owners and operators in HGA an estimated $100 - $135 million a year ($70 - $93 million for the construction operating restrictions rules and $30 - $42 million for the Tier 2/3 rules) to comply with the rule requirements that are being repealed in this rulemaking action. The specific number of units of state and local government that would have had to comply with the existing rules, which are now proposed to be repealed, was not identified during the proposal period for these rules.

PUBLIC BENEFIT AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed repeals are in effect, the public benefit anticipated from the proposed rulemaking will be the implementation of certain provisions of SB 5, which directed the agency to delete the construction equipment operating restrictions rules and the accelerated purchase of Tier 2/Tier 3 diesel equipment rules from the SIP.

Because the existing rules, adopted in April 2000 and December 2000, did not require emission reductions until 2004, the commission estimates there have been no significant fiscal expenditures to individuals and businesses to comply with the existing rules which are now proposed to be repealed.

The existing rules would have: 1) prohibited owners and operators of diesel-powered construction and industrial equipment 50 hp and above from operating their affected equipment during the ozone season from 6:00 a.m. - 10:00 a.m. in DFW and 6:00 a.m. - noon in HGA beginning in 2005; and 2) require owner/operators in DFW and HGA to replace their diesel-powered construction, industrial, commercial, and lawn and garden equipment 50 hp and above with newer Tier 2 and Tier 3 equipment beginning in December 2004.

The existing rules would have affected individuals and businesses with ongoing or future construction projects and those entities that owned and operated diesel equipment 50 hp and larger used in the construction, general industrial, lawn and garden, utility, and material handling categories in the DFW and HGA ozone nonattainment areas.

The commission estimated at the proposal of the existing rules, that it would have cost affected owners and operators in DFW an estimated $50 - $70 million a year (actual cost was only derived

for the Tier 2/3 rules) and owners and operators in HGA an estimated $100 - $135 million a year ($70 - $93 million for the construction shift rules and $30 - $42 million for the Tier 2/3 rules) to comply with the rule requirements that are being repealed in this rulemaking action.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse economic effects are anticipated to any small or micro-businesses as a result of implementing the proposed changes, which would repeal the existing rules regarding heavy equipment fleets, compression-ignition engines and the rules regarding construction equipment operating restrictions which were adopted in April 2000 for the DFW ozone nonattainment area and in December 2000 for the HGA ozone nonattainment area.

Because the existing rules, adopted April 2000 and December 2000, did not require emission reductions until 2004, the commission estimates there have been no significant fiscal expenditures to small or micro-businesses to comply with the existing rules which are now proposed to be repealed.

The existing rules would have: 1) prohibited owners and operators of diesel-powered construction and industrial equipment 50 hp and above from operating their affected equipment during the ozone season from 6:00 a.m. - 10:00 a.m. in DFW and 6:00 a.m. - noon in HGA beginning in 2005; and 2) required owner/operators in DFW and HGA to replace their diesel-powered construction, industrial, commercial, and lawn and garden equipment 50 hp and above with newer Tier 2 and Tier 3 equipment beginning in December 2004.

The existing rules would have affected small and micro-businesses with ongoing or future construction projects and those entities that owned and operated diesel equipment 50 hp and larger used in the construction, general industrial, lawn and garden, utility, and material handling categories in the DFW and HGA ozone nonattainment areas.

The commission estimated at the proposal of the existing rules that it would have cost affected owners and operators in DFW an estimated $50 - $70 million a year (actual cost was only derived for the Tier 2/3 rules) and owners and operators in HGA an estimated $100 - $135 million a year ($70 - $93 million for the construction shift rules and $30 - $42 million for the Tier 2/3 rules) to comply with the rule requirements that are being repealed in this rulemaking action. The specific number of small or micro-businesses that would have had to comply with the existing rules, which are now proposed to be repealed, was not identified during the proposal period of these rules.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rules being proposed for repeal were intended to protect the environment and reduce risks to human health from environmental exposure to ozone and would have affected, in a material way, a sector of the economy, competition, and the environment.

This rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the rules proposed for repeal are being replaced by a reduction strategy which will result in NO_x emission reductions similar to the NO_x reductions that would have been achieved by the rules. These agreements will protect the environment and reduce risks to human health from environmental exposure to ozone. Therefore this rulemaking action will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for this proposed repeal of rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking is to repeal Subchapter I, Non-Road Engines; Division 2, Heavy Equipment Fleets - Compression-Ignition Engines; §§114.400, 114.412, 114.416, 114.417, and 114.419; Division 4, Construction Equipment Operating Limitations; §§114.432, 114.436, 114.437, and 114.439; Division 8, Houston/Galveston Heavy Equipment Fleets - Compression-Ignition Engines; §§114.470, 114.472, 114.476, 114.477, and 114.479; Division 9, Houston/Galveston Construction Equipment Operating Restrictions; §§114.482, 114.486, 114.487, and 114.489; and corresponding revisions to the SIP. These rules will be replaced by reductions resulting from voluntary and incentive programs authorized by SB 5 which will obtain the similar NO_x reductions necessary for the DFW and HGA ozone nonattainment areas to meet the NAAQS established under federal law. These repeals do not burden private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

When HGA and DFW rules regarding heavy equipment fleets, compression-ignition engines and the rules regarding construction equipment operating restrictions were originally adopted, the commission determined that the proposed rulemaking related to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed the previous adoption action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action was consistent with the applicable CMP goals and policies. The CMP goal applicable to the rulemaking action was the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). No new sources of air contaminants were authorized and NO_x air emissions were anticipated to be reduced as a result of these rules. The CMP policy applicable to the rulemaking action was the policy that commission rules comply with regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). The rulemaking action complied with 40 CFR 50, National Primary and Secondary Ambient Air Quality Standards, and 40 CFR 51, Requirements for Preparation, Adoption, and

Submittal Of Implementation Plans. Therefore, in compliance with 31 TAC §505.22(e), these rulemaking actions were determined to be consistent with CMP goals and policies.

The repeal of these rules will not invalidate the determination that the previous rulemaking actions were consistent with CMP goals and policies, because the rules proposed for repeal are being replaced by voluntary and incentive programs authorized by SB 5, which will result in NO_x emission reductions similar to the NO_x reductions that would have been achieved by the rules. Therefore, this rulemaking action is also consistent with CMP goals and policies.

Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

ANNOUNCEMENT OF HEARINGS

The commission will hold public hearings on this proposal on August 13, 2001 at 2:00 p.m., Houston City Hall Council Chambers, 2nd Floor, 901 Bagby, Houston; on August 14, 2001 at 9:00 a.m., Texas Natural Resource Conservation Commission, Building E, Room 201S, 12100 Park 35 Circle, Austin; and on August 14, 2001 at 2:00 p.m., North Central Texas Council of Governments, Transportation Board Room, 3rd Floor, 616 Six Flags Drive, Arlington. The hearings are structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to each hearing. Individuals may present oral statements when called upon in order of registration. A four-minute time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. Open discussion will not occur during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing, and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs, and who are planning to attend a hearing, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Ms. Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; faxed to (512) 239- 4808; or emailed to *terp@tnrcc.state.tx.us*. All comments should reference Rule Log Number 2001-025a-114-AI. Comments must be received by 5:00 p.m., August 14, 2001. The latest version of these proposed rules in Chapter114 and the SIP revision are available on the commission's web site at *http://www.tnrcc.state.tx.us/oprd/sips/terp.html*. For further information, please contact Bill Jordan at (512) 239-2583 or Alan Henderson at (512) 239-1510.

DIVISION 2. HEAVY EQUIPMENT FLEETS--COMPRESSION-IGNITION ENGINES

30 TAC §§14.410, 114.412, 114.416, 114.417, 114.419

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

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These repeals are also proposed under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; and §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. Finally, these proposed repeals are required as part of the implementation of SB 5, §18, Acts of the 77th Legislature, 2001.

These proposed repeals implement SB 5, §18.

§114.410. Definitions.

§114.412. Control Requirements.

§114.416. Reporting and Recordkeeping Requirements.

§114.417. Exemptions.

§114.419. Affected Counties.

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 11, 2001.

TRD-200103972
Ramon Dasch
Acting Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 239-0348

♦ ♦ ♦

DIVISION 4. CONSTRUCTION EQUIPMENT OPERATING LIMITATIONS

30 TAC §§114.432, 114.436, 114.437, 114.439

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

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These repeals are also proposed under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA; §382.011, which authorizes the

commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; and §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. Finally, these proposed repeals are required as part of the implementation of SB 5, §18, Acts of the 77th Legislature, 2001.

These proposed repeals implement SB 5, §18.

§114.432. Control Requirements.
§114.436. Recordkeeping Requirements.
§114.437. Exemptions.
§114.439. Affected Counties and Compliance Dates.

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

Filed with the Office of the Secretary of State, on July 11, 2001.

TRD-200103973
Ramon Dasch
Acting Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 239-0348

♦ ♦ ♦

DIVISION 8. HOUSTON/GALVESTON HEAVY EQUIPMENT FLEETS--COMPRESSION-IGNITION ENGINES

30 TAC §§114.470, 114.472, 114.476, 114.477, 114.479

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

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These repeals are also proposed under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; and §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. Finally, these proposed repeals are required as part of the implementation of SB 5, §18, Acts of the 77th Legislature, 2001.

These proposed repeals implement SB 5, §18.

§114.470. Definitions.
§114.472. Control Requirements.
§114.476. Reporting and Recordkeeping Requirements.
§114.477. Exemptions.
§114.479. Affected Counties.

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 11, 2001.

TRD-200103974
Ramon Dasch
Acting Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 239-0348

♦ ♦ ♦

DIVISION 9. HOUSTON/GALVESTON CONSTRUCTION EQUIPMENT OPERATING RESTRICTIONS

30 TAC §§114.482, 114.486, 114.487, 114.489

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

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These repeals are also proposed under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; and §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. Finally, these proposed repeals are required as part of the implementation of SB 5, §18, Acts of the 77th Legislature, 2001.

These proposed repeals implement SB 5, §18.

§114.482. Control Requirements.
§114.486. Recordkeeping Requirements.
§114.487. Exemptions.
§114.489. Affected Counties and Compliance Dates.

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

Filed with the Office of the Secretary of State, on July 11, 2001.

TRD-200103975
Ramon Dasch
Acting Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 239-0348

♦ ♦ ♦

SUBCHAPTER K. MOBILE SOURCE INCENTIVE PROGRAMS

The Texas Natural Resource Conservation Commission (commission) proposes new §§114.600 - 114.602 and 114.609 in new Division 1, On-Road Diesel Vehicle Purchase or Lease Incentive Program; and new §§114.610 - 114.612, 114.616, 114.618, and 114.619 in new Division 2, Light-Duty Motor Vehicle Purchase or Lease Incentive Program. These new sections and new divisions are being proposed in new Subchapter K, Mobile Source Incentive Programs, of Chapter 114 as part of the implementation of Senate Bill (SB) 5 (relating to the Texas Emission Reduction Plan), Acts of the 77th Texas Legislature, 2001.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The 77th Legislature adopted SB 5 establishing the Texas Emission Reduction Plan (TERP) which provides financial incentives for reducing emissions of on-road and non-road motor vehicles and equipment, grants for the development of new emission control technology, new building energy efficiency standards, and research and development programs. The program is funded through surcharges and fees established in the bill. Senate Bill 5 also required that the commission delete the operating restriction on construction equipment rules and the Tier 2/Tier 3 accelerated purchase rules on construction equipment from the Dallas/Fort Worth and Houston/Galveston state implementation plans and replace them with programs from SB 5. The SB 5 programs are estimated to achieve reductions in excess of the reductions expected from the rules that are being repealed. In accordance with SB 5, the state implementation plan will be revised to replace these rules with TERP.

The proposed rules will establish a state-wide incentive program for the purchase or lease of new on-road diesel vehicles and light-duty motor vehicles that meet emission standards more stringent than those required by federal requirements. The incentive for eligible on-road diesel vehicles will be the reimbursement of incremental costs to purchase the cleaner vehicle and the incentive for eligible light- duty motor vehicles will be an award of a specified dollar amount. Both incentives will be based on the emission standard to which the vehicle is certified. The implementation and administration of the new on-road diesel vehicle purchase or lease incentive program will be performed by the commission. However, implementation and administration of the incentive awards associated with the light-duty motor vehicle purchase or lease incentive program will be the responsibility of the state comptroller's office.

SECTION BY SECTION DISCUSSION

The proposed new Subchapter K includes two new divisions which will establish the rules concerning motor vehicle purchasing and leasing incentives. The proposed new Division 1 includes the proposed new on-road diesel vehicle purchase or lease incentive program rules found in the proposed new §§114.600 - 114.602, and 114.609. The proposed new Division 2 includes the proposed new light-duty motor vehicle purchase or lease incentive program rules found in the proposed new §§114.610 - 114.612, 114.616, 114.618, and 114.619.

The proposed new §114.600 contains definitions applicable to the on-road diesel vehicle purchase or lease incentive program rules. These definitions include: incremental costs, lease, lessee, motor vehicle, new on-road diesel vehicle, and on-road diesel. The definitions of motor vehicle and on-road diesel are as specified under SB 5, §1. The other definitions listed were added for clarity.

The proposed new §114.601 establishes the state-wide applicability of §§114.600, 114.602, and 114.609. All incentives are subject to the availability of funding for this program. Because the funding for these incentives is from surcharges which will be collected throughout the lifetime of the program, and because there are statutory caps on the amount of funding for this program, funding for incentives for eligible vehicles may be delayed or unavailable. Incentives will be funded in the order of the submission of a completed certification.

The proposed new §114.602 establishes the eligibility requirements for the on-road diesel vehicle purchase or lease incentive to reimburse the incremental costs of purchasing or leasing an on- road diesel vehicle that is certified by the United States Environmental Protection Agency (EPA) to meet an emission standard more stringent than that of a conventional on-road diesel vehicle. The proposed new §114.602 also specifies that only one incentive will be provided for each eligible new on-road diesel vehicle purchased or leased in the state and that the incentive shall be provided to the lessee and not to the purchaser if the on-road diesel vehicle is purchased for the purpose of leasing the on-road diesel vehicle to another person. In addition, the proposed new §114.602 specifies that the incentive for the lease of an eligible new on-road diesel vehicle must be prorated based on an eight-year lease term. This provision will likely prevent the excessive use of short term leases in acquiring incentive funding.

The proposed new §114.609 establishes the schedule of emission standards and incentive amounts from which the incremental cost reimbursement incentives will be based.

The proposed new §114.610 contains definitions applicable to the light-duty motor vehicle purchase or lease incentive program rules. These definitions include: bin or emissions bin, lease, lessee, light-duty motor vehicle, and new light-duty motor vehicle. The definitions of bin or emissions bin, light-duty motor vehicle, and motor vehicle are as specified under SB 5, §1. The other definitions listed were added for clarity.

The proposed new §114.611 establishes the state-wide applicability of §§114.610, 114.612, 114.616, 114.618, and 114.619. All incentives are subject to the availability of funding for this program. Because the funding for these incentives is from surcharges which will be collected during the pendency of the program, and because there are statutory caps on the amount of funding for this program, funding for incentives for eligible vehicles may be delayed or unavailable. Incentives established by these proposed rules will be funded in accordance with rules and procedures adopted by the state comptroller's office.

The proposed new §114.612 establishes the eligibility requirements for the new light-duty purchase or lease incentive for the purchase or lease of a new light-duty motor vehicle that is certified by the EPA to meet the Tier 2 - Bin 4, Bin 3, Bin 2, or Bin 1 emission standards or to an emissions standard that is at least as stringent. The proposed new §114.612 also specifies that only one incentive will be provided for each eligible new light-duty motor vehicle purchased or leased in the state and that the incentive shall be provided to the lessee and not to the purchaser if the new light-duty motor vehicle is purchased for the purpose

of leasing the light-duty motor vehicle to another person. In addition, the proposed new §114.612 specifies that the incentive for the lease of an eligible new light-duty motor vehicle must be prorated based on an four-year lease term. This provision will likely prevent the excessive use of short-term leases in acquiring incentive funding.

The proposed new §114.616 establishes the requirements for a list of eligible vehicles that vehicle manufacturers will be required to provide to the executive director, or his designee, at the beginning, but no later than July 1, of each year preceding the next new vehicle model year, beginning January 1, 2002. The information to be included on this list will provide the commission with sufficient data to verify the emission certification of vehicles listed. The proposed new §114.616 will also allow the manufacturer to supplement the list as necessary to include additional new light-duty motor vehicle models that the manufacturer intends to sell in this state during the model year. In addition, the proposed new §114.616 will require that all dealers and leasing agents of new light- duty motor vehicles statewide make copies of this list available to their prospective purchasers or lessees. This provision will help provide awareness of this incentive program to dealers state-wide and provide additional information to customers in making purchase selection decisions.

The proposed new §114.618 establishes the requirements for a vehicle emissions brochure that vehicle manufacturers will be required to publish by September 1 of each year and distribute to customers regarding the vehicles eligible to receive an incentive, beginning September 1, 2002. The dimensions of the brochure are also established by the proposed new §114.618 for the sake of uniformity in printing styles and so that the brochure may be easily recognized by prospective purchasers and lessees. The proposed new §114.618 will also require each manufacturer to submit a copy of the brochure to the executive director, or his designee, by September 1 of each year, beginning September 1, 2002. In addition, the proposed new §114.618 will require manufacturers that do not intend to sell new light-duty motor vehicles in the state that may be eligible for the incentive to publish a brochure that states a notice of that fact.

The proposed new §114.619 establishes the schedule of emission standards and corresponding incentive amounts from which the incentives will be based.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed amendments are in effect, there will be significant administrative costs to the commission to implement provisions in this rulemaking. There may be potential cost savings to units of state and local government that elect to participate in the voluntary incentive programs that will be implemented by the proposed amendments. Units of state and local government may receive incentives for purchases of cleaner on-road diesel vehicles in an amount not to exceed $25,000 per vehicle and incentives to purchase cleaner-running light-duty motor vehicles in an amount not to exceed $5,000 per vehicle. The incentives proposed in this rulemaking action would be available statewide.

The proposed amendments are intended to implement certain provisions of SB 5. Specifically, the bill directed the commission to establish a state-wide incentive program for the purchase or lease of new on-road diesel vehicles and light-duty motor vehicles that meet emission standards more stringent than those required by federal regulations. The incentive for eligible on-road diesel vehicles will be the reimbursement of the cost difference between purchasing a vehicle that meets current emission standards and purchasing a vehicle that meets the more stringent emission standards as specified in this rulemaking. The incentive for eligible light-duty motor vehicles will be an award of a specified dollar amount, both incentives will be based on the emission standard to which the vehicle is certified.

All diesel-powered motor vehicles with a gross vehicle weight rating (GVWR) over 10,000 pounds that are required to be registered for use on public highways are eligible for the incentives if the vehicle is certified by the EPA to an emission standard at least as stringent as specified in this rulemaking. Types of diesel-powered vehicles that would qualify for incentives include large step-vans (such as those used by the United Parcel Service (UPS)), large pickup trucks, 18-wheel trucks, and buses.

A wide range of light-duty motor vehicles would also qualify for the incentives statewide. All light-duty motor vehicles with a GVWR less than 10,000 pounds that are required to be registered for use on public highways are eligible for incentives if the vehicle is certified by the EPA to an emission standard at least as stringent as the Tier 2 - Bin 4, Bin 3, Bin 2, or Bin 1 emission standards. A Bin is a set of emission standards applicable to exhaust pollutants that get stricter the lower the Bin number. Vehicles that meet Bin 4 standards are capable of emitting 0.04 grams/mile of nitrogen oxides (NO_x) or less; Bin 3 vehicles can emit 0.03 grams/mile of NO_x or less; Bin 2 vehicles can emit 0.02 grams/mile of NO_x; and Bin 1 vehicles can emit 0.00 grams/mile NO_x (zero emission vehicle). Examples of light-duty vehicles that would qualify for incentives include: most cars, pickups, sport utility vehicles (SUV), and passenger vans.

Incentives for the purchase or lease of on-road diesel vehicles manufactured on or after January 1, 2001 until September 30, 2002 shall be based on the following emission standards: vehicles emitting 2.5 grams per brake horsepower-hour (g/bhp-hr) of NO_x or less, are eligible for up to $15,000; and vehicles emitting 1.5 g/bhp-hr or less, would be eligible for up to $25,000. For those on- road diesel vehicles manufactured on or after October 1, 2002 until September 30, 2006, the standards and incentives are as follows: vehicles emitting 1.2 g/bhp-hr of NO_x or less would be eligible for up to $15,000; and vehicles emitting 0.5 g/bhp-hr or less, would be eligible for up to $25,000.

Incentives for the purchase or lease of light-duty motor vehicles for model years 2003 through 2007 will be based on the following emission standards and incentive amounts: Bin 4 is eligible for $1,250; Bin 3 is eligible for $2,225; Bin 2 is eligible for $3,750; and Bin 1 is eligible for $5,000.

Senate Bill 5 established the TERP, providing financial incentives for reducing emissions of on- road and non-road motor vehicles and equipment, grants for the development of new emission control technology, new building energy efficiency standards, and research and development programs. The program is funded through newly created and increased fees and taxes established in the bill. Specifically, 10% of the registration fee for truck trailers and commercial vehicles statewide; 1% of the charge for each sale, lease, or rental of new or used construction equipment statewide; 2.5% of the total charge for every retail sale or lease of year 1996 and earlier on-road diesel motor vehicles with

a gross registered weight over 14,000 lbs; $225 fee on motor vehicles registering for the first time in Texas, except military personnel; and $10 fee per commercial motor vehicle inspection. The Comptroller has estimated that approximately $133 million would be generated by these fees and taxes and deposited into the TERP in 2002 with the amount increasing to $165 million by 2006. The TERP fund would be used to fund the incentives and grants for the various programs established by the bill and to pay for the administration of the program. The collection of these fees is not part of this rulemaking.

Owners and operators that register, purchase, or lease truck trailers, commercial vehicles, on- road diesel vehicles, construction equipment, and out-of-state vehicles would pay the fees to fund the TERP fund. The Comptroller has estimated that over 417,000 truck trailers and commercial vehicles, 440,000 out-of-state motor vehicles, and an unknown number of on-road diesel vehicles and construction equipment would be affected by the newly created and increased taxes and fees established by SB 5. Although units of state and local government may be affected by the increased charges on vehicles and equipment, the proposed amendments are intended to reduce the cost of acquiring cleaner- running vehicles.

The commission estimates that significant administrative costs will be required to implement the proposed amendments. The commission was appropriated an additional $1,125,401 in Fiscal Year (FY) 2002 and $966,402 in FY 2003 to administer the provisions of SB 5. The commission was also appropriated an additional $103,616,840 in FY 2002 and $109,439,810 in FY 2003 out of the TERP fund to be used as grants and incentives for the diesel emissions reduction program. In addition to the additional appropriations, the commission was authorized an additional five full-time equivalent personnel positions (FTE) to develop and manage the program.

PUBLIC BENEFIT AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments would be potentially reducing the amount of harmful emissions being emitted from motor vehicles and thereby improving the overall air quality of the state.

The proposed amendments are intended to implement certain provisions of SB 5, which directed the commission to establish a state-wide incentive program for the purchase or lease of new on-road diesel vehicles and light-duty motor vehicles that meet emission standards more stringent than those required by federal regulations. The incentive for eligible on-road diesel vehicles will be the reimbursement of the cost difference between purchasing a vehicle that meets current emission standards and purchasing a vehicle that meets the more stringent emission standards as specified in this rulemaking. The incentive for eligible light-duty motor vehicles will be an award of a specified dollar amount, both incentives will be based on the emission standard to which the vehicle is certified.

All diesel-powered motor vehicles with a GVWR over 10,000 pounds that are required to be registered for use on public highways are eligible for the incentives if the vehicle is certified by the EPA to an emission standard at least as stringent as specified in this rulemaking. Types of diesel- powered vehicles that would qualify for incentives include large stepvans (such as those used by UPS), large pickup trucks, 18-wheel trucks, and buses.

A wide range of light-duty motor vehicles would also qualify for the incentives statewide. All light-duty motor vehicles with a GVWR less than 10,000 pounds that are required to be registered for use on public highways are eligible for incentives if the vehicle is certified by the EPA to an emission standard at least as stringent as the Tier 2 - Bin 4, Bin 3, Bin 2, or Bin 1 emission standards. Example of light-duty vehicles that would qualify for incentives include: most cars, pickups, SUVs, and passenger vans.

Incentives for the purchase or lease of on-road diesel vehicles manufactured on or after January 1, 2001 until September 30, 2002 shall be based on the following emission standards: vehicles emitting 2.5 g/bhp-hr of NO_x or less, are eligible for up to $15,000; and vehicles emitting 1.5 g/bhp-hr or less, would be eligible for up to $25,000. For those on-road diesel vehicles manufactured on or after October 1, 2002 until September 30, 2006, the standards and incentives are as follows: vehicles emitting 1.2 g/bhp-hr of NO_x or less would be eligible for up to $15,000; and vehicles emitting 0.5 g/bhp-hr or less, would be eligible for up to $25,000.

Incentives for the purchase or lease of light-duty motor vehicles for model years 2003 through 2007 will be based on the following emission standards and incentive amounts: Bin 4 (0.04 grams/mile of NO_x) is eligible for $1,250; Bin 3 (0.03 grams/mile of NO_x) is eligible for $2,225; Bin 2 (0.02 grams/mile of NO_x) is eligible for $3,750; and Bin 1 (0.00 grams/mile of NO_x) is eligible for $5,000.

Senate Bill 5 established the TERP, which is funded through newly created and increased fees and taxes established in the bill. Owners and operators of truck trailers, commercial vehicles, on-road diesel vehicles, construction equipment, and out-of-state vehicles would pay the fees to fund the TERP. The Comptroller has estimated that over 417,000 truck trailers and commercial vehicles, 440,000 out- of-state motor vehicles, and an unknown number of on-road diesel vehicles and construction equipment would be affected by the newly created and increased taxes and fees established by SB 5. Although individuals and businesses will be affected by the increased charges on vehicles and equipment, the proposed amendments are intended to reduce the cost of acquiring cleaner-running vehicles.

The amount of incentives that can be provided annually is limited to what the commission is appropriated from the TERP fund. The commission was appropriated $103,616,840 for FY 2002, and $109,439,810 for FY 2003 to be used as grants and incentives for the diesel emissions reduction program. This funding will be used to provide incentives for the purchase or lease of new on-road diesel vehicles and light-duty motor vehicles that exceed current emission standards as described in this rulemaking, and to fund incentives and grants being proposed in concurrent rulemaking. The commission does not have an estimate as to the number and type of vehicles that will be purchased by individuals and businesses through the proposed incentive programs.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal implications for small and micro-businesses as a result of implementation of the proposed amendments. Senate Bill 5 directed the commission to establish a state-wide incentive program for the purchase or lease of new on-road diesel vehicles and light-duty motor vehicles that meet emission standards more stringent than those required by

federal regulations. The incentive for eligible on-road diesel vehicles will be the reimbursement of the cost difference between purchasing a vehicle that meets current emission standards and purchasing a vehicle that meets the more stringent emission standards as specified in this rulemaking. The incentive for eligible light- duty motor vehicles will be an award of a specified dollar amount, both incentives will be based on the emission standard to which the vehicle is certified.

Small and micro-businesses that purchase qualifying vehicles could potentially receive up to as much as $25,000 per vehicle when purchasing on-road diesel vehicles, and up to $5,000 per vehicle when purchasing qualifying light-duty motor vehicles.

All diesel-powered motor vehicles with a GVWR over 10,000 pounds that are required to be registered for use on public highways are eligible for the incentives if the vehicle is certified by the EPA to an emission standard at least as stringent as specified in this rulemaking. Types of diesel- powered vehicles that would qualify for incentives include large stepvans (such as those used by UPS), large pickup trucks, 18-wheel trucks, and buses.

A wide range of light-duty motor vehicles would also qualify for the incentives. All light-duty motor vehicles with a GVWR less than 10,000 pounds that are required to be registered for use on public highways are eligible for incentives if the vehicle is certified by the EPA to an emission standard at least as stringent as the Tier 2 - Bin 4, Bin 3, Bin 2, or Bin 1 emission standards. A Bin is a set of emission standards applicable to exhaust pollutants. Example of light-duty vehicles that would qualify for incentives include: most cars, pickups, SUVs, and passenger vans.

Senate Bill 5 established the TERP which is funded through newly created and increased fees and taxes established in the bill. Owners and operators of truck trailers, commercial vehicles, on-road diesel vehicles, construction equipment, and out-of-state vehicles would pay the fees to fund the TERP fund. The Comptroller has estimated that over 417,000 truck trailers and commercial vehicles, 440,000 out-of-state motor vehicles, and an unknown number of on-road diesel vehicles and construction equipment would be affected by the newly created and increased taxes and fees established by SB 5. Although there will be small and micro-businesses affected by the increased charges, the proposed amendments are intended to reduce the cost of acquiring cleaner-running vehicles.

The amount of incentives that can be provided annually is limited to what the commission is appropriated from the TERP fund. The commission was appropriated $103,616,840 for FY 2002 and $109,439,810 for FY 2003 to be used as grants and incentives for the diesel emissions reduction program. This funding will be used to provide incentives for the purchase or lease of new on-road diesel vehicles and light-duty motor vehicles that exceed current emission standards as described in this rulemaking, and to fund incentives and grants being proposed in concurrent rulemaking. The commission does not have an estimate as to the number and type of vehicles that will be purchased by small or micro-businesses through the proposed incentive programs.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule" as defined in that statute. A major environmental rule is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy or a sector of the economy; productivity; competition; jobs; the environment; or the public health and safety of the state or a sector of the state. The proposed rules are intended to protect the environment or reduce risks to human health from environmental exposure to ozone by providing financial incentives for the purchase of cleaner on-road diesel vehicles and light-duty motor vehicles. As such, the rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Additionally, Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1.) exceed a standard set by federal law, unless the rule is specifically required by state law; 2.) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3.) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4.) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking action does not meet any of these four applicability requirements because the rulemaking is specifically required by state law in SB 5.

TAKINGS IMPACT ASSESSMENT

The commission assessed the takings impact for these proposed rules in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking action is to provide financial incentives for the purchase of cleaner on-road diesel vehicles and light-duty motor vehicles. The rules will not burden private real property because they implement a voluntary program and do not involve changes to private real property. These proposed rules only affect motor vehicles which are not considered to be private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). The specific purpose of this rulemaking action is to provide financial incentives for the purchase of cleaner on-road diesel vehicles and light-duty motor vehicles. No new sources of air contaminants will be authorized and NO_x air emissions will be reduced as a result of these rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking action

complies with 40 CFR 51. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

ANNOUNCEMENT OF HEARINGS

The commission will hold public hearings on this proposal on August 13, 2001 at 2:00 p.m., Houston City Hall Council Chambers, 2nd Floor, 901 Bagby, Houston; on August 14, 2001 at 9:00 a.m., Texas Natural Resource Conservation Commission, Building E, Room 201S, 12100 Park 35 Circle, Austin; and on August 14, 2001 at 2:00 p.m., North Central Texas Council of Governments, Transportation Board Room, 3rd Floor, 616 Six Flags Drive, Arlington. The hearings are structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to each hearing. Individuals may present oral statements when called upon in order of registration. A four-minute time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. Open discussion will not occur during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing, and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend the hearing, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Ms. Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; faxed to (512) 239- 4808; or e-mailed to *terp@tnrcc.state.tx.us*. All comments should reference Rule Log Number 2001-025c-114-AI. Comments must be received by 5:00 p.m., August 14, 2001. The latest version of these proposed rules in Chapter 114 is available on the commission's web site at *http://www.tnrcc.state.tx.us/oprd/sips/terp.html*. For further information, please contact Morris Brown at (512) 239-1438 or Alan Henderson at (512) 239-1510.

DIVISION 1. ON-ROAD DIESEL VEHICLE PURCHASE OR LEASE INCENTIVE PROGRAM

30 TAC §§114.600 - 114.602, 114.609

STATUTORY AUTHORITY

These new sections are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These new sections are also proposed under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and Chapter 386, which establishes the TERP. Finally, these proposed new sections are required as part of the implementation of SB 5, Acts of the 77th Legislature, 2001.

The proposed new sections implement TCAA, Chapter 386, and SB 5.

§114.600. Definitions.

Unless specifically defined in the TCAA or in the rules of the commission, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division shall have the following meanings, unless the context clearly indicates otherwise.

(1) Incremental costs--The cost difference between the manufacturer's suggested retail price (MSRP) to purchase or lease a new on-road diesel vehicle certified by the EPA to meet the federal emission standards required at the date of its manufacture and the MSRP to purchase or lease a comparable new on-road diesel vehicle certified by the EPA to meet an emission standard at least as stringent as those specified in §114.609 of this title (relating to On-Road Diesel Vehicle Purchase or Lease Incentive Schedule).

(2) Lease--The use and control of a new on-road diesel vehicle in accordance with a rental contract for a term of twelve consecutive months or more.

(3) Lessee--A person who enters into a lease for a new on-road diesel vehicle.

(4) Motor vehicle--A self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Texas Transportation Code, Chapter 502.

(5) New on-road diesel vehicle--An on-road diesel that has never been the subject of a first sale as defined under Title 43, Texas Administrative Code, §17.2 (relating to Definitions), either within this state or elsewhere.

(6) On-road diesel--An on-road diesel-powered motor vehicle that has a gross vehicle weight rating of 10,000 pounds or more.

§114.601. Applicability.

The provisions of §§114.600, 114.602, 114.604, and 114.609 of this title (relating to Definitions; On-Road Diesel Vehicle Purchase or Lease Incentive Requirements; On-Road Diesel Purchase or Lease Incentive Reporting Requirements; and On-Road Diesel Vehicle Purchase or Lease Incentive Schedule) apply statewide subject to the availability of funding.

§114.602. On-Road Diesel Vehicle Purchase or Lease Incentive Requirements.

(a) The purchase or lease of a new on-road diesel vehicle certified by the EPA to an emissions standard at least as stringent as those specified under §114.609 of this title (relating to On-Road Diesel Vehicle Purchase or Lease Incentive Schedule) shall be eligible for an incentive for the reimbursement of incremental costs not to exceed that specified under §114.609 of this title if the purchaser or lessee of the on-road diesel vehicle agrees to register the vehicle in this state and meets the requirements of this section.

(b) Only one incentive will be provided for each eligible new on-road diesel vehicle purchased or leased in the state.

(c) The incentive shall be provided to the lessee and not to the purchaser if the on-road diesel vehicle is purchased for the purpose of leasing the on-road diesel vehicle to another person.

(d) An incentive for the lease of an eligible new on-road diesel vehicle shall be prorated based on an eight-year lease term.

(e) A person eligible to receive an incentive under this section shall sign a certification that the person will operate the on-road diesel vehicle in this state for not less than 75% of the vehicle's annual mileage while owned or leased by the purchaser or lessee and while the purchaser or lessee resides within the state before the reimbursement of incremental costs can occur. The certification must contain, at a minimum:

(1) the name, address, telephone number, and proof of identification of the person receiving the incentive;

(2) the purchase date, manufacturer, model, model year, vehicle license number, vehicle identification number, gross vehicle weight rating, current odometer reading, and certified emissions standard of the new on-road diesel vehicle for which the incentive has been claimed under subsection (a) of this section; and

(3) a copy of the vehicle's registration and purchase invoice, or lease agreement if applicable, to be attached to the certification.

§114.609. On-Road Diesel Vehicle Purchase or Lease Incentive Schedule.

(a) The incentives provided under §114.602 of this title (relating to On-Road Diesel Vehicle Purchase or Lease Incentive Requirements) for new on-road diesel vehicles manufactured on or after January 1, 2001 until September 30, 2002 shall be based on the following emission standards for oxides of nitrogen (NO_x) and accompanying reimbursement amounts:

(1) 2.5 grams per brake horsepower-hour (g/bhp-hr) of NO_x or less is eligible for up to $15,000; and

(2) 1.5 g/bhp-hr of NO_x or less is eligible for up to $25,000.

(b) The incentives provided under §114.602 of this title for new on-road diesel vehicles manufactured on or after October 1, 2002 until September 30, 2006 shall be based on the following emission standards for NO_x and accompanying reimbursement amounts:

(1) 1.2 g/bhp-hr of NO_x or less is eligible for up to $15,000; and

(2) 0.5 g/bhp-hr of NO_x or less is eligible for up to $25,000.

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 11, 2001.

TRD-200103990
Ramon Dasch
Acting Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 239-0348

♦ ♦ ♦

DIVISION 2. LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE PROGRAM

30 TAC §§114.610 - 114.612, 114.616, 114.618, 114.619

These new sections are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These new sections are also proposed under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and Chapter 386, which establishes the Texas Emission Reduction Plan. Finally, these proposed new sections are required as part of the implementation of SB 5, Acts of the 77th Legislature, 2001.

The proposed sections rules implement TCAA, Chapter 386, and SB 5.

§114.610. Definitions.

Unless specifically defined in the TCAA or in the rules of the commission, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division shall have the following meanings, unless the context clearly indicates otherwise.

(1) Bin or emissions bin--A set of emissions standards applicable to exhaust pollutants measured on the Federal Test Procedure according to Title 40 Code of Federal Regulations, §86.1811-04.

(2) Lease--The use and control of a new light-duty motor vehicle in accordance with a rental contract for a term of twelve consecutive months or more.

(3) Lessee--A person who enters into a lease for a new light-motor vehicle.

(4) Light-duty motor vehicle--A motor vehicle with a gross vehicle weight rating of less than 10,000 pounds.

(5) Motor vehicle--A self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Texas Transportation Code, Chapter 502.

(6) New light-duty motor vehicle--A light-duty motor vehicle that has never been the subject of a first sale as defined under Title 43, Texas Administrative Code, §17.2 (relating to Definitions), either within this state or elsewhere.

§114.611. Applicability.

The provisions of §§114.610, 114.612, 114.616, 114.618, and 114.619 of this title (relating to Definitions; Light-Duty Motor Vehicle Purchase or Lease Incentive Requirements; Manufacturer's Report; Vehicle Emissions Information Brochure; and Light-Duty Motor Vehicle Purchase or Lease Incentive Schedule) apply statewide subject to the availability of funding.

§114.612. Light-Duty Motor Vehicle Purchase or Lease Incentive Requirements.

(a) The purchase or lease of a new light-duty motor vehicle certified by the EPA to an emissions standard at least as stringent as those specified in §114.619 of this title (relating to Light-Duty Motor

Vehicle Purchase or Lease Incentive Schedule) shall be eligible for the incentive specified in §114.619 of this title if listed under §114.616 of this title (relating to Manufacturer's Report) and the purchaser or lessee agrees to register the vehicle in this state and meets the requirements of this section.

(b) A person who purchases or leases a new light-duty motor vehicle eligible for an incentive under subsection (a) of this section shall be eligible to receive an incentive specified in §114.619 of this title if the purchaser or lessee registers the new light-duty motor vehicle in this state and signs a certification that the person will operate the light-duty motor vehicle in this state for not less than 75% of the light-duty motor vehicle's annual mileage while owned or leased by the purchaser or lessee and while the purchaser or lessee resides within the state. The certification must contain, at a minimum:

(1) the name, address, telephone number, and proof of identification of the person receiving the incentive;

(2) the purchase date, manufacturer, model, model year, vehicle license number (if assigned), vehicle identification number, gross vehicle weight rating (if applicable), current odometer reading, and emissions test group number to verify the certified emissions standard of the new light-duty motor vehicle for which the incentive has been claimed under this section; and

(3) a copy of the vehicle's registration and purchase invoice, or lease agreement if applicable, to be attached to the certification.

(c) Only one incentive will be provided for each eligible new light-duty motor vehicle purchased or leased in the state.

(d) The incentive shall be provided to the lessee and not to the purchaser if the eligible new light-duty motor vehicle is purchased for the purpose of leasing the light-duty motor vehicle to another person.

(e) An incentive for the lease of an eligible new light-duty motor vehicle shall be prorated based on a four-year lease term.

§114.616. Manufacturer's Report.

(a) A manufacturer of light-duty motor vehicles sold in the state shall provide to the executive director, or his designee, a list of the new light-duty motor vehicle models that the manufacturer intends to sell in this state during that model year that are certified by the EPA to meet the incentive emissions standards listed under §114.619 of this title (relating to Light-Duty Motor Vehicle Purchase or Lease Incentive Schedule). The list must contain for each light-duty motor vehicle listed, at a minimum:

(1) the manufacturer name, model, and model year; and

(2) the test group, evaporative/refueling family, engine displacement, exhaust emission test fuel type, applicable emission standards, and certificate number as listed on the Certificate of Conformity issued by the EPA.

(b) Beginning January 1, 2002, the list required by subsection (a) of this section shall be submitted to the executive director, or his designee, at the beginning, but no later than July 1, of each year preceding the new vehicle model year.

(c) A manufacturer of new light-duty motor vehicles may supplement the list required by subsection (a) of this section to include additional new light-duty motor vehicle models the manufacturer intends to sell in this state during the model year.

(d) All new light-duty motor vehicle dealers and leasing agents statewide shall make copies of the list required under this section available to prospective purchasers or lessees of new light-duty motor vehicles.

§114.618. Vehicle Emissions Information Brochure.

(a) Beginning September 1, 2002, a manufacturer of new light-duty motor vehicles sold in the state covered under §114.616 of this title (relating to Manufacturer's Report) shall publish and make available to its dealers for distribution to the dealers' customers by September 1 of each year, a brochure that includes at a minimum:

(1) a list of eligible new light-duty motor vehicles as required under §114.616 of this title;

(2) the emissions and air pollution ratings, not including fuel efficiency, for each eligible new light- duty motor vehicle listed under paragraph (1) of this subsection based on data from the EPA Green Vehicle Guide (*http://www.epa.gov/greenvehicles/index.htm*) and the light-duty motor vehicle Bin certification number;

(3) an indication of where the Bin certification information is located on each new light-duty motor vehicle listed under paragraph (1) of this subsection and a clear explanation of how to interpret that information; and

(4) information on how the consumer may obtain further information from the EPA Green Vehicle Guide.

(b) The brochure required under subsection (a) or (d) of this section shall be placed in a location within the dealer's showroom or sales area so that it is clearly visible and available for distribution to the dealer's customers.

(c) The brochure required under subsection (a) or (d) of this section shall have a page size no smaller than 8.5 inches by 11 inches and the information required under subsection (a)(1) - (4) of this section shall be printed in no less than 12-point type in a color contrasting with the intended background.

(d) Beginning September 1, 2002, a manufacturer of new light-duty motor vehicles sold in this state not covered under §114.616 of this title must publish a brochure that indicates that no eligible new light-duty motor vehicles will be available for purchase or lease within the state from the manufacturer for the upcoming new model year.

(e) Beginning September 1, 2002, a manufacturer of new light-duty motor vehicles sold in the state shall submit a copy of the brochure required under subsection (a) or (d) of this section to the executive director, or his designee, by September 1 of each year.

§114.619. Light-Duty Motor Vehicle Purchase or Lease Incentive Schedule.

The incentives provided under §114.612 of this title (relating to Light-Duty Motor Vehicle Purchase or Lease Incentive Requirements) for model years 2003 through 2007 light-duty motor vehicles shall be based on the following emission standards and accompanying incentive amounts:

(1) Bin 4 is eligible for $1,250;

(2) Bin 3 is eligible for $2,225;

(3) Bin 2 is eligible for $3,750; and

(4) Bin 1 is eligible for $5,000.

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 11, 2001.

TRD-200103989

Ramon Dasch
Acting Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 239-0348

♦ ♦ ♦

DIVISION 3. DIESEL EMISSIONS REDUCTION INCENTIVE PROGRAM FOR ON-ROAD AND NON-ROAD VEHICLES

30 TAC §§114.620 - 114.622, 114.626, 114.629

The Texas Natural Resource Conservation Commission (commission) proposes new §114.620, Definitions; §114.621, Applicability; §114.622, Incentive Program Requirements; §114.626, Monitoring, Recordkeeping, and Reporting Requirements; and §114.629, Affected Counties and Implementation Schedule in new Division 3, Diesel Emissions Reduction Incentive Program for On-Road and Non-Road Vehicles. These new sections and new division are being proposed in new Subchapter K, Mobile Source Incentive Programs, of Chapter 114 as part of the implementation of Senate Bill (SB) 5 (relating to the Texas Emission Reduction Plan), Acts of the 77th Texas Legislature, 2001.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The 77th Legislature adopted SB 5 establishing the Texas Emission Reduction Plan (TERP) which provides financial incentives for reducing emissions of on-road and non-road motor vehicles and equipment, grants for the development of new emission control technology, new building energy efficiency standards, and research and development programs. The program is funded through surcharges and fees established in the bill. Senate Bill 5 also requires that the commission delete the operating restriction on construction equipment rules and the Tier 2/Tier 3 accelerated purchase rules on construction equipment from the Dallas/Fort Worth and Houston/Galveston state implementation plans (SIP) and replace them with programs from SB 5. The SB 5 programs are estimated to achieve reductions in excess of the reductions expected from the rules that are being repealed. In accordance with SB 5, the SIP will be revised to replace these rules with TERP.

The proposed rules would establish an incentive program for the repower, retrofit or add-on, use of a qualifying fuel, and the development and demonstration of new technologies in engines used in on- road and non-road diesel equipment that would reduce nitrogen oxides (NO_x) emissions not otherwise required by federal requirements. The proposed rules also establish incentives for the purchase or lease of new non-road equipment and for the implementation of infrastructure projects. The implementation and administration of the incentive programs will be performed by the commission and implemented through establishment of guidelines and criteria for eligible projects. The incentive programs established by these rules are available for use in the nonattainment areas of Texas and other affected areas of the state.

SECTION-BY-SECTION DISCUSSION

The proposed new Subchapter K includes a proposed new Division 3 which establishes a proposed new Diesel Emissions Reduction Incentive Program for On-Road and Non-Road Vehicles with rules found in the proposed new §§114.620 - 114.622, 114.626, and 114.629. Except where noted in the discussion that follows, the requirements in the proposed new rules are taken from requirements in SB 5. Also, criteria and requirements will be further refined through the guidelines and criteria that will be developed as part of the incentive program, as provided for in SB 5.

The proposed new §114.620 contains definitions applicable to the diesel emission reduction incentive program for on-road and non-road vehicles. These definitions include: cost-effectiveness, incremental cost, motor vehicle, non-road diesel, non-road engine, on-road diesel, qualifying fuel, repower, and retrofit.

The proposed new §114.621 establishes the applicability for persons applying for grants from the diesel emission reduction incentive program for on-road and non-road vehicles program. This provision will allow for potential future as well as current owners and operators to be eligible for grants from the program.

The proposed new §114.622 establishes the eligibility requirements for the incentive program. The proposed new §114.622 lists projects that are eligible for funding which include the following: purchase or lease of non-road diesels; emissions-reducing retrofit projects for on-road or non-road diesels; emissions-reducing repower projects for on-road or non-road diesels; purchase and use of emissions-reducing add-on equipment for on-road or non-road diesels; development and demonstration of practical, low-emissions retrofit technologies, repower options, and advanced technologies for on-road or non-road diesels with lower NO_x emissions; use of qualifying fuels; implementation of infrastructure projects; and other projects with the potential to reduce NO_x emissions from diesel engines. The proposed new §114.622 also requires that, if a project is funded under this incentive program, at least 75% vehicle miles traveled or hours of operation must take place in a nonattainment or affected county for five years following the grant. It is important that reductions be achieved for purposes of demonstrating attainment by 2007. The agency will develop guidance accordingly. Furthermore, the proposed new §114.622 also requires that: old equipment or engines that are replaced must be recycled, scrapped, or otherwise removed from all affected counties; grants can only be awarded to projects that have a cost- effectiveness not exceeding $13,000 per ton of NO_x emissions reduced; projects funded with this grant money cannot be used to generate emission credits; and projects are not eligible if required by a state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. Additionally, a proposed retrofit, repower, or add-on equipment project must achieve a reduction of at least 30%. Finally, if a grant recipient fails to meet the terms of a project grant or the conditions of this division, the grant recipient may be required to return some or all of the funding. All of these requirements are found in SB 5 except the requirement that old equipment or engines must be recycled, scrapped, or removed from the affected counties. The commission has included this requirement so that these older equipment and engines are truly replaced with newer ones in order to ensure that all of the estimated emission reductions are actually achieved.

The proposed new §114.626 establishes that grant recipients must meet the reporting requirements of the grant and that reports will not be required more than once in a 12-month period. General reporting requirements may be detailed in guidance that is being developed for this incentive program in addition to project-specific reporting requirements which may be included in the grant terms.

The proposed new §114.629 lists the affected counties in which this program applies. The proposed new §114.629 also establishes that equipment purchased before September 1, 2001 are not eligible for funding. This list of counties includes the nonattainment area counties of Texas as well as other counties which could potentially become nonattainment counties in the near future.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed amendments are in effect, there will be significant administrative costs to the commission to implement provisions in this rulemaking. There may be potential cost savings to units of state and local government that elect to participate in the voluntary incentive programs that will be implemented by the proposed amendments.

The proposed amendments are intended to implement certain provisions of SB 5. Specifically, the bill directed the commission to implement a diesel emissions reduction incentive program to award grants to help fund eligible emissions reduction projects. Eligible projects include: the replacement of existing on-road and non-road diesel engines with cleaner-running engines (known as repower); the retrofitting or adding-on new or different equipment to an existing on-road and non-road diesel engine to reduce emissions; the use of a qualifying fuel; and the development and demonstration of new technologies in engines used in on-road and non-road diesel equipment that would reduce NO_x emissions not otherwise required by federal requirements; the purchase or lease of new non-road equipment; the implementation of infrastructure projects; and other projects with the potential to reduce NO_x emissions from diesel engines.

Incentives for proposed projects would be available in the following counties: Bastrop, Bexar, Brazoria, Caldwell, Chambers, Collin, Comal, Dallas, Denton, El Paso, Ellis, Fort Bend, Galveston, Gregg, Guadalupe, Harris, Hardin, Harrison, Hays, Jefferson, Johnson, Kaufman, Liberty, Montgomery, Nueces, Orange, Parker, Rockwall, Rusk, San Patricio, Smith, Tarrant, Travis, Upshur, Victoria, Waller, Williamson, and Wilson.

To be eligible for a grant, the cost-effectiveness for the proposed project must not exceed $13,000 per ton of NO_x removed. For a proposed project, at least 75% of operations must occur within the affected counties for the first five years following approval of the grant. For projects that include replacement of equipment or engines, the old equipment or engines must be recycled, scrapped, or otherwise removed from all affected counties.

The commission has not identified a limit to the types of vehicles, equipment, or projects that would be eligible for incentives under the proposed amendments. Additionally, no limits have been set on the amount of funding to be granted for each request. The following listing of sample projects and resulting grants was derived from data provided by California's Carl Moyer program. This listing is for information purposes only. The commission does not have an estimate of the total number and amount per grant that will be awarded annually by the diesel emissions reduction incentive program.

Figure: 30 TAC Chapter 114 - Preamble

Senate Bill 5 established the TERP, providing financial incentives for reducing emissions of on- road and non-road motor vehicles and equipment, grants for the development of new emission control technology, new building energy efficiency standards, and research and development programs. The program is funded through newly created and increased fees and taxes established in the bill. Specifically, 10% of the registration fee for truck trailers and commercial vehicles statewide; 1% of the charge for each sale, lease, or rental of new or used construction equipment statewide; 2.5% of the total charge for every retail sale or lease of model year 1996 and earlier on-road diesel motor vehicles with a gross registered weight over 14,000 pounds; $225 fee on motor vehicles registering for the first time in Texas, except military personnel; and $10 fee per commercial motor vehicle inspection. The Comptroller has estimated that approximately $133 million would be generated by these fees and taxes and deposited into the TERP fund in fiscal year (FY) 2002 with the amount increasing to $165 million by FY 2006. The TERP fund would be used to fund the incentives and grants for the various programs established by the bill, and to pay for the administration of the program. The collection of these fees is not part of this rulemaking.

Owners and operators that register, purchase, or lease truck trailers, commercial vehicles, on- road diesel vehicles, construction equipment, and out-of-state vehicles would pay the fees to fund the TERP fund. The Comptroller has estimated that over 417,000 truck trailers and commercial vehicles; 440,000 out-of-state motor vehicles; and an unknown number of on-road diesel vehicles and construction equipment would be affected by the newly created and increased taxes and fees established by SB 5. Although units of state and local government may be affected by the increased charges on vehicles and equipment, the proposed amendments are intended to reduce the cost of funding eligible emissions reduction projects.

The commission estimates that significant administrative costs will be required to implement the proposed amendments. The commission was appropriated an additional $1,125,401 in FY 2002 and $966,402 in FY 2003 to administer the provisions of SB 5. The commission was also appropriated an additional $103,616,840 in FY 2002 and $109,439,810 in FY 2003 out of the TERP fund to be used as grants and incentives for the diesel emissions reduction incentive program. In addition to the additional appropriations, the commission was authorized an additional five full time equivalent (FTE) personnel positions to develop and manage the program.

PUBLIC BENEFIT AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments would be potentially reducing the amount of harmful emissions being emitted from motor vehicles and equipment and thereby improving the overall air quality of the state.

The proposed amendments are intended to implement certain provisions of SB 5. Specifically, the bill directed the commission to implement a diesel emissions reduction incentive program to award grants to help fund eligible emission reduction projects. Eligible projects include: the replacement of existing on-road and non-road diesel engines with cleaner-running engines (known as repower); the retrofitting or adding-on new or different equipment to an existing on-road and non-road diesel engine to reduce emissions; the use of a qualifying fuel; the development and demonstration of new technologies in engines

used in on-road and non-road diesel equipment that would reduce NO_x emissions not otherwise required by federal requirements; the purchase or lease of new non-road equipment; the implementation of infrastructure projects; and other projects with the potential to reduce NO_x emissions from diesel engines.

Incentives for proposed projects would be available in the following counties: Bastrop, Bexar, Brazoria, Caldwell, Chambers, Collin, Comal, Dallas, Denton, El Paso, Ellis, Fort Bend, Galveston, Gregg, Guadalupe, Harris, Hardin, Harrison, Hays, Jefferson, Johnson, Kaufman, Liberty, Montgomery, Nueces, Orange, Parker, Rockwall, Rusk, San Patricio, Smith, Tarrant, Travis, Upshur, Victoria, Waller, Williamson, and Wilson.

To be eligible for a grant, the cost-effectiveness for the proposed project must not exceed $13,000 per ton of NO_x removed. For a proposed project, at least 75% of operations must occur within the affected counties for the first five years following approval of the grant. For projects that include replacement of equipment or engines, the old equipment or engines must be recycled, scrapped, or otherwise removed from all affected counties.

The commission has not identified a limit to the types of vehicles, equipment, or projects that would be eligible for incentives under the proposed amendments. Additionally, no limits have been set on the amount of funding to be granted for each request. Examples of projects funded by California's Carl Moyer program include the repower of waste collection trucks, front loaders, tour and transit buses; the retrofitting of refuse trucks; the purchase of new shuttle buses, delivery trucks, and resort and transit buses; and the repower of marine vessels, fishing boats, and auxillary vessels. The grants awarded ranged from $11,000 to $100,000 per engine for the repower of on-road vehicles; $7,500 to $50,000 towards the purchase of a new on-road vehicles; and $4,000 to $12,000 per engine for the repower of marine vessels. These examples are for information purposes only. The commission does not have an estimate of the total number and amount per grant that will be awarded annually by the diesel emissions reduction incentive program.

Senate Bill 5 established the TERP, which is funded through newly created and increased fees and taxes established in the bill. Owners and operators of truck trailers, commercial vehicles, on-road diesel vehicles, construction equipment, and out-of-state vehicles would pay the fees to fund the TERP fund. The Comptroller has estimated that over 417,000 truck trailers and commercial vehicles; 440,000 out-of-state motor vehicles; and an unknown number of on-road diesel vehicles and construction equipment would be affected by the newly created and increased taxes and fees established by SB 5. Although individuals and businesses will be affected by the increased charges on vehicles and equipment, the proposed amendments are intended to reduce the cost of funding eligible emissions reduction projects.

The amount of incentives that can be provided annually is limited to what the commission is appropriated from the TERP fund. The commission was appropriated $103,616,840 for FY 2002, and $109,439,810 for FY 2003 to be used as grants and incentives for the diesel emissions reduction incentive program. This funding will be used to provide incentives for the funding of eligible emissions reduction projects described in this rulemaking, and to fund incentives and grants being proposed in concurrent rulemaking. The commission does not have an estimate as to the number and type of vehicles and equipment that will be purchased by individuals and businesses through the proposed incentive programs.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal implications for small and micro-businesses as a result of implementation of the proposed amendments. Senate Bill 5 directed the commission to implement a diesel emission reduction incentive program to award grants to help fund eligible emission reduction projects. Eligible projects include: the replacement of existing on-road and non-road diesel engines with cleaner-running engines; the retrofitting or adding-on new or different equipment to an existing on-road and non-road diesel engine to reduce emissions; the use of a qualifying fuel; the development and demonstration of new technologies in engines used in on-road and non-road diesel equipment that would reduce NO_x emissions not otherwise required by federal requirements; the purchase or lease of new non-road equipment; the implementation of infrastructure projects; and other projects with the potential to reduce NO_x emissions from diesel engines.

The commission has not identified a limit to the types of vehicles, equipment, or projects that would be eligible for incentives under the proposed amendments. Additionally, no limits have been set on the amount of funding to be granted for each request. Examples of projects funded by California's Carl Moyer program include the repower of waste collection trucks, front loaders, tour and transit buses; the retrofitting of refuse trucks; the purchase of new shuttle buses, delivery trucks, and resort and transit buses; and the repower of marine vessels, fishing boats, and auxillary vessels. The grants awarded ranged from $11,000 to $100,000 per engine for the repower of on-road vehicles; $7,500 to $50,000 towards the purchase of a new on-road vehicles; and $4,000 to $12,000 per engine for the repower of marine vessels. These examples are for information purposes only. The commission does not have an estimate of the total number and amount per grant that will be awarded annually by the diesel emissions reduction incentive program.

Senate Bill 5 established the TERP which is funded through newly created and increased fees and taxes established in the bill. Owners and operators of truck trailers, commercial vehicles, on-road diesel vehicles, construction equipment, and out-of-state vehicles would pay the fees to fund the TERP fund. The Comptroller has estimated that over 417,000 truck trailers and commercial vehicles; 440,000 out-of-state motor vehicles; and an unknown number of on-road diesel vehicles and construction equipment would be affected by the newly created and increased taxes and fees established by SB 5. Although there will be small and micro-businesses affected by the increased charges, the proposed amendments are intended to reduce the cost of funding eligible emissions reduction projects.

The amount of incentives that can be provided annually is limited to what the commission is appropriated from the TERP fund. The commission was appropriated $103,616,840 for FY 2002, and $109,439,810 for FY 2003 to be used as grants and incentives for the diesel emissions reduction incentive program. This funding will be used to provide incentives for the funding of eligible emission reduction projects described in this rulemaking, and to fund incentives and grants being proposed in concurrent rulemaking. The commission does not have an estimate as to the number and type of vehicles and equipment that will be purchased by small or micro-businesses through the proposed incentive programs.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule" as defined in that statute. A major environmental rule is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy or a sector of the economy; productivity; competition; jobs; the environment; or the public health and safety of the state or a sector of the state. The proposed rules are intended to protect the environment or reduce risks to human health from environmental exposure to ozone by providing financial incentives for reducing diesel emissions through the repower, retrofit, or add-on; use of a qualifying fuel; and the development and demonstration of new technologies in engines used in on-road and non-road diesel equipment that would reduce NO_x emissions not otherwise required by federal requirements. The proposed rules also establish incentives for the purchase or lease of new non-road equipment and for the implementation of infrastructure projects. As such, the rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Additionally, Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1.) exceed a standard set by federal law, unless the rule is specifically required by state law; 2.) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3.) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4.) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking action does not meet any of these four applicability requirements because the rulemaking is specifically required by SB 5.

TAKINGS IMPACT ASSESSMENT

The commission assessed the takings impact for these proposed rules in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking action is to implement a diesel emissions reduction incentive program. The rules will not burden private real property because they implement a voluntary program and do not involve changes to private real property. These proposed rules only affect motor vehicles which are not considered to be private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). The specific purpose of this rulemaking action is to implement a diesel emission reduction incentive program. No new sources of air contaminants will be authorized and NO_x air emissions will be reduced as a result of these rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR 51. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

ANNOUNCEMENT OF HEARINGS

The commission will hold public hearings on this proposal on August 13, 2001 at 2:00 p.m., Houston City Hall Council Chambers, 2nd Floor, 901 Bagby, Houston; on August 14, 2001 at 9:00 a.m., Texas Natural Resource Conservation Commission, Building E, Room 201S, 12100 Park 35 Circle, Austin; and on August 14, 2001 at 2:00 p.m., North Central Texas Council of Governments, Transportation Board Room, 3rd Floor, 616 Six Flags Drive, Arlington. The hearings are structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to each hearing. Individuals may present oral statements when called upon in order of registration. A four-minute time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. Open discussion will not occur during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing, and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend the hearing, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Ms. Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; faxed to (512) 239- 4808; or emailed to *terp@tnrcc.state.tx.us*. All comments should reference Rule Log Number 2001-025b-114-AI. Comments must be received by 5:00 p.m., August 14, 2001. The latest version of these proposed rules in Chapter114 are available on the commission's web site at *http://www.tnrcc.state.tx.us/oprd/sips/terp.html*. For further information, please contact Ken Gathright at (512) 239-0599 or Alan Henderson at (512) 239-1510.

STATUTORY AUTHORITY

These new sections are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These new sections are also proposed under

Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and Chapter 386, which establishes the TERP. Finally, these proposed new sections are part of the implementation of SB 5, Acts of the 77th Legislature, 2001.

These proposed new sections implement TCAA, Chapter 386, and SB 5.

§114.620. Definitions.

Unless specifically defined in the TCAA or in the rules of the commission, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA; and §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division shall have the following meanings, unless the context clearly indicates otherwise.

(1) Cost-effectiveness -- The total dollar amount expended divided by the total number of tons of nitrogen oxides emissions reduction attributable to that expenditure.

(2) Incremental cost -- The cost of an applicant's project less a baseline cost that would otherwise be incurred by an applicant in the normal course of business and may include added lease or fuel costs as well as additional capital costs.

(3) Motor vehicle -- a self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Texas Transportation Code, Chapter 502.

(4) Non-road diesel -- a vehicle or piece of equipment, excluding a motor vehicle or on-road diesel, that is powered by a non-road engine, including: non-road non-recreational equipment and vehicles; construction equipment; locomotives; marine vessels; and other high-emitting diesel engine categories.

(5) Non-road engine -- an internal combustion engine that is in or on a piece of equipment that is self- propelled or that propels itself and performs another function, excluding a vehicle that is used solely for competition, or a piece of equipment this is intended to be propelled while performing its function, or a piece of equipment designed to be and capable of being carried or moved from one location to another.

(6) On-road diesel -- An on-road diesel-powered motor vehicle that has a gross vehicle weight rating of 10,000 pounds or more.

(7) Qualifying fuel -- any liquid or gaseous fuel or additives registered or verified by the EPA that is ultimately dispensed into a motor vehicle or on-road or non-road diesel that provides reductions of nitrogen oxides emissions beyond reductions required by state or federal law.

(8) Repower -- to replace an old engine powering an on-road or non-road diesel with:

(A) a new engine that emits at least 30% less than the nitrogen oxides (NO_x) emissions standard required by federal regulation for the current model year for that engine;

(B) an engine manufactured later than 1987 that emits at least 30% less than the NO_x emissions standard emitted by a new engine certified to the baseline NO_x emissions standard for that engine;

(C) an engine manufactured before 1988 that emits not more than 50% of the NO_x emissions standard emitted by a new engine certified to the baseline NO_x emissions standard for that engine; or

(D) electric motors, drives, or fuel cells.

(9) Retrofit -- to equip an engine and fuel system with new emissions-reducing parts or technology verified by the EPA after manufacture of the original engine and fuel system.

§114.621. Applicability.

Any person that owns or leases, or intends to own or lease, one or more on-road or non-road diesels that operate, or will operate, within an affected county as defined by §114.629 of this title (relating to Affected Counties and Implementation Schedule) may apply for a grant under the diesel emissions reduction incentive program.

§114.622. Incentive Program Requirements.

(a) Eligible projects include:

(1) purchase or lease of non-road diesels;

(2) emissions-reducing retrofit projects for on-road or non-road diesels;

(3) emissions-reducing repower projects for on-road or non-road diesels;

(4) purchase and use of emissions-reducing add-on equipment for on-road or non-road diesels;

(5) development and demonstration of practical, low-emissions retrofit technologies, repower options, and advanced technologies for on-road or non-road diesels with lower nitrogen oxides (NO_x) emissions;

(6) use of qualifying fuel;

(7) implementation of infrastructure projects; and

(8) other projects that have the potential to reduce anticipated NO_x emissions from diesel engines.

(b) For a proposed project as listed in subsection (a) of this section, other than a project involving a marine vessel or engine, not less than 75% of vehicle miles traveled or hours of operation projected for the five years immediately following the award of a grant must be projected to take place in a nonattainment area or affected county of this state.

(c) For a proposed project that includes a replacement of equipment or a repower, the old equipment or engine must be recycled, scrapped, or otherwise removed from all affected counties as defined by §114.629 of this title (relating to Affected Counties and Implementation Schedule).

(d) To be eligible for a grant, the cost-effectiveness of a proposed project as listed in subsection (a)(1) - (7) of this section must not exceed $13,000 per ton of NO_x emissions.

(e) Projects funded with a grant from this program may not be used for credit under any state or federal emissions reduction credit averaging, banking, or trading program except as provided under Texas Health and Safety Code, §386.056.

(f) A proposed project as listed in subsection (a) of this section is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to:

(1) an otherwise qualified project, regardless of the fact that the state implementation plan assumes that the change in equipment,

vehicles, or operations will occur, if on the date the grant is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document; or

(2) the purchase of an on-road diesel or equipment required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

(g) A proposed retrofit, repower, or add-on equipment project must achieve a reduction in NO_x emissions of at least 30% compared with the baseline emissions adopted by the commission for the relevant engine year and application.

(h) If a grant recipient fails to meet the terms of a project grant or the conditions of this division, the executive director can require that the grant recipient return some or all of the grant funding to the extent that emission reductions are not achieved or cannot be demonstrated.

§114.626. Monitoring, Recordkeeping, and Reporting Requirements.

Grant recipients must meet the reporting requirements of their grant which must occur no less frequently than annually.

§114.629. Affected Counties and Implementation Schedule.

(a) Applicable counties in the incentive program include: Bastrop, Bexar, Brazoria, Caldwell, Chambers, Collin, Comal, Dallas, Denton, El Paso, Ellis, Fort Bend, Galveston, Gregg, Guadalupe, Harris, Hardin, Harrison, Hays, Jefferson, Johnson, Kaufman, Liberty, Montgomery, Nueces, Orange, Parker, Rockwall, Rusk, San Patricio, Smith, Tarrant, Travis, Upshur, Victoria, Waller, Williamson, and Wilson.

(b) Equipment purchased before September 1, 2001 is not eligible for a grant under this program.

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

Filed with the Office of the Secretary of State, on July 11, 2001.

TRD-200103978
Ramon Dasch
Acting Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 239-0348

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 67. HEARINGS ON DISPUTED CLAIMS

34 TAC §67.47

The Employees Retirement System of Texas (ERS) proposes amendments to §67.47 concerning continuances.

Paula A. Jones, General Counsel, 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. Jones also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be updated information. There will be no affect on small businesses. There are no known anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P. O. Box 13207, Austin, Texas 78711-3207, or email Ms. Jones at pjones@ers.state.tx.us

The amendments are proposed under Tex. Gov't Code §815.102, which provides authorization for the board to adopt rules for the transaction of any other business of the board, No other statutes are affected by these proposed amendments.

Section 67.47 is amended in order to clarify deadlines for filing continuances.

§67.47. Postponements or Continuances.

(a) (No change.)

(b) A motion for postponement or continuance shall be in writing, shall be served on all parties and filed with the [~~executive director or~~] examiner no later than five (5) days prior to [~~5:00 p.m. on the last work day before~~] the date of the hearing, and shall set forth the specific grounds upon which the continuance is sought. If good cause for the late filing is demonstrated in the motion, the examiner may consider a motion filed after that time or presented orally at the hearing [~~; provided, however, once a contested case has actually proceeded to a hearing, a postponement or continuance may be granted by the examiner upon either oral or written motion~~].

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 9, 2001.

TRD-200103886
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 867-7125

♦ ♦ ♦

CHAPTER 71. CREDITABLE SERVICE

34 TAC §71.17

The Employees Retirement System of Texas (ERS) proposes amendments to §71.17 concerning credit for unused accumulated leave.

Paula A. Jones, General Counsel, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Jones also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be updated information and clarification of the rule. There will be no affect on small businesses. There are no known anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, General Counsel, Employees Retirement

System of Texas, P. O. Box 13207, Austin, Texas 78711-3207, or email Ms. Jones at pjones@ers.state.tx.us

The amendments are proposed under Tex. Gov't Code §815.102, which provides that the board may adopt rules for the transaction of any business of the board. No other statutes are affected by these proposed amendments.

This section is amended in order to implement the provisions of §4 and §5 of Senate Bill 292, 77th Texas Legislature, 2001, involving the conversion of sick and annual leave to service credit in certain situations.

§71.17. Credit for Unused Accumulated Leave.

(a) Unused accumulated leave is creditable only in the employee class of membership and only so long as the last day of employment occurs during the month in which the member dies or the member's retirement becomes effective. [~~Credit for unused accumulated leave may not be used to establish length of service requirements for purposes of death benefit plan eligibility.~~]

(b) (No change.)

(c) Eligible leave credit will become effective as service credit only after retirement or death. Subject to that limitation and upon receipt of a certification pursuant to subsection (b) of this section, the ERS shall grant any service credit to which a retiree is thereby entitled. An increase in the computation of an annuity because of leave credit shall be effective from the time of certification.

(d) (No change.)

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

Filed with the Office of the Secretary of State, on July 9, 2001.

TRD-200103887
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 867-7125

♦ ♦ ♦

CHAPTER 73. BENEFITS

34 TAC §73.11, §73.17

The Employees Retirement System of Texas (ERS) proposes amendments to §73.11 concerning the supplemental retirement program, and to §73.17 concerning disability retirement eligibility.

Paula A. Jones, General Counsel, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Jones also 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 information and clarification of the rules. There will be no affect on small businesses. There are no known anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P. O. Box 13207, Austin, Texas 78711-3207, or email Ms. Jones at pjones@ers.state.tx.us

The amendments are proposed under Tex. Gov't Code §815.102, which provides that the board may adopt rules for the transaction of any business of the Board. No other statutes are affected by these proposed amendments.

Section 73.11 is amended to clarify how a member qualifies for the supplemental benefit and implements §16 of Senate Bill 292, 77th Texas Legislature, 2001, by clarifying when the supplemental benefit goes into effect. Section 73.17 is amended to clarify eligibility requirements for disability retirement.

§73.11. Supplemental Retirement Program.

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

(f) An occupational disability retirement annuity is subject to increase pursuant to the supplemental program as a result of the individual's submission of evidence satisfactory to the retirement system that the person's condition makes the person incapable of gainful occupation and is considered a [~~of~~] total disability under the federal social security law [~~shall be effective with the first payment following receipt of the social security statement~~].

(g) An annuity increase under Subsection (f) is not payable before the first month following the month in which the satisfactory evidence under Subsection (f) is received by the retirement system.

(h) [~~(g)~~] An adjustment under the provisions of subsection (f) of this section shall include any reduction option factor applicable to a survivor benefit.

§73.17. Disability Retirement - Eligibility.

Incapacity from the further performance of duty means that the member has demonstrably sought and been denied workplace accommodation of the disability in accordance with applicable law, and that the member is physically or mentally unable to continue to hold the position occupied and [~~or~~] to hold any other [~~a~~] position [~~with the state~~] offering comparable pay. The education, training, and experience of the employee are to be considered when making this 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 9, 2001.

TRD-200103888
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 867-7125

♦ ♦ ♦

34 TAC §73.19

The Employees Retirement System of Texas (ERS) proposes new §73.19 concerning limitation of disability claims. This new section is proposed in order to reflect the statute of limitation on disability claims in accordance with Tex. Gov't Code Ann., §814.201(c).

Paula A. Jones, General Counsel, has determined that for the first five-year period this new 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. Jones also determined that for each year of the first five years the new rule is in effect the public benefit anticipated as a result of enforcing the rule will be clarification of the rules concerning the time frame during which claims for disability retirement benefits must be filed. There will be no affect on small businesses. There are no known anticipated economic costs to persons who are required to comply with the new rule as proposed.

Comments on the proposed new rule may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P. O. Box 13207, Austin, Texas 78711-3207, or email Ms. Jones at pjones@ers.state.tx.us

This new rule is proposed under Tex. Gov't Code §815.102, which provides that the board may adopt rules for the transaction of any business of the board.

No other statutes are affected by this new rule.

§73.19. Limitation of Disability Claims.

In accordance with § 814.201(c), Government Code, an application for occupational disability retirement benefits shall be barred if it is filed more than two years after the date on which the applicant knew or reasonably should have discovered the alleged disability which forms the basis of the application, except as allowed in the discretion of the executive director upon a showing of good cause for the delay.

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 9, 2001.

TRD-200103889
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 867-7125

♦ ♦ ♦

CHAPTER 75. HAZARDOUS PROFESSION DEATH BENEFITS

34 TAC §75.2

The Employees Retirement System of Texas (ERS) proposes new §75.2 concerning benefit claims. This new section is proposed in order to reflect the additional documentation required in connection with a claim for benefits under Tex. Gov't Code Chapter 615, Subchapter F. The new section also establishes a limit for certain benefits under Tex. Gov't Code Chapter 615, Subchapter F.

Paula A. Jones, General Counsel, has determined that for the first five-year period this new 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. Jones also determined that for each year of the first five years the new rule is in effect the public benefit anticipated as a result of enforcing the rule will be updated information. There will be no affect on small businesses. There are no known anticipated economic costs to persons who are required to comply with the new rule as proposed.

Comments on the proposed new rule may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P. O. Box 13207, Austin, Texas 78711-3207, or email Ms. Jones at pjones@ers.state.tx.us

This new rule is proposed under Tex. Gov't Code §615.121, which provides that the board may adopt rules to administer this section of the Tex. Gov't Code.

No other statutes are affected by this new rule.

§75.2. Additional Benefit Claims.

(a) In addition to the documents required under §75.1 of this chapter, the following documents shall be submitted in an application for benefits under Texas Government Code, Chapter 615, Subchapter F, unless the executive director waives their submission:

(1) a sworn statement from the person making the claim that:

(A) the decedent, on the date of death, was not receiving and was not eligible to receive an annuity under an employee retirement plan;

(B) the surviving spouse, if any, of the decedent has not remarried;

(C) the surviving spouse, if any, of the decedent is not retired and is not eligible to retire under an employee retirement plan; and

(D) the surviving spouse, if any, of the decedent is not receiving and is not eligible to receive social security benefits; and

(2) an itemized statement of funeral expenses incurred, if the application includes a claim for payment of funeral expenses.

(b) The amount reimbursed for funeral expenses under Texas Government Code, Chapter 615, Subchapter F, shall not exceed the lesser of $6,000 or the amount of funeral expenses actually incurred.

(c) The executive director may require additional information or affidavits as necessary to establish the validity of any claim 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 July 9, 2001.

TRD-200103890
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 867-7125

♦ ♦ ♦

CHAPTER 81. INSURANCE

34 TAC §§81.1, 81.3, 81.7, 81.11

The Employees Retirement System of Texas (ERS) proposes amendments to §§81.1, 81.3, 81.7, and 81.11 concerning the Texas Employees Uniform Group Insurance Program. Section 81.1 is amended to revise the definitions of "dependent" and "retiree"; §81.3 is amended to delete all references to the Group Benefits Advisory Committee and to revise language pertaining to the payment of premiums; §81.7 is amended to clarify conditions and coverage effective dates for employees re-enrolling

after a lapse in coverage; and §81.11 is amended to update language pertaining to termination of coverage.

Paula A. Jones, General Counsel, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Jones also 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 simplified administration of the Texas Employees Uniform Group Insurance Program. There will be no affect on small businesses. There are no known anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P. O. Box 13207, Austin, Texas 78711-3207, or email Ms. Jones at pjones@ers.state.tx.us

The amendments are proposed under Tex. Ins. Code, art. 3.50-2, §4A, which provides authorization for the board to adopt rules necessary to carry out its statutory duties and responsibilities.

No other statutes are affected by these proposed amendments.

§81.1. 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) Dependent - The spouse of an employee or retiree and unmarried children under 25 years of age, including:

(A) - (H) (No change.)

(I) a child eligible under Section 3(a)(8)B of the Act, provided that the child's mental retardation or physical incapacity is a medically determinable condition which prevents the child from engaging in self-sustaining employment, that the condition commences before the date of the child's 25th birthday, [~~any such child, regardless of age, who lives with or whose care is provided by an employee or retiree on a regular basis if such child is mentally retarded or physically incapacitated to such an extent as to be dependent upon the employee or retiree for care or support, as the trustee shall determine. Mentally retarded or physically incapacitated means any medically determinable physical or mental condition which prevents the child from engaging in self-sustaining employment, provided that the condition commences prior to such child's attainment of age 25, the child was eligible and covered under the plan immediately prior to reaching age 25,~~] and that satisfactory proof of such condition and dependency is submitted by the employee/retiree within 31 days following such child's attainment of age 25 and at such intervals thereafter as may be required by the system.

(13) - (27) (No change.)

(28) Retiree - An employee who retires or is retired and who: [~~A person authorized by the Act to participate in the program as a retiree or a retired employee who, as of August 31, 1992, was a participant in a group insurance program administered by an institution of higher education.~~]

(A) is authorized by the Act to participate in the program as a retiree;

(B) on August 31, 1992, was a participant in a group insurance program administered by an institution of higher education; or

(C) on the date of retirement, meets the service credit requirements of the Act for participation in the program as an annuitant and, on August 31, 2001:

(i) was an eligible employee with a department whose employees are authorized to participate in the program; or

(ii) had three years of service as an eligible employee with a department whose employees are authorized to participate in the program.

(29) - (31) (No change.)

§81.3. Administration.

[~~(a) Group Benefits Advisory Committee (GBAC).~~]

[~~(1) The GBAC is established by the Act, §18, as amended. Its membership shall be composed as defined in the Act. The Executive Director of the Employees Retirement System of Texas shall establish procedures for the determination of the committee's membership, terms of office, and representation of the applicable state agencies and institutions of higher education, in accordance with the Act.~~]

[~~(2) The GBAC shall advise and consult with the trustee on matters concerning all insurance coverage provided under this Act and shall present recommendations to the trustee regarding other existing or proposed state employee benefits, other than retirement benefits. The committee shall cooperate and work with the trustee in coordinating and correlating the administration of the Texas Employees Uniform Group Insurance Program among the various state agencies and institutions of higher education. The duties of each member of the GBAC shall be to secure input from fellow employees and shall be considered additional duties required of the member's other state office or employment, and all expenses incurred by any such member in performing the member's duties as a member of the committee shall be paid from funds made available for those purposes to the agency or institution of higher education of which the member is an employee or officer.~~]

[~~(3) During a term of appointment or election, a vacancy shall be filled by an employee of the same agency or institution of higher education from which the vacancy occurred, being appointed by its governing body or designee for the balance of the vacated term. A vacancy on the GBAC exists when any member of the GBAC:~~]

[~~(A) resigns from the GBAC;~~]

[~~(B) transfers from a state agency or institution of higher education from which the member was appointed or elected to serve on the GBAC; or~~]

[~~(C) terminates employment from a state agency or institution of higher education.~~]

[~~(4) A vacancy in a position held by a member appointed by the trustee or the Texas Higher Education Coordinating Board shall be filled by such body for the balance of the term.~~]

[~~(5) A vacancy in a position held by a member of the private sector shall be filled by the officer who originally made the appointment to that position.~~]

[~~(6) All GBAC meetings are to be open to the public.~~]

[~~(7) The Executive Director of the Employees Retirement System of Texas shall file a notice of the GBAC's meetings with the Secretary of State for publication in the Texas Register.~~]

[(8) The Executive Director shall be the custodian of the minutes of the GBAC's meetings and will have those minutes available for public inspection at the offices of the Employees Retirement System of Texas during normal working hours.]

[(b) Petitions for supplemental coverage.]

[(1) An agency head or a group of employees or retirees may submit a written petition to the board or to the GBAC requesting the establishment of a supplemental insurance benefits plan.]

[(2) The petition must include a clear and concise statement of the type and extent of coverage desired. The petition must show the relationship of the requested coverage to the existing coverages provided by the program. The proposed plan must provide coverage that is not available in the program or must be an extension of the coverage over and above that provided by the related benefit in the program. The plan must provide that employees enrolling in an approved supplemental plan must first be enrolled for the maximum related benefits provided by the program.]

[(3) The proposed plan must meet the requirements of the Act, including the following:]

[(A) the plan must be reviewed by the GBAC;]

[(B) the plan must be actuarially sound;]

[(C) carriers for the plan must be selected by competitive bidding;]

[(D) the plan must satisfy the Act's minimum enrollment requirements; and]

[(E) the proposal must provide evidence that the proposed coverage is in the best interests of the people covered by the Act.]

[(4) If a proposed plan is approved for payroll deduction in any state agency, a percentage of all premiums paid is to be paid into the employees life, accident and health insurance and benefits fund; such percentage shall be determined by the board, in its sole discretion, at the time of approval.]

(a) [(c)] Health maintenance organizations.

(1) The board may approve a health maintenance organization (HMO) to offer a health benefits plan to participants in the Program. The board may:

(A) utilize a bidding process to approve one or more HMOs in areas of the state determined by the board to be regional bidding areas (RBAs);

(B) utilize an application process to approve one or more HMOs in areas of the state determined by the board to be non-bidding areas;

(C) determine the criteria to be used to approve the HMOs for the RBAs and non-bidding areas;

(D) determine the number of HMOs to approve in each RBA and non-bidding area; and

(E) determine the length of the contracts with the approved HMOs.

(2) In order to seek approval, an HMO must:

(A) submit an application to provide health benefits in the areas within the State of Texas determined by the board to be non-bidding areas;

(B) submit a proposal, in response to a request for bid, in the format determined by the system for one or more of the designated RBAs; or

(C) submit application(s) and bid(s).

(3) An HMO seeking board approval in response to a request for bid in one or more of the RBAs, must satisfy the following conditions:

(A) The HMO must be licensed by the Texas Department of Insurance to operate in the State of Texas.

(B) The HMO must have been providing services in the RBA for at least 6 months prior to September 1 of the fiscal year in which the bid response is due to be filed with the system. Also, the HMO must demonstrate the capacity to provide adequate services, as determined by the system, to the program participants.

(C) The HMO must submit the bid, with rates, to the board at the time and in the format prescribed by the system. Once adopted by the board, the rates may not be modified without the approval of the board. A request for expansion of a non-contiguous service area, as described in this section, shall require a separate application.

(D) The HMO agrees to the provisions contained in the contract between the system and the HMO as adopted for the entire time specified in the contract.

(E) The HMO must provide standardized benefits as described in the contract between the system and the HMO. This document, which is to be considered a part of this section for all purposes, may be obtained from the Executive Director of the system.

(F) If an HMO, approved by the board, fails to maintain compliance with the contract, the board has the right to cancel the existing contract with that HMO upon proper notice as specified in the contract.

(G) An HMO that loses its state license will automatically become ineligible to offer its health benefits plan to participants in the Program.

(4) An HMO, seeking board approval in response to an application in one or more of the non-bidding areas, must satisfy the following conditions:

(A) The HMO must be licensed by the Texas Department of Insurance to operate in the State of Texas.

(B) The HMO must have been providing managed care services in the area for which the application is made for at least 6 months prior to September 1 of the fiscal year in which the application is due to be filed with the system. Also, the HMO must demonstrate the capacity to provide adequate services, as determined by the system, to the program participants.

(C) The HMO must submit the application, with rates, to the board at the time and in the format prescribed by the system. Once adopted by the board, the rates may not be modified without the approval of the board.

(D) The HMO agrees to the provisions contained in the contract between the system and the HMO as adopted for the entire time specified in the contract.

(E) The HMO must provide standardized benefits as described in the contract between the system and the HMO. This document, which is to be considered a part of this section for all purposes, may be obtained from the Executive Director of the system.

(F) If an HMO, approved by the board, fails to maintain compliance with the contract, the board has the right to cancel the existing contract with that HMO upon proper notice as specified in the contract.

(G) An HMO that loses its state license will automatically become ineligible to offer its health benefits plan to participants in the insurance program.

(b) [~~(d)~~] Payment of Premiums.

(1) Premiums for coverage provided under the program are funded from three sources: state contributions, system contributions, and participant contributions. The legislature appropriates monies to fund group insurance benefits for all employees as defined in the Act. Monies for employees compensated from funds other than the General Appropriations Act are appropriated from the official operating budget of the respective department. In addition, the system may contribute an additional amount, as determined by the trustee, for payment of premiums for participants. A participant who applies for coverage for which the monthly premium exceeds the state's or employing department's and the system's contribution must pay the excess amount.

(2) A participant's share of premiums shall be paid through deductions from monthly compensation or annuities or by direct payment, as provided in this paragraph.

(A) An employee or annuitant who applies for coverage for which the monthly premium exceeds the state or employing department and the system contributions must authorize on a form prescribed by the system a deduction from his or her monthly compensation or annuity to pay the difference. If the compensation or annuity is insufficient to provide for the appropriate deduction, the participant must pay premiums directly as provided in subparagraph (B)(i) of this paragraph. Failure to make the required payment of premiums by the due date will result in the cancellation of all coverages not fully funded by the state contribution. A participant entitled to the state contribution will retain member only health and basic life coverage provided the state contribution is sufficient to cover the premium for such coverage. If the state contribution is not sufficient for member only coverage in the health plan selected, the participant will be enrolled in the basic plan except as provided for in §81.7(l)(2)(B) of this title.

(B) A participant shall pay premiums directly, as provided in this subparagraph, if the participant is not on a payroll or is in a leave without pay status, is not receiving an annuity from a state retirement system from which the appropriate premiums may be deducted, or is not receiving a salary or annuity sufficient to allow for a full required premium deduction. [~~Persons who are eligible participants in the program and who are not on a payroll or who are not receiving an annuity from a state retirement system from which the appropriate premiums may be deducted or whose salary or annuity are insufficient to allow for a full required deduction must pay premiums directly as indicated in the following.~~]

(i) An employee [~~who is in a leave without pay status or~~] whose salary is insufficient, or who is a non-salaried board member, shall pay monthly premiums in advance through the employing department. Any other participant to whom this subparagraph applies shall pay monthly premiums in advance to the system. Premium payments are due on the first day of the month covered and must be postmarked or received by the system or the employing department, whichever is appropriate, within 30 days of the due date to avoid cancellation of coverage. Failure to make the required premium payment by the due date will result in cancellation of all coverages not fully funded by the state contribution, if applicable. A person entitled to the state contribution will retain member only health and basic life coverage provided the state contribution is sufficient to cover the premium for such coverage. If the state contribution is not sufficient for member only coverage in the health plan selected by the employee or retiree, the employee or retiree will be enrolled in the basic plan except as provided for in §81.7(l)(2)(B) of this title.

(ii) A person who continues group health and dental benefits as provided in §81.5(k) of this title (relating to Eligibility) must pay premiums in advance on a monthly basis. Premiums for such a person will be 102% of the rates charged for other participants in the same coverage category and with the same plan. All premiums due for the election/enrollment period must be postmarked or received by the Employees Retirement System of Texas on or before the date indicated on the continuation of coverage enrollment form. Subsequent premiums are due on the first day of the month covered and must be postmarked or received by the Employees Retirement System of Texas within 30 days of the due date to avoid cancellation of coverage.

(iii) A person who continues group health and dental benefits as provided in §81.5(k)(3) of this title (relating to Eligibility) must pay premiums in advance on a monthly basis. Premiums for such a person for each month of coverage after the 18th month of coverage will be 150% of the rates charged for other participants in the same coverage category and with the same plan. All premiums are due on the first day of the coverage month and must be postmarked or received by the Employees Retirement System of Texas within 30 days of the due date to avoid cancellation of coverage.

(3) An employee whose dependent child is eligible for coverage under Section 14A of the Act is eligible for the supplemental state contribution as authorized by that section and provided in the paragraph.

(A) An employee becomes eligible for the supplemental contribution on the first day of the month following the date on which the system receives certification of the dependent child's eligibility for coverage under that section. Eligibility for the supplemental contribution terminates on the last day of the contract year. An employee may apply for the supplemental contribution for an additional period of coverage during the annual enrollment period applicable to that period of coverage.

(B) A dependent child of an employee who is eligible for the supplemental contribution is not required to provide evidence of insurability.

§81.7. Enrollment and Participation.

(a) Full-time employees and their dependents.

(1) (No change.)

(2) To enroll eligible dependents, to elect to enroll in an approved HMO or in HealthSelect Plus, and to elect optional coverages, the employee shall complete an enrollment form within 30 days after the date on which the employee begins active duty. Coverages selected on or before the date on which the employee begins active duty become effective on the date on which the employee begins active duty. Coverages selected within 30 days after the date on which the employee begins active duty become effective on the first day of the month following the date on which the enrollment form is completed [~~employee begins active duty~~]. An enrollment form completed after the initial period for enrollment as provided in this paragraph is subject to the provisions of subsection (h) of this section.

(3) - (9) (No change.)

(10) For purposes of this section, an enrollment form is completed when all information necessary to effect an enrollment has

been transmitted to the system in the form and manner prescribed by the system.

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

(d) Surviving dependents

(1) (No change.)

(2) A surviving spouse who is receiving an annuity shall make premium payments by deductions from the annuity as provided in §81.3(b)(2)(A) [~~§81.3(d)(2)(A)~~] of this title (relating to Administration). A surviving spouse who is not receiving an annuity may make payments as provided in §81.3(b)(2)(B) [~~§81.3(d)(2)(B)~~] of this title.

(e) Former COBRA unmarried children. A former COBRA unmarried child must provide an application to continue health and dental insurance coverage within 30 days after the date the notice of eligibility is mailed by the system. Coverage becomes effective on the first day of the month following the month in which continuation coverage ends. Premium payments may be made as provided in §81.3(b)(2)(B) [~~§81.3(d)(2)(B)~~] (relating to Administration).

(f) (No change.)

(g) Special rules for additional or alternative coverages.

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

(4) An eligible participant in the Program electing optional additional coverage and/or HMO or HealthSelect Plus coverage in lieu of the basic plan of insurance is obligated for the full payment of premiums. If the premiums are not paid, all coverages not fully funded by the state contribution will be canceled. A person entitled to the state contribution will retain member only health coverage provided the state contribution is sufficient to cover the premium for such coverage. If the state contribution is not sufficient for member only coverage in the health plan selected by the employee or retiree, the employee or retiree will be enrolled in the basic plan except as provided for in subsection (l)(2)(B) [~~(1)(2)(B)~~] of this section.

(5) - (6) (No change.)

(h) Changes in coverage after the initial period for enrollment.

(1) Changes for Qualifying Life Event.

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

(E) Except as otherwise provided in subsections (a)(6) and (a)(8) of this section, the change in coverage is effective on the first day of the month following the date on which the enrollment form is completed [~~of the qualifying life event~~].

(F) (No change.)

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

(4) The evidence of insurability provision applies only to:

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

(C) employees, retirees, or eligible dependents who wish to enroll in HealthSelect of Texas after the initial period for enrollment, except as provided in subsections (a), (g)(5)-(6), and (h)(6)-(10) of this section and §81.3(b)(3)(B) [~~§81.3(d)(3)(B)~~] of this title (relating to Administration);

(D) - (E) (No change.)

(5) - (11) (No change.)

(i) - (j) (No change.)

(k) Re-enrollment [~~Reinstatement~~] in the program.

(1) The provisions of subsection (a) of this section shall apply to the enrollment of an employee who terminates employment and returns to active duty within the same contract year, who transfers from one department to another, or who returns to active duty after a period of leave without pay during which coverage is canceled. [~~Except as provided in subsection (h)(1) of this section, an employee who terminates employment and returns to active duty within the same contract year shall reinstate the coverages in effect on the date employment was terminated. Except as provided in subsection (h)(1), coverage becomes effective on the date on which the employee returns to active duty. To reinstate canceled coverages, submission of evidence of insurability acceptable to the carrier will not apply. Provided that all applicable preexisting conditions exclusions were satisfied on the date of termination, no new preexisting conditions exclusions will apply. If not, any remaining period of preexisting conditions exclusions must be satisfied upon reinstatement.~~]

(2) An employee to whom paragraph (k)(1) applies shall not be required to submit evidence of insurability acceptable to the carrier. [~~Except as provided in subsection (h)(1) of this section, an employee whose coverages are canceled during a period of leave without pay shall, upon return to active duty, reinstate the coverages in effect on the date of cancellation. Except as provided in subsection (h)(1), coverage becomes effective on the date on which the employee returns to active duty. To reinstate canceled coverages, submission of evidence of insurability acceptable to the carrier will not apply.~~] Provided that all applicable preexisting conditions exclusions were satisfied on the date of termination, transfer, or cancellation, no new preexisting conditions exclusions will apply. If not, any remaining period of preexisting conditions exclusions must be satisfied upon re-enrollment [~~reinstatement~~].

(3) If an employee is a member of the Texas National Guard or any of the reserve components of the United States armed forces, and the employee's coverages are canceled during a period of leave without pay or upon termination of employment as the result of an assignment to active military duty, the period of active military duty shall be applied toward satisfaction of any period of preexisting conditions exclusions remaining upon the employee's return to active employment.

(l) Continuing coverage in special circumstances.

(1) (No change.)

(2) Continuation of coverages for employees in a leave without pay status.

(A) An employee in a leave without pay status may continue the coverages in effect on the date the employee entered that status for the period of leave, but not more than 12 months. The employee must pay premiums directly as provided in §81.3(b)(2)(B)(i) [~~§81.3(d)(2)(B)(i)~~] of this title (relating to Administration).

(B) An employee whose leave without pay is a result of the Family and Medical Leave Act of 1993 will continue to receive the state contribution during such period of leave without pay. The employee must pay premiums directly as defined in §81.3(b)(2)(B)(i) [~~§81.3(d)(2)(B)(i)~~] of this title. Failure to make the required payment of premiums by the due date will result in the cancellation of all coverages except for member only health and basic life coverage. The employee will continue in the health plan in which he or she was enrolled immediately prior to the cancellation of all other coverages. If a premium beyond the state contribution for member only health and basic life coverage is owed, the employee must make the required payment of premiums directly to the employing department upon return to active duty.

(3) - (10) (No change.)

(11) Continuation coverage defined. Continuation coverage as provided for in paragraphs (5)-(10) of this subsection means the continuation of only health and dental coverage benefits which meet the following requirements.

(A) (No change.)

(B) Period of coverage. The coverage shall extend for at least the period beginning on the first day of the month following the date of the cessation of coverage event and ending not earlier than the earliest of the following:

(i) - (iv) (No change.)

(v) the date on which coverage ceases under the plan due to failure to make timely payment of any premium required as provided in §81.3(b)(2)(B)(ii) [~~§81.3(d)(2)(B)(ii)~~] and (iii) of this title (relating to Administration);

(vi) - (viii) (No change.)

(C) Premium requirements. The premium for a participant during the continuation coverage period will be 102% of the employee's/retiree's health and dental coverages only rate and is payable as provided in §81.3(b)(2)(B)(ii) [~~§81.3(d)(2)(B)(ii)~~] of this title (relating to Administration).

(i) The premium for a participant eligible for 36 months of coverage will be 102% of the employee's/retiree's health and dental coverages only rate for the 19th through 36th months of coverage and is payable as provided in §81.3(b)(2)(B)(ii) [~~§81.3(d)(2)(B)(ii)~~] of this title (relating to Administration).

(ii) The premium for a participant eligible for 29 months of coverage will be 150% of the employee's/retiree's health and dental coverages only rate for the 19th through 29th months of coverage and is payable as provided in §81.3(b)(2)(B)(iii) [~~§81.3(d)(2)(B)(iii)~~] of this title (relating to Administration).

(D) - (E) (No change.)

(12) (No change.)

§81.11. Termination of Coverage.

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

(c) Sanctions for Insurance Program Violations. [~~Expulsion from the Uniform Group Insurance Program.~~]

(1) The Employees Retirement System of Texas may rescind any insurance coverage or impose one or more sanctions described by Insurance Code, Article 3.50-2, §13A against any person, including, but not limited to any current or former participant, employee, annuitant, dependent or insurance claimant who commits any of the violations enumerated in the Insurance Code, Article 3.50-2, §13A(a). [~~The board of trustees may expel any person participating in the Uniform Group Insurance Program who submits a fraudulent claim or otherwise defrauds or attempts to defraud any plan of benefits offered under the program, within the terms of the Insurance Code, Article 3.50-2, §13A.~~]

(2) Any person with a grievance regarding eligibility or other matters involving the program may submit a written request to the Executive Director to make a determination on the matter in dispute. Any person who disputes a recission of coverage, a denial of benefits or other sanctions imposed in connection with a determination made under Insurance Code, Article 3.50-2, §13A(b), may appeal the determination in accordance with §81.9 of this title (relating to Grievance Procedure). A timely appeal of a determination made pursuant to Insurance Code, Article 3.50-2, §13A shall automatically stay the imposition of sanctions. However, at the time such a determination is made pursuant to Insurance Code, Article 3.50-2, §13A, no further claims will be paid until the agency decision is final. Upon final agency action, all eligible claims will be processed subject to any offsets for overpayments made by the carrier.

[~~(3) The Executive Director is authorized to call a hearing on behalf of the Board when he has reason to believe that a person may be subject to expulsion under this section and the Insurance Code, Article 3.50-2, §13A.~~]

(3) [~~(4)~~] Any hearing provided [~~called~~] pursuant to this section shall be a contested case under Government Code, Chapter 2001, and conducted in the manner prescribed by law and by Chapter 67 of this title (relating to Hearings on [~~and~~] Disputed Claims) or the rules of the State Office of Administrative Hearings, when applicable. In the event of any conflict between a provision of Chapter 67 and the rules of the State Office of Administrative Hearings, the provisions of Chapter 67 shall control. [~~During such hearing, the standard of proof requiring a finding against the participant shall be the preponderance of evidence. At the time a case is assigned to a hearings examiner, no further claims will be paid until a finding has been made. When a finding has been made, all eligible claims will be processed subject to any offsets for overpayments made by the carrier.~~]

(4) [~~(5)~~] Any person expelled from the Uniform Group Insurance Program may not be insured under any health benefits plan offered by the program for a period determined by the Employees Retirement System of Texas [~~of five years from the effective date of the expulsion.~~]

[~~(d) Coverage rescinded.~~]

[~~(1) The Executive Director may rescind any insurance coverage of a participant in the program, if the Executive Director determines that the coverage was obtained by a fraudulent act or by making a material misrepresentation or by supplying false information on any enrollment form or application for coverage or related documentation or in any communication].~~

(5) [~~(2)~~] If a person's insurance [~~the participant's~~] coverage is rescinded, it may be rescinded to the date of the inception of the coverage or from [~~to~~] the date of the prohibited conduct as found in the determination made in accordance with Insurance Code, Article 3.50-2, §13A(b) [~~fraudulent act or material misrepresentation~~].

(6) [~~(3)~~] The Employees Retirement System of Texas [~~Executive Director~~] also may deny any claim filed to obtain benefits from the insurance [~~fraudulently induced~~] coverage~~.~~ in a manner prohibited under Insurance Code, art. 3.50-2, §13A.

[~~(4) The Executive Director's decision to rescind insurance coverage or to deny a claim may be appealed to the board in accordance with §81.9 of this title (relating to Grievance Procedure)~~].

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 9, 2001.

TRD-200103891
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 867-7125

♦ ♦ ♦

CHAPTER 85. FLEXIBLE BENEFITS

34 TAC §85.9

Employees Retirement System of Texas (ERS) proposes amendments to §85.9 concerning payment of claims from reimbursement accounts. This section is amended in order to clarify the rule regarding permissible methods of claims reimbursement.

Paula A. Jones, General Counsel, 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. Jones also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be updated information and clarification of the rule. There will be no affect on small businesses. There are no known anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P. O. Box 13207, Austin, Texas 78711-3207, or email Ms. Jones at pjones@ers.state.tx.us

The amendments are proposed under Tex. Ins. Code, art. 3.50-2, §4A, which provides authorization for the board to adopt rules necessary to carry out its statutory duties and responsibilities.

No other statutes are affected by these proposed amendments.

§85.9. Payment of Claims from Reimbursement Accounts.

(a) (No change.)

(b) Reimbursement of claims to participants.

(1) Payment of eligible expenses shall be made directly to the participant by the plan administrator unless payment for dependent or health care expenses is made directly to the applicable provider through use of a debit card, other similar technology, or other means approved by the administrator. [~~A participant may request payment of a dependent care reimbursement plan claim be made directly to a child care provider.~~]

(2) - (5) (No change.)

(c) - (d) (No change.)

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

Filed with the Office of the Secretary of State, on July 9, 2001.

TRD-200103892
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 867-7125

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 431. FIRE INVESTIGATION

SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INVESTIGATOR CERTIFICATION

37 TAC §431.201

The Texas Commission on Fire Protection (TCFP) proposes amendments to §431.201, concerning minimum standards for fire investigation personnel. The amendments establish minimum certification requirements for persons who are employed as full- time fire investigators. This is a change from TCFP certifications for fire investigators being voluntary.

Jake Soteriou, Fire Service Standards and Certification Division Director, has determined that for each year of the first five-year period that the rule change is in effect there will be minimal fiscal implications for state and local governments. The Commission will incur additional costs for staff time and travel expenses of approximately $40 per person who seeks examination and certification under the amended section. The increased costs will be offset by a corresponding increase in revenue generated from fees for examinations and certifications. Local governments that choose to pay the examination and certification costs for employees will incur additional costs of $40 per employee.

Mr. Soteriou has also determined that for the first five-year period that the rule change is in effect, the public benefit anticipated is enhanced job performance by having qualified fire investigators. There is no anticipated cost to small businesses. The anticipated cost to individuals, as applicants for fire investigator certification, are any fees for training courses, testing, and certification that are not paid by their employer.

Comments on the proposal may be submitted to Jake Soteriou, Fire Service Standards and Certification Division Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768- 2286 or submitted by e-mail to info@tcfp.state.tx.us.

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with the authority to establish minimum training standards for admission to employment as fire protection personnel; and Texas Government Code, §419.032, which provides the TCFP with authority to adopt rules to establish qualifications for fire protection personnel.

Texas Government Code, §419.022 is affected by the proposed rule amendments.

§431.201. Minimum Standards for Fire Investigation Personnel.

(a) All full-time personnel employed by any local government entity in Texas who are assigned fire investigation duties must be as a minimum, certified as a structure fire protection personnel or fire investigator by the commission. [~~All individuals holding a Fire Investigator certification shall be required to comply with the continuing education requirements in §441.15 of this title (relating to Continuing Education Requirements for Arson Investigator or Fire Investigator.~~]

(b) Prior to being assigned to fire investigation duties as a full-time employee, all personnel who are not certified as structure fire protection personnel must complete a commission approved basic fire investigator training program and successfully pass the commission examination pertaining to that curriculum. [~~An individual certified under this subchapter shall limit his or her investigation to determining fire cause and origin. If evidence of criminal conduct in violation of the Penal Code, Chapter 28 (Arson, Criminal Mischief, and other Property~~

~~Damage or Destruction) is discovered, the investigator shall immediately transfer custody and control of the investigation to a certified arson investigator or licensed peace officer.~~]

(c) All individuals holding a Fire Investigator certification shall be required to comply with the continuing education requirements in §441.15 of this title (relating to Continuing Education Requirements for Arson Investigator or Fire Investigator). [~~A person who previously held an arson investigator certification who no longer holds a current commission as a peace officer may apply for certification as a fire investigator in accordance with this subchapter.~~]

(d) An individual certified under this subchapter shall limit his or her investigation to determining fire cause and origin. If evidence of a crime is discovered, the investigator shall immediately transfer custody and control of the investigation to a certified arson investigator or licensed peace officer.

(e) A person who previously held an arson investigator certification who no longer holds a current commission as a peace officer may apply for certification as a fire investigator in accordance with this subchapter.

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

Filed with the Office of the Secretary of State, on July 6, 2001.

TRD-200103877
Gary L. Warren Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 239-4921

♦ ♦ ♦

CHAPTER 433. MINIMUM STANDARDS FOR DRIVER/OPERATOR - PUMPER

37 TAC §433.1, §433.3

The Texas Commission on Fire Protection (TCFP) proposes amendments to §433.1 and §433.3, concerning minimum standards for driver/operator-pumper. The amendments remove references to the effective dates of the sections and remove language which provided a one-year window of opportunity from the sections' effective dates for individuals with previous training to challenge the certification examination.

Jake Soteriou, Fire Service Standards and Certification Division Director, has determined that for each year of the first five-year period that the rule change is in effect there will be no fiscal implications for state and local governments.

Mr. Soteriou has also determined that for the first five-year period that the rule change is in effect, the public benefit anticipated is enhanced job performance by qualified driver/operator-pumpers. There is no anticipated cost to small businesses. The anticipated cost to individuals, as applicants for driver/operator-pumper certification, are any fees for training courses that are not paid by their employer.

Comments on the proposal may be submitted to Jake Soteriou, Fire Service Standards and Certification Division Director, Texas Commission on Fire Protection, P. O. Box 2286, and Austin, Texas 78768-2286 or submitted by e-mail to info@tcfp.state.tx.us.

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with the authority to establish minimum training standards for admission to employment as fire protection personnel; and Texas Government Code, §419.032, which provides the TCFP with authority to adopt rules to establish qualifications for fire protection personnel.

Texas Government Code, §419.022 is affected by the proposed rule amendments.

§433.1. Driver/Operator - Pumper Certification.

[~~(a) The effective date of this section shall be January 1, 2000.~~]

[~~(b)~~] A driver/operator - pumper is defined as an individual who safely operates a fire pumper in accordance with all state and local laws; operates a fire pump in a safe manner; and determines effective fire stream calculations and pump discharge pressures. Responsibilities include routine apparatus tests, maintenance, inspections, and servicing functions.

[~~(c) Within one year of the effective date of this section, an individual may apply for certification as a Driver/Operator - Pumper and is eligible to take the commission examination for driver/operator - pumper, upon documentation to the Commission that the individual has completed the minimum requirements of the National Fire Protection Association Standard 1002 (1998 edition, or earlier).~~]

§433.3. Minimum Standards for Driver/Operator - Pumper Certification.

(a) [~~The effective date of this section shall be January 1, 2000.~~] Training programs that are intended to satisfy the requirements of this section[~~, started on or after the effective date of this section,~~] must meet the curriculum, competencies, and hour requirements of this section. All applicants for certification must meet the examination requirements of this section.

(b) In order to obtain Driver/Operator - Pumper certification the individual must:

(1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel;

(2) complete a commission approved Driver/Operator - Pumper Curriculum and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved driver/operator - pumper program must consist of one of the following:

(A) complete a commission approved Driver/Operator - Pumper Curriculum of at least 40 hours as specified in Chapter 7 of the Commission's document titled "Commission Certification Curriculum Manual," as approved by the Commission in accordance with Chapter 443 of this title (relating to Certification Curriculum Manual).

(B) complete an out-of-state training program that has been submitted to the commission for evaluation and found to be equivalent to or exceed the commission approved Driver/Operator - Pumper Curriculum.

(C) complete a military training program that has been submitted to the commission for evaluation and found to be equivalent to or exceeds the commission approved Driver/Operator - Pumper Curriculum.

(c) Out-of-state or military training programs which are submitted to the commission for the purpose of determining equivalency

will be considered equivalent if all competencies set forth in Chapter 7 (pertaining to Driver/Operator - Pumper) of the "Commission Certification Curriculum Manual" are met.

(d) The commission approved Driver/Operator - Pumper Curriculum must be conducted by a training facility that has been certified by the commission as provided in Chapter 427 of this title (relating to Certified Training Facilities).

(e) An individual from another jurisdiction who possesses valid documentation of accreditation from the International Fire Service Accreditation Congress as Driver/Operator - Pumper shall be eligible to take the commission written examination for driver/operator - pumper.

(f) No individual will be permitted to take the commission examination for driver/operator - pumper unless the individual documents, as a minimum, completion of NFPA 1001 Fire Fighter I training.

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 6, 2001.

TRD-200103878
Gary L. Warren Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 239-4921

♦ ♦ ♦

CHAPTER 451. FIRE OFFICER

SUBCHAPTER A. MINIMUM STANDARDS FOR FIRE OFFICER I

37 TAC §451.1

The Texas Commission on Fire Protection (TCFP) proposes an amendment to §451.1, concerning Fire Officer I certification. The amendment clarifies that individuals must take the commission examination for Fire Officer I before applying for certification as Fire Officer I.

Jake Soteriou, Fire Service Standards and Certification Division Director, has determined that for each year of the first five-year period that the rule change is in effect there will be no fiscal implications for state and local governments.

Mr. Soteriou has also determined that for the first five-year period that the rule change is in effect, the public benefit anticipated is a clearer understanding of the certification process. There is no anticipated cost to small businesses or to individuals.

Comments on the proposal may be submitted to Jake Soteriou, Fire Service Standards and Certification Division Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, TX 78768- 2286 or submitted by e-mail to info@tcfp.state.tx.us.

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.032(d), which provides the TCFP with authority to adopt rules to establish qualifications for certification of fire protection personnel.

The proposed amendment implements Texas Government Code, §419.032.

§451.1. Fire Officer I Certification.

(a) The effective date of this section shall be February 1, 2001.

(b) A Fire Officer I is defined as an individual who may supervise fire personnel during emergency and non-emergency work periods; serve in a public relations capacity with members of the community; implement departmental policies and procedures at the unit level; secure fire scenes and perform fire investigations to determine preliminary cause; conduct pre-incident planning; supervise emergency operations; or ensure a safe working environment for all personnel.

(c) Within one year of the effective date of this section, an individual [~~may apply for certification as a Fire Officer I and~~] is eligible to take the commission examination for Fire Officer I, upon documentation to the Commission that the individual has completed the Fire Officer I training meeting the minimum requirements of the National Fire Protection Association Standard 1021, Chapter 2 (1997 edition, or earlier). Individuals who qualify with training under the college course option are not subject to the one year limit of this subsection.

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

Filed with the Office of the Secretary of State, on July 6, 2001.

TRD-200103879
Gary L. Warren Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 239-4921

♦ ♦ ♦

SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE OFFICER II

37 TAC §451.201

The Texas Commission on Fire Protection (TCFP) proposes an amendment to §451.201, concerning certification for Fire Officer II. The amendment clarifies that individuals must take the commission examination for Fire Officer II before applying for certification as Fire Officer II.

Jake Soteriou, Fire Service Standards and Certification Division Director, has determined that for each year of the first five-year period that the rule change is in effect there will be no fiscal implications for state and local governments.

Mr. Soteriou has also determined that for the first five-year period that the rule change is in effect, the public benefit anticipated is a clearer understanding of the certification process. There is no anticipated cost to small businesses or to individuals.

Comments on the proposal may be submitted to Jake Soteriou, Fire Service Standards and Certification Division Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, TX 78768- 2286 or submitted by e-mail to info@tcfp.state.tx.us.

The amendment is proposed under Texas Government Code, §419.008, which provides the TCFP with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.032(d), which provides the TCFP with

authority to adopt rules to establish qualifications for certification of fire protection personnel.

The proposed amendment implements Texas Government Code, §419.032.

§451.201. Fire Officer II Certification.

(a) The effective date of this section shall be February 1, 2001.

(b) A Fire Officer II is defined as an individual who may evaluate the performance of personnel; deliver public education programs; prepare budget requests, news releases, and policy changes; conduct inspections and investigations; supervise multi- unit emergency operations; and identify unsafe work environments and take preventive action; or review injury, accident, and health exposure reports. Individuals who perform inspections must comply with Chapter 429 of this title (relating to Minimum Standards for Fire Inspectors). Individuals who perform investigations must comply with Chapter 431 of this title (relating to Fire Investigation).

(c) Within one year of the effective date of this section, an individual [~~may apply for certification as a Fire Officer II and~~] is eligible to take the commission examination for Fire Officer II, upon documentation to the Commission that the individual has completed the Fire Officer II training meeting the minimum requirements of the National Fire Protection Association Standard 1021, Chapter 3 (1997 edition, or earlier), and holds, as a minimum, intermediate fire service instructor certification, intermediate fire education specialist certification or associate instructor certification through the commission. Individuals who qualify with training under the college course option are not subject to the one year limit of this subsection.

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

Filed with the Office of the Secretary of State, on July 6, 2001.

TRD-200103880
Gary L. Warren Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: August 19, 2001
For further information, please call: (512) 239-4921

♦ ♦ ♦

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 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 78. TALENT AGENCIES

16 TAC §78.10, §78.30

The Texas Department of Licensing and Regulation adopts amendments to §78.10 and §78.30 regarding the Texas Talent Agencies administrative rules. Section 78.10 is adopted without changes to the proposed text as published in the January 26, 2001 issue of the *Texas Register* (26 TexReg 868) and will not be republished. Section 78.30 is adopted with changes to the proposed text as published in the January 26, 2001 issue of the *Texas Register* (26 TexReg 868). The amendments in §78.10 reflect changes that codified Article 5221a-9 into the Texas Occupations Code, Chapter 2105. The changes reflect the current information.

The changes to §78.30 from what was previously proposed deletes language that is no longer necessary. The reason for the deletion is because it is superfluous language as a result of changes made in the 77th Legislative session (HB1216) that clarified the definition of artist.

No comments were received regarding adoption of these amendments.

The adopted amendments will function by providing the public and industry with current information as well as by having a clearer definition of artist.

The amendments are adopted under the Texas Occupations Code, Chapter 51, §51.203 and Texas Occupations Code, Chapter 2105, §2105.002. The Department interprets §51.203 as authorizing the Commissioner to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. The Department interprets §2105.002 as authorizing the Department to adopt rules as necessary to implement this chapter and administer the registration program created under this chapter.

The statutory provision affected by this adoption is Texas Occupations Code, Chapter 51, §51.203 and Texas Occupations Code, Chapter 2105, §2105.002. No other statutes, articles, or codes are affected by the adoption.

§78.30. Exemptions.

The term "talent agency" does not apply to:

(1) a person who obtains or attempts to obtain employment for himself.

(2) an organized labor union that represents artists and whose efforts to obtain or attempt to obtain employment for its members is incidental to representing its members.

(3) a person who, without assessing a fee, operates a talent agency in conjunction with the person's own business, or as the authorized representative for a bona fide employer, for the exclusive purpose of employing artists for use in or for that business, or by that employer.

(4) attorneys licensed to practice who represent artists, strictly as legal advisors and not as managers.

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 3, 2001.

TRD-200103840
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: July 23, 2001
Proposal publication date: January 26, 2001
For further information, please call: (512) 463-7348

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

SUBCHAPTER B. STAFF AND MISCELLANEOUS

22 TAC §577.18

The Texas Board of Veterinary Medical Examiners adopts new §577.18 concerning Historically Underutilized Businesses (HUBs). 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 1969).

Adoption of this section will allow the Board to comply with Texas Government Code, §2161.003, which requires all state

agencies to adopt the General Services Commission's HUB rules. The section encourages the participation of HUBs in state agency construction projects and purchases of goods and services. Adoption of the section commits the Board to the state's policy regarding HUBs.

No comments were received regarding adoption of section.

The section is adopted under the authority of §801.151 (a) of the Texas Occupations Code which give 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-200103800
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

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

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

25 TAC §409.531, §409.541

The Texas Department of Mental Health and Mental Retardation (department) adopts amendments to §409.531, concerning certification status, of Chapter 409, Subchapter L, concerning mental retardation local authority (MRLA) program, with changes to the text as proposed in the February 9, 2001, issue of the *Texas Register* (26 TexReg 1234). Section 409.541, concerning compliance with MRLA program principles for mental retardation authorities (MRAs), is adopted without changes.

The amendments correspond to new rules being adopted by the Texas Department of Protective and Regulatory Services (TDPRS), which is the investigative authority for allegations of abuse, neglect, and exploitation of individuals receiving services through the Mental Retardation Local Authority (MRLA) Program.

The amendments to §409.531 revise the Program Principles for Program Providers. New Provider Principle P6.1 requires the program provider to implement and maintain a plan for initial and periodic training of personnel. Revisions to Provider Principle P29 require that the initial and periodic training must assure program personnel are knowledgeable of how to identify, report, and prevent acts of abuse, neglect, or exploitation. Provider Principle P32.2, which requires the program provider to ensure that program personnel are instructed to report immediately all incidents of abuse, neglect, or exploitation to TDPRS, is amended to specify that the report must be made immediately but no later than one hour after personnel have knowledge or suspicion of such an incident. P32.3 is reworded for clarity. Revisions to Provider Principle P32.4 require the program provider to provide TDPRS with access to all records pertinent to an investigation of alleged abuse, neglect, or exploitation, and to preserve and protect all evidence related to the allegation as directed by TDPRS. Provider Principle P32.6 is revised to extend from 10 to 14 calendar days the timeframe during which the program provider must report to the department its response to the findings of a TDPRS investigation. Other revisions to Provider Principle P32.6 require the program provider to notify the alleged victim or the LAR of the investigative finding, the corrective action taken by the program provider, the process to appeal the investigative finding, and the process for requesting a copy of the investigative report. Provider Principle P32.6 also requires the program provider to provide the alleged victim or LAR with a de-identified copy of TDPRS's investigative report, if the alleged victim or LAR requests a copy of the report. Revised Provider Principle P41 adds the requirement for the program provider to search the Employee Misconduct Registry and Nurse Aid Registry maintained by the Texas Department of Human Services prior to employing or contracting with direct service personnel and refrain from employing a person designated on either registry as having abused, neglected or exploited a person receiving services.

The amendments to §409.541 revise the Program Principles for Mental Retardation Authorities. New Authority Principle A21.1 requires that the MRA determine if a program provider implements and maintains a plan for initial and periodic training of personnel. Revisions to Authority Principle A23 requires that the MRA determine if a program provider's initial and periodic training assure program personnel are knowledgeable of how to identify, report, and prevent acts of abuse, neglect, or exploitation. Revisions to Authority Principle A26 specify that the MRA determine that the program provider implements procedures that are in compliance with Program Provider Principle 32.1-32.7 relating to allegations of abuse, neglect, or exploitation.

In §409.531, Provider Principle P32.3(c), which requires the program provider to notify the alleged victim or the alleged victim's LAR of the allegation report, is revised to require that the notification be accomplished as soon as possible but no later than 24 hours after the program provider reports or is notified of the allegation. Language also is added requiring the provider to explain to the alleged victim or the alleged victim's LAR what actions have been taken or will be taken in response to the allegation. Provider Principle P32.6 is revised to correct an incomplete reference to TDPRS rules concerning how to request an appeal.

A hearing was held on March 5, 2001, in Austin to accept testimony from the public regarding the amendments. No testimony was presented. Written comments were received from the parent/guardian of a state mental retardation (MR) facility resident, Garland; the parent/guardian of one state MR facility resident and guardian of two other state MR facility residents, Richmond; and the Parent Association for the Retarded of Texas (PART), Austin.

Concerning Provider Principles P6.1 and P29 in §409.531(a), two commenters requested that a specific timeframe be specified for the periodic training of program provider employees. Three commenters made the same recommendation concerning the proposed revisions to the corresponding Authority Principles A21.1 and A23 in §409.541(a). The department responds that

the purpose of these principles is to assure that provider personnel training is accomplished based upon the current needs of the consumers, as well as upon any demonstration by program personnel that further training or "update" training is required. The principles as proposed reflect the department's expectation that personnel are continuously qualified with respect to meeting individual consumer needs and to identifying and reporting of abuse, neglect, and exploitation, therefore, the department declines to include a specific timeframe as recommended.

Concerning the revision of Provider Principles P32.3 and P32.6 in §409.531(a), two commenters requested that the language be revised to require an alleged victim of abuse, neglect, or exploitation to be notified of an allegation or the findings of the investigation of an allegation only if appropriate. The commenters stated that the alleged victim may function at the level of a baby or toddler and that notification might traumatize the individual further. The department shares the commenters' concern for the emotional well-being of the program's consumers especially in situations involving potential neglect, abuse, or exploitation of a consumer. The department also recognizes that when these situations occur, alleged victims, as well as their LARs, should be assured that the situation has been recognized and action is being taken. The department believes communication of this assurance is owed to all alleged victims, irrespective of their perceived level of functioning or understanding and, therefore, declines to revise the language as recommended.

Three commenters recommended changes or expressed concerns related to issues outside the scope of the current amendments. The department appreciates these comments which will be taken into consideration during future revisions to these rules.

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

§409.531. Certification Status.

(a) MRLA program providers contracting with TDMHMR for participation in the MRLA Program must be in continuous compliance with the MRLA Program Principles for Program Providers as described in Mental Retardation Local Authority Program Principles for Program Providers. Each MRLA program provider participating in the MRLA Program will receive a certification review conducted by TDMHMR or its designee at least annually in order to maintain certification status.
Figure: 25 TAC §409.531(a)

(1) TDMHMR personnel will conduct all certification reviews of MRLA program providers operated by the local MRA.

(2) TDMHMR or its designee will conduct all certification reviews of non-MRA operated program providers.

(b) Certification review corrective actions required from the program provider as determined by prior reviews under the HCS or MRLA Consumer Principles for Certification and related timelines remain in effect until the first certification review as an MRLA program provider.

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 6, 2001.

TRD-200103866
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: July 26, 2001
Proposal publication date: February 9, 2001
For further information, please call: (512) 206-5232

♦ ♦ ♦

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

25 TAC §419.177, §419.178

The Texas Department of Mental Health and Mental Retardation (department) adopts amendments to §§419.177 of Chapter 419, Subchapter D, concerning home and community-based services (HCS) program, without changes to the text as proposed in the February 9, 2001, issue of the *Texas Register* (26 TexReg 1240). Section 419.178 is adopted with changes.

The amendments correspond to new rules being adopted by the Texas Department of Protective and Regulatory Services (TDPRS), which is the investigative authority for allegations of abuse, neglect, and exploitation of individuals receiving services through the Home and Community-based Services (HCS) Program.

The amendments to §419.177 contain more specific requirements with regard to a program provider's responsibility to implement and maintain a plan for initial and periodic training of personnel. New language specifically requires training that assures program personnel are knowledgeable of how to identify, report, and prevent acts of abuse, neglect, or exploitation. The proposal would add the requirement for the program provider to search the Employee Misconduct Registry and Nurse Aid Registry maintained by the Texas Department of Human Services prior to employing or contracting with direct service personnel and refrain from employing a person designated on either registry as having abused, neglected or exploited a person receiving services.

The amendments to §419.178 require a program provider and its consumer/advocate advisory committee to review all allegations of abuse, neglect, and exploitation and to review the program provider's practices for preventing the occurrence or reoccurrence of abuse, neglect, or exploitation. The current requirement for the program provider to ensure that program personnel are instructed to report immediately all incidents of abuse, neglect, or exploitation to TDPRS is amended to further specify that the report must be made immediately but no later than one hour after personnel have knowledge or suspicion of such an incident. The amendments require the program provider to

provide TDPRS with access to all records pertinent to an investigation of alleged abuse, neglect, or exploitation, and to preserve and protect all evidence related to the allegation as directed by TDPRS. The amendments extend from 10 to 14 calendar days the timeframe during which the program provider must report to the department its response to the findings of a TDPRS investigation. The amendments require the program provider to notify the alleged victim or the LAR of the investigative finding, the corrective action taken by the program provider, the process to appeal the investigative finding, and the process for requesting a copy of the investigative report. The program provider also is required to provide the alleged victim or LAR with a de-identified copy of TDPRS's investigative report, if the alleged victim or LAR requests a copy of the report.

Section 419.178(k)(3), which requires the program provider to notify the alleged victim or the alleged victim's LAR of the allegation report, is revised to require that the notification be accomplished as soon as possible but no later than 24 hours after the program provider reports or is notified of the allegation. Language also is added requiring the provider to explain to the alleged victim or the alleged victim's LAR what actions have been taken or will be taken in response to the allegation.

A hearing was held on March 5, 2001, in Austin to accept testimony from the public regarding the amendments. No testimony was presented. Written comments were received from the parent/guardian of a state mental retardation facility resident, Garland; and from the Parent Association for the Retarded of Texas (PART), Austin.

Concerning §419.177(c), two commenters requested that a timeframe be specified for the periodic training of program provider employees. The department responds that the purpose of this principle is to require the program provider to assure personnel training is accomplished based upon the current needs of the individuals served as well as upon any demonstration by program personnel that further training or "update" training is required. The principle as proposed reflects the department's expectation that personnel are continuously qualified with respect to meeting individual consumer needs and to the identification and reporting of abuse, neglect, and exploitation, therefore, the department declines to include a specific timeframe as recommended.

Concerning §419.177(n), two commenters stated that conducting criminal history checks of applicants for employment, contractors, and employees and not employing or contracting with persons listed in either the Employee Misconduct Registry or the Nurse Aid Registry is a good way to protect individuals. The department appreciates the commenters' support and agrees that the addition of this requirement to the existing requirement for criminal history checks of applicants and employees will afford more protection for program consumers.

Concerning §419.178(k)(3), two commenters requested that the language be revised to require an alleged victim of abuse, neglect, or exploitation to be notified of an allegation only if appropriate. The commenters stated that the alleged victim may function at the level of a baby or toddler and that notification might traumatize the individual further. The department shares the commenters' concern for the emotional well-being of the program's consumers especially in situations involving potential neglect, abuse, or exploitation of a consumer. The department also recognizes that when these situations occur, individuals, as well as their LARs, should be assured that the situation has been recognized and that action is being taken. The department believes communication of this assurance is owed to all individuals served, irrespective of their perceived level of functioning or understanding and, therefore, declines to revise the language as recommended.

With regard to the same section, the commenters also requested that a timeframe be specified for the alleged victim and the LAR to be notified of an allegation of abuse, neglect, or exploitation. The department agrees and has revised the rule to require this notification to be made as soon as possible but no later than 24 hours from the time the program provider reports or is notified of such an allegation.

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

§419.178. Certification Principles: Quality Assurance.

(a) The program provider must pursue and promote the active and maximum cooperation with generic service agencies, other service providers, individuals and advocates in planning and developing a full range of services and resources to match the needs of the individual as those needs are identified.

(b) The program provider must ensure a personalized service delivery program based upon the choices made by each individual, or the individual's LAR on behalf of the individual, and those choices that are available to persons without mental retardation and other disabilities.

(c) The program provider shall:

(1) conduct an initial on-site inspection prior to initiating services in a residence and, thereafter, at least an annual on-site inspection of all residences in which foster/companion care, supervised living, or residential support is provided to assure that, based on the individual's needs, the environment is healthy, comfortable, safe, appropriate and typical of other residences in the community, suited for the individual's abilities, and is in compliance with applicable federal, state, and local regulations for the community in which the individual lives; and

(2) ensure that the individual's IDT reviews the results of the on-site inspection conducted prior to the individual residing in the residence and each inspection conducted at least annually thereafter; and takes action as required to assure that the residence is appropriate and meets the needs of the individual.

(d) The program provider must ensure that:

(1) emergency plans are maintained for each residence in which foster/companion care, supervised living or residential support is provided;

(2) the emergency plans address relevant emergencies appropriate for the type of service, geographic location and the individuals living in the residence; and

(3) the individuals and service provider staff follow the plans during drills and actual emergencies.

(e) The program provider must assure that a residence in which four individuals live:

(1) is in continuous compliance with applicable provisions concerning Residential Board and Care Occupancies - Small Facilities of the edition of the NFPA 101 Life Safety Code, published by the National Fire Protection Association and most recently adopted by the Texas State Fire Marshal's Office as certified by the fire safety authority having jurisdiction for the location of the residence (e.g., the local fire marshal or building official) at the time the residence is approved by the department and at least annually thereafter;

(2) is approved by the department in accordance with §419.182 of this title (relating to Department Approval of Residences); and

(3) is in continuous compliance with all applicable health and safety laws, ordinances, and regulations.

(f) The program provider shall establish an on-going consumer/advocate advisory committee composed of individuals, individuals' LARs, community representatives, and family members that will meet at least quarterly. The committee will assist the program provider to perform the following activities at least annually:

(1) evaluating and addressing the satisfaction of individuals or individuals' LARs with the program provider's services;

(2) soliciting, addressing, and reviewing complaints from individuals or their LARs about the operations of the program provider;

(3) reviewing all allegations of abuse, neglect, and exploitation alleged to have been committed by program provider personnel against individuals and the program provider's practices for preventing the occurrence or reoccurrence of abuse, neglect, and exploitation; and

(4) participating in a continuous quality improvement review of the program provider's operations and offering recommendations for improvement of program operations for action by the program provider as necessary.

(g) The program provider shall make available all records, reports and other information related to the delivery of HCS Program services as requested by the department, other authorized agencies, or HFCA and deliver such items, as requested, to a specified location.

(h) The program provider shall conduct at least annually, a satisfaction survey of individuals and their LARs and take action regarding any areas of dissatisfaction.

(i) The program provider shall publicize and make available a process for eliciting complaints and maintain a record of verifiable resolutions of complaints received from:

(1) individuals, their families or LARs

(2) program provider's personnel or service providers; and

(3) the general public.

(j) The program provider must ensure that:

(1) the individual and the LAR are informed of how to report allegations of abuse, neglect, or exploitation to TDPRS and are provided with the TDPRS toll-free telephone number (1-800-647-7418) in writing; and

(2) all program provider personnel are:

(A) instructed to report to TDPRS immediately, but not later than one hour after having knowledge or suspicion, that an individual has been or is being abused, neglected, or exploited; and

(B) provided with the TDPRS toll-free telephone number (1-800-647-7418) in writing; and

(3) all program provider personnel report suspected abuse, neglect or exploitation as instructed.

(k) If the program provider suspects an individual has been or is being abused, neglected, or exploited or is notified of an allegation of abuse, neglect or exploitation, the program provider shall take necessary actions to secure the safety of the alleged victim , including but not limited to:

(1) obtaining immediate and on-going medical or psychological services for the alleged victim as necessary;

(2) if necessary, restricting access by the alleged perpetrator of the abuse, neglect or exploitation to the alleged victim or other individuals pending investigation of the allegation; and

(3) notifying, as soon as possible but no later than 24 hours after the program provider reports or is notified of an allegation, the alleged victim and the alleged victim's LAR of the allegation report and the actions that have been or will be taken.

(l) The program provider personnel shall cooperate with the TDPRS investigation of an allegation of abuse, neglect, or exploitation, including but not limited to:

(1) providing complete access to all HCS Program service sites owned, operated, or controlled by the program provider;

(2) providing complete access to individuals and program provider personnel;

(3) providing access to all records pertinent to the investigation of the allegation; and

(4) preserving and protecting any evidence related to the allegation in accordance with TDPRS instructions.

(m) In all respite facilities and all residences in which the residential assistance provider or the program provider hold a property interest, the program provider must post in a conspicuous location:

(1) the name, address and telephone number of the program provider;

(2) the effective date of the TDMHMR Waiver Program Provider Agreement; and

(3) the name of the legal entity named on the Waiver Program Provider Agreement.

(n) The program provider must:

(1) report the program provider's response to the finding of all TDPRS investigations of abuse, neglect, or exploitation to the department in accordance with department procedures within 14 calendar days of the program provider's receipt of the investigation findings; and

(2) promptly, but not later than five calendar days from the program provider's receipt of the TDPRS investigation finding, notify the alleged victim or LAR of:

(A) the investigation finding;

(B) the corrective action taken by the program provider if TDPRS confirms that abuse, neglect, or exploitation occurred;

(C) the process to appeal the investigation finding as described in 40 TAC Chapter 711, Subchapter M (relating to Requesting

an Appeal if You are the Reporter, Alleged Victim, Legal Guardian or with Advocacy, Incorporated); and

(D) the process for requesting a copy of the investigative report from the program provider; and

(3) upon request of the alleged victim or LAR, provide to the alleged victim or LAR a copy of the TDPRS investigative report after concealing any information that would reveal the identity of the reporter or of any individual who is not the alleged victim.

(o) If abuse, neglect, or exploitation is confirmed by the TDPRS investigation, the program provider shall take appropriate action to prevent the reoccurrence of abuse, neglect or exploitation including, when warranted, disciplinary action against or termination of the employment of program provider personnel confirmed by the TDPRS investigation to have committed abuse, neglect, and exploitation.

(p) At least annually, the program provider must review incidents of confirmed abuse, neglect, or exploitation, complaints, and unusual incidents to identify program operations modifications that will prevent the reoccurrence of such incidents and improve service delivery.

(q) The program provider shall ensure that all personal information concerning an individual, such as lists of names, addresses and records obtained by the program provider is kept confidential, that the use or disclosure of such information and records is limited to purposes directly connected with the administration of the HCS Program, and is otherwise neither directly nor indirectly used or disclosed unless the consent of the individual to whom the information applies or his or her LAR is obtained beforehand.

(r) The program provider shall apply a consistent method in assessing charges against the individual's personal funds that ensures that charges for items or services, including but not limited to room and board, are reasonable and comparable to the costs of similar items and services generally available in the community.

(s) The program provider shall assure the individual or his or her LAR has agreed in writing to all charges assessed by the program provider against the individual's personal funds prior the charges being assessed.

(t) The program provider shall not assess charges against the individual's personal funds for costs for items or services reimbursed through the HCS Program.

(u) At the written request of an individual or his or her LAR, the program provider:

(1) must manage the individual's personal funds entrusted to the program provider;

(2) must not commingle the individual's personal funds with the program provider's funds; and

(3) must maintain a separate, detailed record of all deposits and expenditures for the individual.

(v) When behavior management techniques involving restriction of individual rights or intrusive techniques are used, the program provider shall ensure that the implementation of such techniques includes:

(1) approval by the individual's IDT;

(2) written consent of the individual or LAR;

(3) written notification to the individual or LAR of the right to discontinue participation at any time;

(4) assessment of the individual's needs and current level/severity of the targeted behavior(s);

(5) use of techniques appropriate to the level/severity of the targeted behavior(s);

(6) a written program developed by a psychologist with input from the individual, LAR, the individual's IDT, and other professional personnel;

(7) collection and monitoring of behavioral data concerning the targeted behavior(s);

(8) allowance for the decrease in the use of intervention based on behavioral data;

(9) allowance for revision of the program when desired behavior(s) are not displayed or techniques are not effective;

(10) consideration of the effects of the techniques in relation to the individual's physical and psychological well-being; and

(11) at least an annual review by the IDT to determine the effectiveness of the program and the need to continue the techniques.

(w) The program provider shall report the death of an individual to the department by the end of the next business day following the death and, if the program provider reasonably believes that the individual's LAR does not know of the death, to the individual's LAR as soon as possible, but not later than 24 hours after the death.

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 6, 2001.

TRD-200103864
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: July 26, 2001
Proposal publication date: February 9, 2001
For further information, please call: (512) 206-5232

♦ ♦ ♦

SUBCHAPTER E. ICF/MR PROGRAMS

The Texas Department of Mental Health and Mental Retardation (department) adopts new §§419.211, 419.215-419.218, 419.224, 419.241, 419.243, and 419.245-419.249, and amendments to §§419.255, 419.256, 419.260, and 419.269 of Chapter 419, Subchapter E, concerning ICF/MR programs, without changes to the text as proposed in the March 30, 2001, issue of the *Texas Register* (26 TexReg 2487). The following sections are adopted with changes: §§419.203, 419.213-419.214, 419.219, 419.223, 419.225-419.227, 419.236-419.240, 419.242, 419.244, and 419.299.

The new sections describe the following requirements for the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) Program in Texas including, provider administrative requirements in new Division 3; provider service requirements in Division 4; eligibility, enrollments, and review in new Division 5. The amendments to §419.203 in Division 1 add the definitions of terms used in the proposed new sections. In Division 4, new §419.227, concerning discharge from a facility, incorporates the provisions of repealed §419.223, also concerning discharge from a facility, with clarifying revisions. The repeal of §419.223

permits a more logical organization of the new sections within the division. New §419.223 addresses requirements of the program provider to conduct an annual review of living options. In Division 7, new §419.269, concerning audits, incorporates the provisions of repealed §419.262, concerning auditing, with other auditing provisions. The listing of references in repealed §419.299 are augmented by a much longer listing of references from the new sections in new §419.299, concerning references.

The following new requirements are described in the new sections. A program provider must perform a capacity assessment if it believes a guardian for that individual may be appropriate and a referral to the appropriate court is anticipated, or if the program provider is ordered by a court to conduct a capacity assessment. In general, only local mental retardation authorities (MRAs) may request enrollment of an applicant into the ICF/MR program, except that a program provider may request enrollment if the applicant received ICF/MR services from a non-state operated facility during the six months prior to the request and the applicant is not moving from or seeking admission to a state school or state center. If the department grants a reinstatement of a lapsed level of care (LOC), the reinstatement will be for a period of not more than 180 days prior to the date of electronic transmission of the MR/RC Assessment. Previously, the period had been one year.

The new sections incorporate existing policies and procedures described in the bulletins that have been distributed by the department's Office of Medicaid Administration to program providers during the past several years. These include a description of circumstances that require the ICAP to be re-administered and clarification of the documentation that must be submitted when the program provider requests an increase in an individual's LON.

The new sections replace existing Chapter 406, Subchapter C, concerning vendor payments; Chapter 406, Subchapter E, concerning eligibility and review; and §§406.302-406.309 and §406.311 of Chapter 406, Subchapter G, concerning additional facility responsibilities, the repeals of which will be adopted in a later issue of the *Texas Register*. Elsewhere in this issue of the *Texas Register*, the department adopts the repeal of §419.223, concerning discharge from a facility; §419.262, concerning auditing; and §419.299, concerning references.

Some of the topics currently addressed in the sections of Chapter 406 that are being repealed are not addressed in the new sections because those topics already are addressed in federal regulations or Texas Department of Health rules. These topics include day services, health and hygiene services, requirements for the self-administration of medication, and medical transportation.

The new sections are part of a comprehensive review, revision, and reorganization of the department's ICF/MR Program rules in Chapter 406. As the sections in existing Chapter 406 are reviewed, the subject matter is incorporated into new sections in Chapter 419, Subchapter E. The first new sections concerning general requirements and personal funds were adopted in late 1999. In December 2000, the department adopted additional new sections concerning provider enrollment in Division 2, provider service requirements in Division 4, and provider agreement sanctions in Division 7. The comprehensive review, revision, and reorganization of the ICF/MR Program rules is being conducted in conjunction with the review of rules required by Texas Government Code, §2001.039.

In §419.203, the terms "assignment," "non-state operated facility," "PDP (person-directed plan)," "related condition," "state-operated facility," and "working day" are defined and the paragraphs re-numbered. The definitions of "CFR," "ICAP," "IQ," "LOC," "LON," "TAC" "THSC," and "USC" are revised to provide a clearer description of their meanings. The definition of "IDT (interdisciplinary team)," is revised to specify that the IDT assesses an individual's needs and makes recommendations for the IPP. The definition of "LAR (legally authorized representative) is revised to delete the terms "surrogate decision-maker" and "surrogate consent committee." The definitions of "mental retardation" and "permanency planning" are revised to be consistent with the definitions used in other department rules. The definition of "specially constituted committee" is revised to correct the plural "individuals" to the singular "an individual's."

In §419.213(a)(13), language is added to specify that the program provider must maintain in each individual's record a summary of the individual's medication history for the last five years or from the time of initiation of services, whichever is most recent. As proposed, the provision did not specify a time period for the summary.

In §419.214(c), the term "state schools and state centers" is substituted for "state-operated facilities" and the term "state school and state center" for "state-operated facility" to clarify that this provision does not apply to small state-operated facilities. In subsection (d) of that same section, the phrase "other than state schools or state centers" is inserted after "facilities" to clarify that this provision does not apply to state schools and state centers.

In §419.219(b), the language is revised to specify that a program provider other than a state school or state center will be reimbursed for durable medical equipment in accordance with the reimbursement rules of the Texas Health and Human Services Commission (1 TAC §355.455). Subsections (f), (g), and (j), which also address durable medical equipment, are deleted. In addition, subsection (e) is deleted because the systems are not yet in place to implement this provision. The subsections of §419.219 are relettered.

Subsection (a) of §419.223(a) has been revised to clarify that state schools and state centers follow the living options process described in the department's continuity of services rule (Chapter 412, Subchapter F) when discussing living options with an individual or LAR.

In §419.225(2), "state schools and state centers" is substituted for "state-operated facilities" to clarify that this provision does not apply to small state-operated facilities. In paragraph (3)(A) of that section, the reference is corrected to cite the department's newly adopted rule governing abuse, neglect, and exploitation in local authorities and community centers.

The numeral "3" is replaced with the word "three" in §419.226(h) and §419.227(i) to comply with current department and *Texas Register* style guidelines.

In §419.227(f), language has been added to explicitly describe the exception to the requirement that a program provider obtain written approval from the department prior to the effective date of the proposed discharge of an individual because of maladaptive behavior. Because the discharge of an individual under this section from a state school or state school for transfer to a psychiatric facility for inpatient services is reported in the department's Client Assignment and Registration (CARE) system, subsection (i) is revised to specify that a state school or state center is not

required to submit an additional notice of the discharge to the department.

A typographical error is corrected in §419.236(b)(1) with the addition of closing quotes after the term "brain death." In addition, new paragraph (b)(4) is added which specifies that an additional circumstance under which an individual is not in need of and able to benefit from active treatment is when the individual is generally able to function with little supervision or without a program of continuous active treatment.

Subsection (f) of §419.237 is revised to specify that the effective date of an initial LOC will be the date requested by the MRA, which may be no earlier than 30 days prior to the date the MR/RC Assessment is electronically transmitted to the department. As proposed, the effective date of the initial LOC would have been the date that the MR/RC Assessment was transmitted.

Language is deleted in §419.238 and §419.239 because that language is included in the definition of related condition that has been added in §419.203.

A typographical error is corrected in §419.240(c) with the substitution of "MR/RC" for "MR/MC."

In §419.242(4), a new subparagraph (E) is added stating that the individual's PDP should be submitted, if available, when requesting an increase to an existing LON based on the results of an ICAP assessment.

Another typographical error is corrected in §419.244(b)(1) with the substitution of "ICF/MR" for "ICF-MR." In §419.244(b)(2), "state school or state center" is substituted for "state-operated facility" to clarify that the provision does not apply to individuals moving from or seeking admission to a small state-operated facility. Subsection (c)(1) of §419.244 is revised to require that the program provider selected by an applicant or the applicant's LAR must notify the MRA in writing that admission to the program provider's facility has been offered to the applicant. After consultation with representative MRAs, the department has revised §419.244(e) to specify that an MRA must accomplish enrollment activities no later than 15 working days after the MRA receives notification from the program provider that a placement has been offered to the applicant and from the applicant or LAR that the program provider has been selected. As proposed, the provision permitted an MRA 30 calendar days to accomplish the activities. Paragraph (3) of subsection (e) has been revised to clarify the actions the MRA must take if the applicant has an existing LOC.

In paragraph §419.299(18), the reference is corrected to cite the department's newly adopted rule governing abuse, neglect, and exploitation in local authorities and community centers.

A hearing to accept public comment was held on April 17, 2001, in Austin. No testimony was presented. Written comments were received from the parent/guardian of a state mental retardation facility resident, Garland; seven state mental retardation facilities including Brenham State School, Denton State School, El Paso State Center, Lubbock State School, Mexia State School, San Angelo State School, and San Antonio State School; 16 private providers including Bethesda Lutheran Homes and Services, Inc., Cypress; Bluebonnet Residential Center, Godley; CALAB, Inc. in Lubbock and San Antonio; Classic Group Home, Houston; Community Access, Inc., Tyler; Community Living Concepts, Inc., Keene; EduCare Community Living, Denton; New Horizons, Benbrook; Newstart, Inc., Fort Worth; Residential Management, Inc., San Antonio; Rock House, Inc., Stephenville; Southern Concepts, Inc., Granbury; Summer House II, Georgetown; UCP of Metropolitan Dallas; Vita-Living, Inc., Houston; and Volunteers of America, Arlington; and four advocacy organizations including Advocacy, Inc., Austin; The Arc of Texas, Austin; Texas Council for Developmental Disabilities, Austin; and the Private Providers Association of Texas (PPAT), Austin.

Three commenters asked that the department address in an appropriate section of the subchapter the issue of children and adults being roommates and/or residing in the same facility. The commenters stated that while the practice might be fine if the child and adult are almost the same age, as a general rule it is not acceptable for children to be rooming/residing with adults. The commenters further stated their belief that that children belong in a family setting rather than an ICF/MR facility, but said they recognized that children are living in ICF/MR facilities today. Therefore, the issue of children rooming/residing with adults must be addressed and limitations imposed. The department responds that program providers are required to comply with the federal standards of participation which require, in part, at 42 CFR §483.470(a)(1), that individuals "of grossly different ages, developmental levels, and social needs" must not be housed "in close physical or social proximity unless the housing is planned to promote the growth and development of all those housed together." The department recommends that the commenters report concerns about a particular provider's compliance with this provision to the ICF/MR survey office at the Texas Department of Human Services.

Six commenters stated that the fiscal impact statement in the proposal preamble was inaccurate in stating that "does not have foreseeable implications relating to costs or revenues of state or local government." Another commenter questioned how MRAs can perform the additional responsibilities required in §419.244 in a timely manner without employing additional resources. The same commenter further questioned whether MRAs have currently underutilized resources which they can divert to performing these additional responsibilities without incurring costs requiring additional revenues. One commenter from a state school noted that during the course of a year the process of requesting renewals and revisions of level-of-care and level-of-need is labor intensive, and requires the equivalent of one "full-time equivalent" to copy the necessary documentation, compile the information, and review it to ensure that requested increases are substantiated. The department responds that it has kept MRAs informed of the department's intent to have MRAs assume these responsibilities as the single point of entry for ICF/MR Program services. In addition, the department has reviewed the 15-month history of new admissions to private ICFs/MR since January 2000 and does not believe that the volume of new admissions in the future will significantly increase MRA costs. The department will be monitoring the new enrollment process once it is implemented September 1, 2001, to ensure that potential delays in enrollments are addressed. Regarding the comment about the staff resources needed to request renewals and revisions of LOC and LON, the department notes that the rule requires only that MRAs request an initial LOC and LON for an applicant. Program providers will continue to request renewals and revisions.

Twelve commenters disputed the economic impact statement in the proposal preamble that stated there would be no "adverse economic effect" on program providers because the new processes for enrollment "do not impose any measurable cost." The commenters stated that having the MRA responsible for most

enrollments and permitting the MRA 30 days in which to "initiate" the enrollment process would result in lost reimbursement to program providers when a vacancy occurs. One commenter said that one facility at 99% occupancy that experiences a vacancy for 50 days will have an average revenue loss of $7,600, and a vacancy for 75 days will represent an average revenue loss of $8,950. Another commenter who is a program provider with both six and 13 bed facilities estimated that this requirement will result in a loss to the program provider of $100,000 per year as a result of anticipated delays in filling vacant beds. The commenter further stated that no evidence had been presented by the department to indicate that an analysis had been conducted to determine how much this rule will impact program providers. Two commenters stated that program providers with small facilities operate on slim profit margins and the new requirement will have a strongly negative economic impact on those providers. Four commenters stated that fixed costs such as house and vehicle payments, utilities, and insurance are not reduced by a vacancy, and that the number of staff required for the facility generally cannot be decreased. The department does not believe that program providers will suffer an adverse economic impact as a result of MRAs being required to request enrollment in the ICF/MR Program for new applicants. However, the department has revised §419.237 and §419.244 to address the process concerns of program providers. Subsection (f) of §419.237 is revised to specify that the effective date of an initial LOC is the date requested by the MRA which may be up to 30 days prior to the date the MR/RC Assessment is electronically transmitted to the department. This will enable a program provider to provide services to an individual and receive reimbursement if enrollment is completed within the 30 day time period. After consultation with representative MRAs, the department has revised §419.244(e) to specify that an MRA must accomplish enrollment activities no later than 15 working days after the MRA receives notification from both the program provider and the applicant or LAR that the program provider has been selected by the applicant or LAR. The department believes these changes address the concerns of program providers that enrollment of applicants will not be accomplished by MRAs in a timely fashion.

One commenter requested that the term "assignment" be defined in §419.203. The department agrees and has added the term and definition.

Another commenter requested that subparagraph (F) of the definition of "behavior intervention plan" be reworded to specify that the staff interventions being described must be appropriate. The commenter stated that the definition as proposed could be interpreted to mean that anecdotal data regarding past events should be included. The department believes that the provision as proposed is clear and unambiguous, and declines to revise the definition as requested.

A commenter questioned whether the term "budgeted amount" still means $3 per week not to exceed $12 per month for state MR facilities. The department responds that the budgeted amount for each individual is determined by the IDT based on the individual's needs and ability to handle money.

Two commenters, each of whom represented either a state school or state center, stated that the definition of "discharge" was not consistent with the definition contained in the department's rule concerning continuity of services in state MR facilities. One commenter stated that a "short term" absence should not be considered a "discharge." The commenter stated that hospitalization is not a therapeutic leave, and questioned whether a hospitalization required the initiation of a full discharge from the facility. The commenter stated that it would be hard to give a 30 day notice before the effective date of a hospitalization. The department responds that the term "discharge" in the ICF/MR rules has a different meaning in department rules relating to state schools and state centers and that hospitalization is a "discharge" as defined in this rule. In addition, the department acknowledges that a 30-day notice may not always be feasible but, as stated in §419.227(c), the program provider must document why certain actions, including giving notice, are not feasible.

Another commenter requested that the definition of "IDT (interdisciplinary team)" be revised to be consistent with the definition in the Persons with Mental Retardation Act. The department agrees and has revised the definition as requested.

One commenter suggested that the following terms be defined consistent with other department rules: "ICAP," ICF/MR Program," "IQ," "LOC," "LON," "mental retardation," and "permanency planning." The department agrees that the definitions of "IQ," "LOC," "LON," "mental retardation," and "permanency planning" should be consistent with those in other department rules, and has revised the language accordingly. While "ICAP" is not defined in any other department rule, the proposed definition has been revised to provide a clearer description of what the term means. The definition of ICF/MR Program is the same as that in the currently effective Chapter 419, Subchapter E, governing ICF/MR programs.

One commenter requested that the definition of "permanency planning" be revised to specify that it is a philosophy and planning process for individuals under the age of 18. The department has revised the definition to be consistent with the definitions in other department rules by adding the phrase "for a minor."

One commenter recommended that the term "surrogate decision maker" not be included in the definition of "LAR (legally authorized representative)," stating the surrogate decision makers do not have the same authority as the other people listed in the definition. The department notes that, as stated in the definition, the persons listed as examples of LARs may act as an LAR in regard to the particular matter in question, only if they are authorized by law to do so. The rule definition does not attempt to extend that authority. In any event, for purposes of clarity TDMHMR will not include "surrogate decision maker" or "surrogate consent committee" in the definition.

One commenter recommended that the term "pooled account" as defined in §419.203 be changed to "co-mingled." The department declines to make the requested revision because the sections of Chapter 419, Subchapter E in which the term appears were not proposed for review and comment.

Concerning the definition of "program provider," one commenter stated that it would be helpful if the definition explicitly addressed either the inclusion or exclusion of state MR facilities from this category. The commenter voiced the assumption that state MR facilities are not bound to the same requirements as "program providers" and remarked that there is a difference between a licensed and contract facilities. The department responds that the term program provider includes all ICFMR providers. In those instances where a requirement or process applies to a specific type of facility, it is explicitly stated in the rule.

Seven commenters recommended that the definition of "related condition" not be deleted. The department agrees and has added the term and definition, to §419.203.

Concerning the definition of "sales receipt" a commenter questioned whether this term refers only to trust fund purchases that exceed the budgeted amount. The department responds that the definition of sales receipt is not limited to particular purchases. Section 419.256 sets forth requirements for expenditures of personal funds.

A commenter recommended that the definition of "separate account" be revised to read "A trust fund account that contains an individual's personal funds." The department responds that the definition is clear as written, and that the recommended revision does not specify that the account contains only one individual's personal fund. The department declines to revise the definition as requested.

Another commenter questioned what the term "contemporary" means as it is used in the definition of "specially constituted committee." The department responds that "contemporary" as used in this section means " current or modern" and is the term used in 42 CFR §483.440(f)(3). The department notes that the all program providers should be in compliance with this provision of the CFR.

Concerning §§419.219(h)(3), 419.237(a), and 419.240(a), a commenter from a state school stated that the facility is still being asked to admit individuals who do not have a current, complete ICAP assessment and that without that assessment the facility cannot submit the MR/RC required for determination of an LOC. The department responds that §419.244(a) and (b) require the MRA, not the program provider, to request enrollment of an applicant moving from or seeking admission to a state school or state center. As described in §419.244(e), the enrollment process includes the MRA obtaining an ICAP score and requesting an LOC determination for individuals who do not have current LOC determinations. Furthermore, §419.237 has been revised to allow an initial LOC to be effective up to 30 days prior to the date the MR/RC Assessment is electronically transmitted to the department.

A commenter stated that the process for discussing living options as discussed in §419.223 should be consistent with that in the department's recently adopted continuity of services rule for state-operated facilities, Chapter 412, Subchapter F. Another commenter stated that as written, the section seems to imply that a discussion of living options is not required for individuals residing in state MR facilities. The department responds that the process as described in this rule is consistent with the requirements of Chapter 412, Subchapter F. The department has revised subsection (a) to clarify that state schools and state centers must comply with 25 TAC §412.274 concerning an individual's living options.

Three commenters recommended that "or" between individual and LAR be changed to "and" in §419.223(a). because the use of "or" is not consistent with the philosophy of person-directed planning espoused by the department. The commenters stated that the use of "or" makes it far too easy for the IDT to *exclude* rather than *include* an individual in the IDT process when there is a LAR. The commenters stated that an individual with an LAR should take part in IDT proceedings unless participating would be harmful to the individual. The department concurs with the recommendation as the objective of the Living Options process is to solicit preferences of both the individual and the LAR, and has revised subsection (a) as requested. Use of the term "or" is retained when a decision by the person with legal authority is required. The commenters also recommended that reviews of living options for minors be performed at least semi-annually but preferably on a quarterly basis. The department believes that the commenters' recommended revision constitutes a significant change to the rule as proposed that the department declines to make at this time.

A commenter requested that §419.223(c)(3) be revised to read "assist the individual or LAR in accessing the service requested when it becomes available." The department agrees and has revised the language as requested.

A commenter stated that while the Capacity Assessment for Self Care and Financial Management described in §419.224 is not complicated to understand, it is 23 pages long and will certainly require resources to complete. The commenter further stated that the rule is not clear as to when the assessment should be performed. The commenter questioned whether the assessment must be performed if the individual's family decides to pursue guardianship and whether the completed assessment is submitted to the court. The department responds that the assessment itself is seven pages long and that the balance of the 23 pages is general instructions. The department believes the section clearly describes the circumstances under which the assessment is to be completed and declines to make the suggested revisions.

Concerning §419.225, a commenter questioned whether state schools and state centers should report injuries of an unknown source to the Texas Department of Human Services. The department responds that, as stated in the section, reporting requirements for state schools and state centers are described in department rules at Chapter 417, Subchapter K, concerning abuse, neglect, and exploitation in TDMHMR Facilities, and in the *Memorandum of Understanding Between Texas Department of Mental Health and Mental Retardation (TDMHMR) and Texas Department of Human Services (TDHS) and Texas Department of Protective and Regulatory Services (TDPRS) concerning Reportable Incidents in State Schools, State Centers, State Operated Community-based MHMR Services, and Community Mental Health and Mental Retardation Centers with Intermediate Care Facilities for the Mentally Retarded (ICF/MR)*. Copies of the memorandum of understanding are available from the department's Office of Policy Development. Also concerning §419.225, another commenter stated that (2)(B) and (3)(A) should be the same for all program providers. The department responds that the intent of the comment is unclear. However the department believes the section accurately describes the reporting procedures for allegations of abuse, neglect, and exploitation for each category of program providers and, therefore, declines to make the recommended revision.

Concerning §419.226(b)(1), one commenter questioned why the rule didn't simply state "if the individual is absent from the facility for 72 hours". The department responds that the provision accurately describes the relevant timeframe and declines to make the suggested revision. Concerning the same paragraph, another commenter suggested that "midnight to midnight" be added following "full day." The department responds that full day is defined in §419.203 as "a 24-hour period extending from midnight to midnight" and declines to make the suggested revision. Concerning §419.226(h), a commenter questioned whether the program provider must submit a completed client movement form to the department whenever the individual returns from leave, regardless of the type of leave. The department responds that the Client Movement form must be submitted after the individual returns to the facility from any type of leave.

A commenter stated that §419.227 attempts to limit "dumping" by program providers but does not require involvement of the MRA

unless the individual is being admitted to a psychiatric hospital for inpatient services, and then only after the fact. The commenter stated that the involvement by the MRA should be required to allow for a smoother transition from provider to provider or so that supports can be put in place to assist the family if a return home becomes necessary. The department responds that paragraph (c)(1) requires that the MRA be informed of a proposed discharge in writing at least 30 days before the effective date of the discharge and that paragraph (c)(4) requires that the MRA receive a copy of the final summary and the post-discharge plan. In addition, §419.227(i) requires notification of the MRA within three days of a discharge when an individual requires immediate admission for in-patient psychiatric services. One commenter questioned whether this section is consistent with the discharge provisions of the department's recently adopted continuity of services rule for state MR facilities. The department replies that the section is consistent with Chapter 412, Subchapter F and that if a state school or state center complies with the provisions in that subchapter, the facility will have complied with the provisions of this section.

Also concerning §419.227, another commenter stated that subsection (b) should specify that the first full day an individual is absent from a facility is the effective date of a discharge only if the individual is competent. The department responds that an individual's presence or absence from the facility, rather than an individual's competency determines the effective date of a discharge, and declines to make the requested revision. A commenter stated that the phrase "why such an action is not feasible" should be deleted in subsections (c) and (d), and questioned what circumstances could justify not giving the individual or LAR prior notice of a discharge. The department recognizes that emergency or unanticipated circumstances occur, such as hospitalizations or an individual's decision to leave a facility, that would prevent the program provider from meeting the timeframes specified in the section, and declines to revise the provision as requested. The commenter also stated that subsection (c)(1) should be revised to state that notice of a discharge should be given to the individual or LAR, if there is one and that subsection (c)(4) should be revised to specify that the copy of the final summary and the post-discharge plan should be provided to the individual or the LAR, if there is one. The department responds that discharge is a significant event that warrants prior notification to both the individual and the LAR, as well as providing a copy of the final summary and post-discharge plan to both the LAR and the individual and declines to revise the language as requested. Concerning (c)(2), the commenter expressed concern that permitting program providers to justify discharge of an individual by saying that the facility can no longer meet the individual's needs will be used by program providers who just do not want to keep that individual. The department responds that the requirement that providers must document the reason for the proposed discharge serves an important purpose in that it allows TDHS surveyors to review such reasons during surveys and determine whether a program provider is in compliance with federal regulations concerning discharge at 42 CFR §483.440(b)(4) and (5). In addition, the department must approve all discharges proposed because of an individual's maladaptive behaviors, in accordance with §419.227(f). Concerning §419.227(f)(4), a commenter stated that the program provider must have a psychologist work with the individual before even considering scheduling an IDT meeting to discuss a proposed discharge. The department agrees that a psychologist should be consulted about an individual's maladaptive behavior before an IDT meeting is called to discuss a proposed discharge due to the maladaptive behavior. A commenter requested that subsection (i) be revised to clarify whether the transfer to a state mental health facility for 30 days of an individual who is court-committed to a state MR facility under the Persons with Mental Retardation Act qualifies as a discharge under this section. Also concerning subsection (i), another commenter stated that if a program provider will not be readmitting an individual following an admission to a psychiatric facility for inpatient services, that the program provider must bear some responsibility to find an alternative placement for the individual if the hospitalization lasts for less than 90 days or whatever length of time the department believes is appropriate. The commenter explained that the section as proposed permits a provider to request admission of an individual to a psychiatric facility for inpatient services of less than a week, pay for the hospitalization, and then discharge the individual. The department responds that when an individual is discharged to a psychiatric facility, the program provider must comply with subsections (c) through (e) of §419.227, which includes the development of the final summary and the post-discharge plan. If the program provider does not intend to readmit the individual, the MRA may facilitate location of alternative services.

Two commenters stated that §419.236 should address all eligibility criteria and should be consistent across all department rules relating to the ICF/MR Program. One of the two commenters stated that this section is misleading because it implies that this criteria applies to state MR facility placement. A third commenter questioned whether the criteria in this section should be consistent with the criteria in recently adopted Chapter 412, Subchapter F, concerning continuity of services -- state MR facilities. The department responds that the eligibility criteria described in this section are for admission to the ICF/MR Program and that, when adopted, this will be the only department rule that addresses eligibility criteria for the ICF/MR Program. Program providers are permitted to establish additional criteria for the facilities they operate. State law (Persons with Mental Retardation Act) prescribes additional criteria for admission to a state MR facility that are described in Chapter 412, Subchapter F.

A commenter stated that an item should be added to the listing in §419.236(b) that addresses situations in which an individual does not need active treatment due to the capabilities of the individual. The department agrees and has revised the provision as requested.

Concerning §419.237(c), a commenter approved of the department's change from four to two levels of care (LOC) as a way of simplifying the assignment process. The department acknowledges the approval.

Concerning §419.237(f) which says the effective date of the initial LOC is the date the MR/RC Assessment is electronically transmitted to the department, a commenter stated that a program provider who admits an individual might have several days when there is no LOC if additional time is needed to obtain the information for the MR/RC assessment beyond the 20-day "window" permitted for new admissions. The department responds that the commenter's concern is addressed with the department's revision of subsection (f) to specify that the MRA can specify an effective date of an initial LOC that is no more than 30 days prior to the date the MR/RC Assessment is electronically transmitted to the department. This will enable a program provider to provide services to an individual and receive reimbursement from the day the services began if the MR/RC Assessment is transmitted within 30 days.

A commenter requested that in addition to retaining the definition of "related condition" in §419.203, the department should reference the definition section after "related condition" is used in §419.238(a)(1)(B) and §419.239(1). The department notes such references are not used for other terms that are defined in §419.203 and declines to make the requested change.

One commenter requested that language explaining the Inventory for Client and Agency Planning (ICAP) be added in §§419.240, 419.241, 419.242, and 419.244. The department responds that it has revised the definition of ICAP in §419.203 to describe what the ICAP is. Therefore, the department does not believe that explanatory language is necessary in the four sections cited by the commenter, and declines to add the language as requested.

Concerning §419.240, a commenter stated the section should be consistent with other department rules and that definitions of "dangerous behavior" and "medically fragile" should be added in §419.203 that are consistent with those in other department rules. The department responds that provisions in §419.241 concerning level of need criteria, are intended to describe the conditions under which an increase in LON and, thus, reimbursement, is appropriate if an individual exhibits dangerous behavior. The description of dangerous behavior in §419.241 is not contradictory of other definitions used in other department rules and, therefore, the department declines to add the definition as requested. The department further notes that "medically fragile" is not used in this subchapter, and declines to define the term as requested.

A commenter stated that §419.240(h) apparently permits the LON to be reviewed at anytime because no timelines are specified. The department agrees that the provision does permit an individual's LON to be reviewed at anytime.

A commenter stated that the §419.241(b)(4) is unclear when it requires that staff "are constantly prepared to physically prevent the dangerous behavior." The commenter stated that the requirement could be interpreted to mean that a staff member must be within arm's reach, which is the language used for requesting a LON 9. The commenter suggested that the requirement be reworded to read "management of the individual's behavior requires that staff members intervene when the behavior occurs." The department declines to make the requested revision because the level of intensity of intervention is clearly described for an increase in LON and a LON 9. The recommended revision does not add clarity to either subsection (b) or (c).

Another commenter suggested that "certified medication aides" be included in §419.241(d)(1). The department declines to make the suggested revision because an increased LON is allowed only if the individual's need for direct treatment falls requires services of a licensed nurse. Services of a medication aide do not justify an increase in the individual's LON. Another commenter requested the deletion of §419.241(d)(2) which addresses documentation in the individual's record of the amount of time spent on nursing treatment, reasoning that if this is not documented, the individual has to wait for some period of time after documentation begins to receive an increased LON. The commenter stated that this information is not usually documented and would not be available if the staff determine that an increase in LON is appropriate. The department declines to delete the language as requested because, for a newly admitted individual the necessary documentation may be available from a previous provider of nursing services. The department states that without documentation of nursing services there would be no basis upon which to determine that an increase in LON is appropriate. The requirement for documentation of nursing services is not a new policy.

Concerning §419.242(1)(E), a commenter questioned whether the requirement is intended to make if more difficult for a program provider to receive a requested increase in an individual's LON. The department responds that the requirement is intended to clarify the documentation necessary to justify a request for an increased in LON. This provision reflects current practice described in department policy memoranda and is not a new requirement.

Nine commenters requested that the department not adopt the provisions in §419.244 that permit only an MRA to request the enrollment of an individual in the ICF/MR Program in most situations. Four of those nine commenters requested that the department convene a meeting of appropriate stakeholders, including consumer advocates, private program providers, MRAs, and department staff to address what the commenters characterize as "deficiencies inherent" in the section as proposed. Another four commenters stated their strong opposition to the adoption of the section as proposed but did not request that the proposal be withdrawn. The department responds that after consultation with representative MRAs, the department has revised §419.244(e) to specify that an MRA must accomplish enrollment activities no later than 15 working days after the MRA receives notification from both the program provider and the applicant or LAR that the program provider has been selected by the applicant or LAR. The department believes this revision addresses the concerns of program providers that enrollment of applicants will not be accomplished by MRAs in a timely fashion. The department further notes that the Access to Services Work Group, whose recommendations were submitted to the Texas MHMR board in March 1999, recommended a single point of access for all services provided or contracted for by the department, including ICF/MR Program services. The work group further recommended that the local authority be the single point of access and that the model for this authority function be the system developed at the MRLA pilot sites. The work group included representatives of MRAs, private providers, and the Private Provider Association of Texas (PPAT) in the membership, as well as consumers, family members and advocacy organizations.

A commenter stated that an individual who may be eligible for admission to a facility under Medical Assistance Only (MAO) must first live in an institution to become eligible for the program. The commenter stated that §419.244 does not seem to address this situation and, therefore, would prevent eligible people from receiving needed services and may be a violation of the Social Security law. The department responds that changes in the process for enrollment of applicants into the ICF/MR Program do not affect the determination of Medicaid eligibility for individuals who become eligible for services under MAO as a result of enrollment in the ICF/MR Program.

Seven commenters stated that §419.244 will unnecessarily delay access to services for eligible individuals when space is available. The commenters further stated that the section does not provide adequate safeguards for individuals and does not recognize the impact the requirement will have on individuals seeking ICF/MR Program services. Two of the commenters stated that the rule is unfair to applicants who have not resided in an ICF/MR before. The commenters stated that under this rule, the enrollment period for an applicant with a history of having resided in an ICF/MR would be much shorter and thus have less of a negative impact on program provider. The commenters stated that

the rule as proposed creates barriers to admission for applicants coming straight from their family homes, and that this was especially true for those applicants who require urgent placement, such as when an aging caregiver becomes sick or dies and immediate placement is necessary. The department has revised subsection (f) of §419.237 to specify that the effective date of an initial LOC is the date requested by the MRA, which may be up to 30 days prior to the date the MR/RC Assessment is electronically transmitted to the department. This will enable a program provider to begin serving an individual and receive reimbursement from the day of the admission if the MR/RC Assessment is transmitted within 30 days. After consultation with representative MRAs, the department has revised §419.244(e) to specify that an MRA must accomplish enrollment activities no later than 15 working days after the MRA receives notification from both the program provider and the applicant or LAR that the program provider has been selected by the applicant or LAR. As proposed, the provision permitted an MRA 30 calendar days to accomplish the activities. The department will be monitoring the new enrollment process once it is implemented, to ensure that delays in enrollments are addressed. The department believes that these changes will alleviate the issues raised by the commenters.

A commenter stated that not allowing program providers in the community to directly enroll individuals who are moving from a state school or state center effectively makes the individuals second class citizens and violates the equal protection clause of the Social Security Act and the United States Constitution. The commenter further stated that the provision sets up a third class of citizens, those individuals who have never received ICF/MR Program services. The commenter said that these individuals will be further limited from ICF/MR Program participation not only by the admissions standards of a specific facility but by the standards imposed by the local MRA. The department responds that recently adopted rules concerning continuity of services (Chapter 412, Subchapter F) govern the process under which an individual leaving a state school or state center is enrolled in a community-based ICF/MR facility. The rules specifically require the involvement of the MRA in this process. The department also states that requiring the MRA to process the enrollment of an individual who has never received ICF/MR Program services before is intended to ensure that the individual is informed of all available choices and assisted in accessing the most appropriate services and supports. The department believes this protects rather than denies the rights of the individual. Furthermore, an MRA is not authorized to impose standards for admission to any facility.

Eleven commenters challenged the requirement in §419.244(a) that only an MRA may request enrollment of an applicant in the ICF/MR Program. The commenters stated that MRAs do not have sufficient staff to perform this additional function efficiently and the enrollments will take longer, with the result that program providers will experience prolonged vacancies and economic hardship. The commenters further stated that individuals seeking ICF/MR Program services and their families will experience undue hardships when they are not able to access services promptly. The commenters stated that private program providers have been efficiently filling their vacancies under the current process and recommended that it be continued. The department responds that MRAs have been kept informed of the department's intent to have MRAs assume these responsibilities as the single point of entry for ICF/MR Program services, and have been preparing for this additional responsibility. In addition, the department has reviewed the recent history of new admissions to community-based ICFs/MR and does not believe that the volume of new admissions will cause problems. After consultation with representative MRAs, the department has revised §419.244(e) to specify that an MRA must accomplish enrollment activities no later than 15 working days after the MRA receives notification from both the program provider and the applicant or LAR that the program provider has been selected by the applicant or LAR. The department will be monitoring the new enrollment process once it is implemented, to ensure that delays in enrollments are addressed.

Eight commenters challenged §419.244(e), which they characterized as permitting an MRA 30 days in which to initiate the enrollment process for those individuals that subsection (a) requires that only the MRA can request enrollment. A commenter stated that §419.244(e) will result in smaller program providers being eliminated from the ICF/MR program and, therefore, reducing choice for individuals and their families. The department responds that the provision requires the MRA to "initiate, monitor, and support the processes" necessary to establish Medicaid eligibility, obtain an ICAP score for the applicant, and request an LOC determination and an LON. The department has changed the time period to "no later than 15 working days" after the MRA is notified by both the program provider and the applicant or applicant's LAR that the program provider has been selected by the applicant or LAR.

Five commenters stated that the department should not be implementing a requirement that only an MRA may request the enrollment of a new applicant at a time when the waiting list for services has more than 13,000 individuals. The department responds that the waiting list referenced by the commenters is for waiver program services and not for ICF/MR Program services and, therefore, will not be impacted by this requirement. The department also notes that the results of a sample survey of individuals on the department's waiting list conducted in July and August 2000 indicates that 32% (262 of the 811 respondents) are interested in an in out-of-home placement, and of those 262 only 15% (39) indicated a preference for a five-bed or larger setting. The department concludes that the waiver program waiting list (which stood at 13,726 names in May 2000 when the sample survey was developed) does not include a large number individuals who want ICF/MR Program services.

One commenter stated that providers have been informed during focus groups that the intent of this rule is to ensure that all individuals are informed of their community living options and as a utilization review function. The commenter stated that program providers already are performing the Community Living Options assessments. The commenter questioned why the utilization review function couldn't be performed by the program provider and the department's utilization review department during the first thirty days of admission. The department responds that the Community Living Options assessments as required by §419.223 has no bearing on the notifications that must be provided to applicants. THSC, §533.038 requires that the department provide an oral and written explanation to applicants seeking residential services of the services and supports for which the applicant may be eligible. The explanation must address ICF/MR Program services -- both state MR facilities and community-based facilities -- as well as waiver program services and other community-based services and supports that may meet

the individual's needs. In Chapter 415, Subchapter D, concerning diagnostic eligibility for services and supports -- mental retardation priority population and related conditions, the department has delegated the responsibility for providing this explanation to MRAs. The utilization review function at enrollment is not affected by this rule.

Seven commenters stated that because some MRAs are also providers of ICF/MR Program services the requirement in §419.244(c) that only an MRA is permitted to enroll an individual in the ICF/MR Program in most situations creates a conflict of interest, i.e., the authority which facilitates the choice of program providers and applicant enrollment also being a program provider. The commenters expressed doubts that MRAs can serve simultaneously as impartial facilitators of choice and applicant enrollment while also operating as a service provider. The department responds that most MRAs that operate ICF/MR services have established distinctly separate divisions to handle the authority and provider functions, thus reducing the potential for a conflict of interest. The department explains that the provisions in §419.244 implement the Access to Services workgroup recommendations that MRAs should serve as the single point of access to publicly funded mental retardation services, including ICF/MR Program services. In addition, MRA activities directed under the provisions of this section occur only after an applicant or the LAR decide to accept services offered by a specific program provider. In the performance of its responsibilities as a local authority, an MRA is obligated through the performance contract requirements to ensure its process for facilitating the choice of services and providers is objective and fairly informs the applicant and LAR of all available choices.

Three commenters stated that the term "reasonable promptness" is used in §419.249 but is not defined anywhere in the proposal. The commenters stated that to some degree, an applicant's right to due process depends on what is meant by the term reasonable promptness, and requested that the term be defined in §419.203, concerning definitions. The department responds that "reasonable promptness" is referenced but not defined in the federal regulations regarding fair hearings at 42 CFR §431.220(a)(1). Because what "reasonable promptness" means will depend on the circumstances of each case, the department does not believe it is helpful to limit its meaning by defining it in the rules. If an applicant believes that a request for services has not been acted upon in a timely manner, the applicant may a request a fair hearing and the hearing officer can make a determination about whether the reasonable promptness standard has been met.

DIVISION 1. GENERAL REQUIREMENTS

25 TAC §419.203

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

§419.203. Definitions.

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

(1) Active treatment -- Continuous, aggressive, consistent implementation of a program of habilitation, specialized and generic training, treatment, health services, and related services. Active treatment does not include services to maintain generally independent individuals who are able to function with little supervision or in the absence of a continuous active treatment program. The program must be directed toward:

(A) the acquisition or maintenance of the behaviors necessary for the individual to function with as much self-determination and independence as possible; and

(B) the prevention or deceleration of regression or loss of current optimal functional status.

(2) Affiliate -- An employee or independent contractor of a provider applicant or a person with a significant financial interest in a provider applicant including, but not limited, to the following:

(A) if the provider applicant is a corporation, then each officer, director, stockholder with an ownership of at least 5%, subsidiary, and parent company;

(B) if the provider applicant is a limited liability company, then each officer, member, subsidiary, and parent company;

(C) if the provider applicant is an individual, then the individual's spouse, each partnership and each partner thereof of which the individual is a partner and each corporation in which the individual is an officer, director, or stockholder with an ownership of at least 5%;

(D) if the provider applicant is a partnership, then each partner and parent company; or

(E) if the provider applicant is a group of co-owners under any other business arrangement, then each owner, officer, director, or the equivalent thereof under the specific business arrangement, and each parent company.

(3) Applicant -- A person seeking enrollment in the ICF/MR Program or seeking admission to a facility.

(4) Applied income -- The portion of an individual's cost of care that the individual is responsible for paying. The amount of an individual's applied income is determined by the policies and procedures authorized by TDHS and depends on the individual's earned and unearned income.

(5) Assignment -- The transfer of rights, interests, and obligations of the program provider agreement from the program provider to another person.

(6) Behavior intervention plan -- A written plan prescribing the systematic application of behavioral techniques regarding an individual that, at a minimum, contains:

(A) reliable and representative baseline data regarding the targeted behavior;

(B) a specific objective to decrease or eliminate the targeted behavior;

(C) a functional analysis of the events which contribute to or maintain the targeted behavior;

(D) detailed procedures for implementing the plan;

(E) ongoing, written quantitative data of the targeted behavior;

(F) written descriptions of incidents of the targeted behavior including the individual's actions and staff interventions;

(G) methods for evaluating plan effectiveness;

(H) procedures for making necessary plan revisions at least annually; and

(I) a fading process for one-to-one supervision, if the individual is assigned an LON 9.

(7) Budgeted amount -- The amount of cash that may be disbursed to an individual at regular intervals, e.g., weekly, monthly, for discretionary spending without obtaining a sales receipt for the expenditure.

(8) Certified capacity -- The maximum number of individuals who may reside in a facility, as set forth in the facility's provider agreement.

(9) CFR (Code of Federal Regulations) -- The compilation of federal agency regulations.

(10) Community MHMR Center -- A community mental health and mental retardation center established under the THSC, Chapter 534.

(11) Day -- Calendar day, unless otherwise specified.

(12) Department -- The Texas Department of Mental Health and Mental Retardation.

(13) Discharge -- The absence, for a full day or more, of an individual from the facility in which the individual resides, if such absence is not during a therapeutic, extended, or special leave, as described in §419.226 of this title (relating to Leaves).

(14) Excluded -- Temporarily or permanently prohibited by a state or federal authority from participating as a provider in a federal health care program, as defined in 42 USC§1302a-7b(f).

(15) Facility -- An intermediate care facility for persons with mental retardation or a related condition.

(16) Full day -- A 24-hour period extending from midnight to midnight.

(17) Fundamental standards of participation HCFA -- Designated standards of participation that reflect client outcomes with respect to basic rights, safety, health, and participation in active treatment services.

(18) HCFA (Health Care Financing Administration) -- The federal agency that administers Medicaid programs.

(19) ICAP (Inventory for Client and Agency Planning) -- A validated, standardized assessment that measures the level of supervision an individual requires and, thus, the amount and intensity of services and supports an individual needs.

(20) ICF/MR Program -- The Intermediate Care Facilities for Persons with Mental Retardation Program, which provides Medicaid-funded residential services to individuals with mental retardation or a related condition.

(21) IDT (interdisciplinary team) -- A group of people assembled by the program provider who possess the knowledge, skills, and expertise to assess an individual's needs and make recommendations for the individual's IPP. The group includes the individual, LAR, mental retardation professionals and paraprofessionals and, with approval from the individual or LAR, other concerned persons.

(22) IPP (individual program plan) -- A plan developed by an individual's IDT that identifies the individual's training, treatment, and habilitation needs and describes services to meet those needs.

(23) Individual -- A person enrolled in the ICF/MR Program.

(24) IQ (intelligence quotient) -- A score reflecting the level of an individual's intelligence as determined by the administration of a standardized intelligence test.

(25) LAR (legally authorized representative) -- A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, and may include a parent, guardian, managing conservator of a minor individual, a guardian of an adult individual, or legal representative of a deceased individual.

(26) LOC (level of care) -- A determination given by the department to an individual as part of the eligibility process based on data submitted on the MR/RC Assessment.

(27) LON (level of need) -- An assignment given by the department to an individual upon which reimbursement for ICF/MR program services is based. The LON assignment is derived from the service level score obtained from the administration of the Inventory for Client and Agency Planning (ICAP) to the individual and from selected items on the MR/RC Assessment.

(28) *Long Term Care Plan for People with Mental Retardation and Related Conditions* -- The plan required by THSC, §533.062, which is developed by the department and specifies, in part, the capacity of the ICF/MR Program in Texas.

(29) MRA (mental retardation authority) -- Consistent with THSC, §533.035, an entity designated by the commissioner to which the Texas Mental Health and Mental Retardation Board delegates its authority and responsibility for planning, policy development, coordination, and resource allocation, and resource development for and oversight of services and supports in one or more local service areas.

(30) Mental retardation -- Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(31) NHIC -- National Heritage Insurance Company.

(32) Non-state operated facility -- A facility for which the program provider is an entity other than the department such as a community MHMR center or private organization.

(33) PDP (person-directed plan) -- A plan of services and supports developed under the direction of an individual or LAR with the support of MRA or program provider staff and other people chosen by the individual or LAR.

(34) Permanency planning -- A philosophy and planning process that focuses on the outcome of family support for a minor by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(35) Personal funds -- The funds that belong to an individual, including earned income, social security benefits, gifts, and inheritances.

(36) Petty cash fund -- Personal funds managed by a program provider that are maintained for individuals' cash expenditures.

(37) Pooled account -- A trust fund account containing the personal funds of more than one individual.

(38) Professional -- A person who is licensed or certified by the State of Texas in a health or human services occupation or who meets department criteria to be a case manager, service coordinator, qualified mental retardation professional, or TDMHMR-certified psychologist as defined in §415.161 of this title (relating to TDMHMR-certified psychologist).

(39) Program provider -- An entity with whom the department has a provider agreement.

(40) Provider agreement -- A written agreement between the department and a program provider that obligates the program provider to deliver ICF/MR Program services.

(41) Provider applicant -- An entity seeking to participate as a program provider.

(42) Related condition -- As defined in the Code of Federal Regulations (CFR), Title 42, §435.1009, a severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with mental retardation, and requires treatment or services similar to those required for individuals with mental retardation;

(B) is manifested before the individual reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(43) Sales receipt -- A written statement issued by the seller that includes:

(A) the date it was created; and

(B) the cost of the item or service.

(44) Sanction team -- A group of professionals assembled and employed by the department, which is overseen by the Health and Human Services Commission to ensure consistency in its determinations.

(45) Separate account -- A trust fund account containing the personal funds of only one individual.

(46) Specially constituted committee -- The committee designated by the program provider in accordance with 42 CFR §483.440(f)(3) that consists of staff, LARs, individuals (as appropriate), qualified persons who have experience or training in contemporary practices to change an individual's inappropriate behavior, and persons with no ownership or controlling interest in the facility. The committee is responsible, in part, for reviewing, approving, and monitoring individual programs designed to manage inappropriate behavior and other programs that, in the opinion of the committee, involve risks to individuals' safety and rights.

(47) State-operated facility -- A facility for which the department is the program provider.

(48) TAC (Texas Administrative Code) -- A compilation of state agency rules published by the Texas Secretary of State in accordance with Texas Government Code, Chapter 2002, Subchapter C.

(49) TDHS -- Texas Department of Human Services.

(50) THSC (Texas Health and Safety Code) -- Texas statutes relating to health and safety.

(51) Trust fund account -- An account at a financial institution in the program provider's control that contains personal funds.

(52) Unclaimed personal funds -- Personal funds managed by the program provider that have not been transferred to the individual or LAR within 30 days after the individual's discharge.

(53) Unidentified personal funds -- Personal funds managed by the program provider for which the program provider cannot identify ownership.

(54) USC (United States Code) -- A compilation of statutes enacted by the United States Congress.

(55) Vendor hold -- Temporary suspension of ICF/MR payments from the department to a program provider.

(56) Working day -- A day when an MRA's administrative offices are open.

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 6, 2001.

TRD-200103853
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: September 1, 2001
Proposal publication date: March 30, 2001
For further information, please call: (512) 206-5232

DIVISION 3. PROVIDER ADMINISTRATIVE REQUIREMENTS

25 TAC §§419.211, 419.213 - 419.219

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

THHSC has delegated to the department the authority to operate the ICF/MR Program.

§419.213. Records.

(a) A program provider must maintain a copy of the following records for each individual:

(1) the birth certificate;

(2) relevant legal documents including documents relating to guardianship, marital status, custody of a minor, or immigration status, if any;

(3) the Social Security card;

(4) a current photograph;

(5) immunization records;

(6) height and weight records;

(7) seizure records, if any;

(8) the most recent physician's orders, including treatment and diet orders;

(9) the most recent nursing care plan, if any;

(10) the most recent laboratory test results, if any;

(11) any significant medical reports, including reports regarding the most recent chest X-ray, electrocardiogram (EKG), and electroencephalogram (EEG), if any;

(12) the most recent medical examination results and a summary of the medical history, including all major surgeries, significant acute illnesses, and injuries requiring hospitalization or a long recovery period;

(13) a summary of the medication history for the last five years or from the time services were initiated, whichever is most recent, including start and stop dates, dose ranges, effectiveness and reactions of all long-term medications and antibiotics;

(14) the most recent dental examination results and a summary of the dental history, including all oral surgeries, extractions, restorations, appliances, and types of anesthesia required for dental work;

(15) the social history and the most recent psychological examination results;

(16) Medicaid and, if applicable, Medicare or third-party insurance cards;

(17) records necessary to disclose the nature and extent of services provided to the individual; and

(18) any other records required by this subchapter or the provider agreement.

(b) A program provider must retain the records described in subsection (a) of this section until the latest of the following occurs:

(1) five years elapse from the date the records were created;

(2) any audit exception or litigation involving the records is resolved; or

(3) the individual becomes 21 years of age.

(c) A program provider must, upon request, make available to the department or its designee the records described in subsection (a) of this section.

§419.214. Certified Capacity of a Facility.

(a) The certified capacity of a facility will be established by the department.

(b) A program provider may request that the department decrease the certified capacity of its facility.

(1) The class of a non-state operated facility that has its certified capacity decreased will be determined according to 1 TAC §355.456(b) (relating to Rate Setting Methodology) for reimbursement purposes.

(2) The department will amend the *Long Term Care Plan for People with Mental Retardation and Related Conditions* to reflect the decrease in certified capacity of a facility or will determine that beds authorized by the *Long Term Care Plan for People with Mental Retardation and Related Conditions* are available for allocation.

(c) To ensure appropriate utilization of state schools and state centers, the department may increase the certified capacity of a state school and state center, if the total capacity of all state schools and state centers does not exceed the authorized bed capacity for "campus facilities" in the *Long Term Care Plan for People with Mental Retardation and Related Conditions*.

(d) If the department determines that redistributing the certified capacity of one or more existing facilities, other than state schools or state centers, into two or more new, smaller facilities may improve utilization of ICF/MR resources, the department may publish notice in the *Texas Register* that it is accepting requests from program providers to redistribute the certified capacity of their facilities. A program provider may submit a request to redistribute capacity. Such a request must be submitted according to the published notice and the department's instructions. After reviewing the submitted requests, the department may negotiate a plan and enter into an agreement with a program provider to redistribute the program provider's certified capacity.

§419.219. Provider Reimbursement.

(a) The department will pay a program provider for ICF/MR Program services provided to individuals enrolled in the ICF/MR Program. Such services include:

(1) room and board;

(2) active treatment; and

(3) medical services.

(b) The department will reimburse a program provider other than a state school or state center for durable medical equipment in accordance with 1 TAC §355.455 and the department's written procedures for durable medical equipment reimbursement.

(c) A program provider must accept the current reimbursement rate or the rate as it may hereafter be amended, as payment in full for ICF/MR Program services provided to an individual enrolled in the ICF/MR Program, and make no additional charge to the individual, any member of the individual's family, or any other source for any item or service including a third party payor, except as allowed by federal or state laws, rules or regulations or the Medicaid State Plan.

(d) To receive payment for ICF/MR Program services, a program provider must:

(1) prepare and submit claims for such services in accordance with this subchapter and the NHIC Claims Management System User Guide; and

(2) submit such claims within 180 days after the end of the month during which services were provided or the date the individual's eligibility is established, whichever is later.

(e) The department will not pay a program provider or will recoup payments made for services provided to an individual:

(1) if the individual does not meet the eligibility criteria described in §419.236 of this title (relating to Eligibility Criteria);

(2) if enrollment of the individual is not complete, as described in §419.241(h) of this title (relating to Applicant Enrollment);

(3) if the individual does not have a valid LOC determination;

(4) if the program provider does not have a signed and dated MR/RC Assessment for the individual;

(5) if the MR/RC Assessment electronically transmitted to the department for the individual does not contain information identical to information on the signed MR/RC Assessment;

(6) if the individual is an inpatient of a hospital, nursing facility or enrolled in a waiver program established under §1915(c) of the Social Security Act;

(7) during a discharge of an individual, including the effective date of discharge as described in §419.227(b) of this title (relating to Discharge From a Facility); or

(8) except as provided in subsection (f) of this section, if the program provider does not have a provider agreement with the department.

(f) The department may pay a program provider for ICF/MR services up to 30 days after its provider agreement has expired or been terminated if the services were provided to individuals admitted to the facility before the effective date of the expiration or termination and reasonable efforts are being made to move the individuals from the facility.

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 6, 2001.

TRD-200103854
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: September 1, 2001
Proposal publication date: March 30, 2001
For further information, please call: (512) 206-5232

♦ ♦ ♦

DIVISION 4. PROVIDER SERVICE REQUIREMENTS

25 TAC §§419.223 - 419.227

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

§419.223. Review of Living Options.

(a) At a facility other than a state school or state center, the IDT must discuss living options with the individual and LAR at least annually or upon the request of the individual or LAR. The facility must use the Community ICF/MR Living Options instrument, copies of which are available on the department's website at www.mhmr.state.tx.us/CentralOffice/Medicaid/i.html or by contacting Office of Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711. State schools and state centers must discuss living options with the individual and LAR in accordance with §412.274 of this title (relating to Consideration of Living Options for Individuals Residing in State MR Facilities).

(1) During the discussion, the IDT must use information obtained from the MRA in whose local service area the facility is located to inform the individual and LAR of the different types of alternative living arrangements.

(2) The IDT must document the discussion in the IDT summary and file the summary in the individual's record.

(3) If the individual or LAR expresses interest in an alternative living arrangement, the program provider must send a copy of the IDT summary to the MRA in whose local service area the facility is located.

(b) If an MRA receives an IDT summary, the MRA must, within 30 days after receiving the IDT summary:

(1) contact the individual or LAR to discuss the alternative living arrangements in which the individual or LAR has expressed an interest; and

(2) determine if the individual or LAR is interested in seeking an alternative living arrangement in another MRA's local service area and, if so, notify the MRA for that local service area.

(c) The MRA for the local service area in which the individual or LAR is interested in seeking an alternative living arrangement must:

(1) enter on the Client Assignment and Registration (CARE) system the individual's name and the specific type of service requested, if that service will not be available within 30 days of the date of request; and

(2) assist the individual or LAR in accessing the service requested when it becomes available.

§419.225. Reporting Abuse, Neglect, and Injuries of Unknown Source.

In accordance with 42 CFR §483.420(d)(2), a program provider must immediately report all allegations of mistreatment, neglect, or abuse, as well as injuries of unknown source, in accordance with state law through established procedures. The procedures are as follows:

(1) facilities licensed by TDHS must report allegations and injuries to TDHS in accordance with 40 TAC Chapter 90, Subchapter G, (relating to Abuse, Neglect, and Exploitation; Complaint and Incident Reports and Investigations);

(2) state schools and state centers must report allegations and injuries in accordance with:

(A) Chapter 417, Subchapter K of this title (relating to Abuse, Neglect, and Exploitation in TDMHMR Facilities); and

(B) the *Memorandum of Understanding Between Texas Department of Mental Health and Mental Retardation (TDMHMR) and Texas Department of Human Services (TDHS) and Texas Department of Protective and Regulatory Services (TDPRS) concerning Reportable Incidents in State Schools, State Centers, State Operated Community-based MHMR Services, and Community Mental Health and Mental Retardation Centers with Intermediate Care Facilities for the Mentally Retarded (ICFMR)* effective March 25, 1996; and

(3) facilities operated by community MHMR centers must report allegations and injuries in accordance with:

(A) Chapter 414, Subchapter L of this title (relating to Abuse, Neglect, and Exploitation in Local Authorities and Community Centers; and

(B) the *Memorandum of Understanding Between Texas Department of Mental Health and Mental Retardation (TDMHMR) and Texas Department of Human Services (TDHS) and Texas Department of Protective and Regulatory Services (TDPRS) concerning Reportable Incidents in State Schools, State Centers, State Operated Community-based MHMR Services, and Community Mental Health and Mental Retardation Centers with Intermediate Care Facilities for the Mentally Retarded (ICFMR)* effective March 25, 1996.

§419.226. Leaves.

(a) An individual's absence from a facility must meet the requirements of this section to be considered a therapeutic leave, an extended therapeutic leave, or a special leave.

(b) An individual is on a therapeutic leave if:

(1) the individual is absent from the facility one full day or more but less than four consecutive full days;

(2) the individual's IPP provides for therapeutic leave; and

(3) except as provided in subsection (e) of this section, the individual has stayed in the facility overnight since being on a prior therapeutic leave or extended therapeutic leave.

(c) An individual is on an extended therapeutic leave if:

(1) the individual is absent from the facility four consecutive full days or more;

(2) the number of days used by the individual for extended therapeutic leave does not exceed ten during the calendar year in which the leave is being taken;

(3) the individual's IPP provides for the extended therapeutic leave; and

(4) except as provided in subsection (e) of this section, the individual has stayed overnight in the facility since being on a prior extended therapeutic leave or therapeutic leave.

(d) An individual is on a special leave if:

(1) the individual is absent from the facility one full day or more;

(2) the individual's IPP provides for and describes the expected benefits of the special leave;

(3) during the absence, sufficient direct care staff of the program provider are with the individual to meet the requirements set forth in 42 CFR §483.430(d);

(4) during the absence, the program provider incurs the usual costs associated with providing services to the individual, including but not limited to costs necessary to provide meals, lodging, and staff; and

(5) during the absence, the program provider provides the active treatment specified in the individual's IPP.

(e) Once per calendar year, an individual may take a therapeutic leave immediately before or after an extended therapeutic leave without staying overnight in the facility between the two leaves.

(f) There is no limit on the number of therapeutic leaves or special leaves an individual may take.

(g) A program provider must maintain the following written documentation for each leave taken by an individual:

(1) the name of the individual;

(2) the type of leave taken (i.e., therapeutic, extended therapeutic, or special); and

(3) the dates and times of the individual's departure from and return to the facility.

(h) Within three days after an individual's return from leave, a program provider must electronically submit a completed Client Movement form to the department.

§419.227. Discharge From a Facility.

(a) When a discharge occurs, a program provider must comply with 42 CFR §483.440(b)(4) and (5) and this section.

(b) The effective date of a discharge is the first full day the individual is absent from the facility.

(c) Prior to the effective date of a discharge, a program provider must take the following action or document why such action is not feasible:

(1) notify the individual, LAR, and the individual's MRA of the proposed discharge in writing at least 30 days before the effective date of the proposed discharge;

(2) document the reason for the proposed discharge and, if the reason is that the facility can no longer meet the individual's needs, explain why;

(3) counsel the individual or LAR about the proposed discharge, including the potential outcomes of the proposed discharge; and

(4) develop a final summary and post-discharge plan in accordance with 42 CFR §483.440(b)(5) and provide a copy of both documents to the individual, LAR, and the individual's MRA.

(d) If any actions required by subsection (c) of this section are not feasible prior to the effective date of a discharge, a program provider must, within 7 days after the effective date of the discharge, complete the required actions.

(e) Within 3 days after the effective date of a discharge, a program provider must:

(1) electronically submit a completed Client Movement Form to the department; and

(2) submit a paper copy of the completed Client Movement Form to the appropriate TDHS Medicaid eligibility worker.

(f) Except when an individual requires immediate admission to a psychiatric facility for inpatient services as provided in subsection (i) of this section, if a program provider proposes a discharge due to the individual's maladaptive behavior, the discharge must be approved in writing by the department prior to the effective date of the discharge.

To request approval, the program provider must submit the following documentation to the department's Office of Medicaid Administration:

(1) a description of the maladaptive behavior(s);

(2) a summary of all behavioral interventions attempted, ranging from the most positive to the most restrictive, with the individual's response to these interventions, and reasons the interventions were ineffective in decreasing or eliminating the behavior(s);

(3) chronological psychoactive medication history, including start and stop dates of medications, dose changes to medications, and reasons for discontinuance or changes to dosages (e.g., adverse reactions, allergies, or increase in target symptoms);

(4) evidence of participation by a psychologist in the IDT meeting discussing the proposed discharge;

(5) evidence of approval of the proposed discharge by the facility's specially constituted committee;

(6) a description of the proposed living arrangement for the individual after the effective date of the discharge; and

(7) a written agreement from a representative of the proposed living arrangement to accept the individual on or after the effective date of the discharge.

(g) The department will review the documentation submitted in accordance with subsection (f) of this section and, within 14 days after receiving the documentation, provide written notice to the program provider of its approval or denial of the discharge.

(h) If a proposed discharge is approved by the department in accordance with subsection (g) of this section, a psychologist must participate in the development of the post-discharge plan described in subsection (c)(4) of this section.

(i) If the reason for a discharge is that the individual requires immediate admission to a psychiatric facility for inpatient services, a program provider other than a state school or state center must, within three days after the effective date of the discharge, notify the Office of Medicaid Administration and the individual's MRA of:

(1) the individual's admission to the psychiatric facility; and

(2) whether the program provider intends to re-admit the individual to the facility and, if not, why the individual will not be re-admitted.

(j) During a discharge, a program provider may accept payment from the individual or other person to hold the individual's residential placement in the facility if a written contract, signed and dated by the program provider and the individual or the other person, is executed prior to each discharge that specifies:

(1) the amount, not to exceed the department's rate of reimbursement for the individual's LON on the effective date of discharge, that the individual or other person agrees to pay the program provider to hold the individual's residential placement;

(2) the period of time for which the individual's residential placement in the facility will be held by the program provider;

(3) that the program provider is not obligated to hold the individual's residential placement after the period of time described in paragraph (2) of this subsection; and

(4) agreement by the program provider that the individual or other person may terminate the contract immediately upon written notice to the program provider.

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 6, 2001.

TRD-200103855
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: September 1, 2001
Proposal publication date: March 30, 2001
For further information, please call: (512) 206-5232

DIVISION 5. ELIGIBILITY, ENROLLMENTS AND REVIEW

25 TAC §§419.236 - 419.249

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

§419.236. Eligibility Criteria.

(a) To be eligible for the ICF/MR Program, a person must:

(1) meet the LOC I or LOC VIII criteria described in §419.238 of this title (relating to Level of Care I Criteria) and §419.239 of this title (relating to Level of Care VIII Criteria);

(2) be in need of and able to benefit from the active treatment provided in the 24-hour supervised residential setting of an ICF/MR; and

(3) be eligible for Supplemental Security Income (SSI) or be determined by TDHS to be financially eligible for Medicaid.

(b) Circumstances under which a person is not in need of and able to benefit from active treatment include when the person:

(1) has been diagnosed by a licensed physician as having "brain death";

(2) does not respond in any way to the living environment;

(3) has a health condition that prevents participation in active treatment; or

(4) is generally able to function with little supervision or without a program of continuous active treatment.

§419.237. Level of Care.

(a) An LOC for a person must be requested from the department by electronically transmitting a completed MR/RC Assessment,

indicating the recommended LOC, to the department. The electronically transmitted MR/RC Assessment must contain information identical to the information on the signed MR/RC Assessment described in subsection (b) of this section.

(b) Information on the MR/RC Assessment must be supported by current data obtained from standardized evaluations and formal assessments that measure physical, emotional, social, and cognitive factors. A paper copy of the person's signed MR/RC Assessment and documentation supporting the recommended LOC must be maintained in the person's record.

(c) The department will make an LOC determination in accordance with §419.238 of this title (relating to ICF/MR LOC I Criteria) and §419.239 of this title (relating to ICF/MR LOC VIII) based on the department's review of information reported on the person's MR/RC Assessment.

(d) The department will notify the requestor electronically if the LOC is authorized. The department will send written notification to the requestor and the person or LAR if the LOC is denied.

(e) An initial LOC is valid for 180 days after its effective date.

(f) The effective date of a person's initial LOC is the date requested by the MRA, which may be no earlier than 30 days prior to the date the person's MR/RC Assessment is electronically transmitted to the department.

§419.238. Level of Care I Criteria.

(a) To meet the LOC I criteria, a person must:

(1) meet the following criteria:

(A) have a full scale intelligence quotient (IQ) score of 69 or below, obtained by administering a standardized individual intelligence test; or

(B) have a full scale IQ score of 75 or below, obtained by administering a standardized individual intelligence test, and have a primary diagnosis by a licensed physician of a related condition that is included on the TDMHMR Approved Diagnostic Codes for Persons with Related Conditions (posted on the department's website at www.mhmr.state.tx.us or obtained by contacting Office of Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711);

(2) have an adaptive behavior level of I, II, III, or IV (i.e., mild to extreme deficits in adaptive behavior) obtained by administering a standardized assessment of adaptive behavior.

(b) If a person has a sensory or motor deficit for which a specially standardized intelligence test or a certain portion of a standardized intelligence test is appropriate, the appropriate score should be used.

(c) If a full scale IQ score cannot be obtained from a standardized intelligence test due to age, functioning level, or other severe limitations, an estimate of a person's intellectual functioning should be documented with clinical justification.

§419.239. ICF/MR Level of Care VIII Criteria.

To meet the LOC VIII criteria, a person must:

(1) have a primary diagnosis by a licensed physician of a related condition that is included on the TDMHMR Approved Diagnostic Codes for Persons with Related Conditions (posted on the department's website at www.mhmr.state.tx.us or obtained by contacting Office of Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711); and

(2) have an adaptive behavior level of II, III, or IV (i.e., moderate to extreme deficits in adaptive behavior) obtained by administering a standardized assessment of adaptive behavior.

§419.240. Level of Need.

(a) An LON for a person must be requested from the department by electronically transmitting a completed MR/RC Assessment, indicating the recommended LON, and submitting any supporting documentation required by §419.242 of this title (relating to Supporting Documentation for Level of Need). The electronically transmitted MR/RC Assessment must contain information identical to the information on the signed MR/RC Assessment described in subsection (c) of this section.

(b) Supporting documentation must be received by the department within seven days after the completed MR/RC Assessment is electronically transmitted to the department.

(c) A paper copy of the person's signed MR/RC Assessment and the supporting documentation must be maintained in the person's record.

(d) The department will assign an LON 1, LON 5, LON 6, LON 8, or LON 9, to a person in accordance with the criteria described in §419.241 of this title (relating to Level of Need Criteria).

(e) The department will assign an LON to a person based on the department's review of information reported on the person's MR/RC Assessment, including the ICAP service level score, and any supporting documentation required by §419.242 of this title (relating to Supporting Documentation for Level of Need).

(f) Within 21 days after receiving an MR/RC Assessment and any supporting documentation, the department will request additional documentation, electronically approve the recommended LON, or send written notification to the requestor that the recommended LON has been denied.

(g) If additional documentation is requested, the department will review any additional documentation submitted in accordance with its request and electronically approve the recommended LON or send written notification to the requestor that the recommended LON has been denied.

(h) The department may review a recommended or assigned LON at any time to determine if it is appropriate. If the department reviews a recommended or assigned LON, documentation supporting the LON must be submitted to the department in accordance with the department's request. The department may modify an LON and recoup or deny payment based on its review.

§419.242. Supporting Documentation for Level of Need.

The following supporting documentation, at a minimum, must be submitted to the department when requesting an LON:

(1) if a request is made to increase an LON 1, LON 5, or LON 8 in accordance with §419.241(b) of this title (relating to Level of Need Criteria), due to a person's dangerous behavior:

(A) the person's IPP;

(B) the person's ICAP assessment booklet;

(C) the person's person directed plan (PDP), if available;

(D) the person's behavior intervention plan; and

(E) written descriptions (e.g. incident reports or progress notes) of specific incidents of the dangerous behavior and the staff interventions;

(2) if a request is made for an LON 9 in accordance with §419.241(c) of this title (relating to Level of Need Criteria), due to the person's extremely dangerous behavior:

(A) the person's IPP;

(B) the person's ICAP assessment booklet;

(C) the person's PDP, if available;

(D) the person's behavior intervention plan;

(E) written descriptions (e.g. incident reports or progress notes) of specific incidents of the extremely dangerous behavior and the staff interventions; and

(F) time sheets that verify the assignment of a staff member to exclusively and constantly supervise the person during the person's waking hours, which must be at least 16 hours per day;

(3) if a request is made to increase an LON 1, LON 5, or LON 8 in accordance with §419.241(d) of this title (relating to Level of Need Criteria), due to a person's extraordinary medical needs:

(A) the person's IPP;

(B) the person's ICAP assessment booklet;

(C) the person's PDP, if available; and

(D) description, frequency, and duration of each type of nursing treatment; and

(4) if a request is made to increase an individual's existing LON based on the results of an ICAP assessment:

(A) the individual's previous ICAP assessment booklet;

(B) the individual's latest ICAP reassessment;

(C) the individual's IPP;

(D) program progress notes; and

(E) the individual's PDP, if available.

§419.244. Applicant Enrollment.

(a) Except as provided in subsection (b) of this section, only an MRA may request enrollment of an applicant by the department.

(b) A program provider may request enrollment of an applicant by the department if the applicant:

(1) has received ICF/MR services from a non-state operated facility during the 180 days prior to the enrollment request; and

(2) is not moving from or seeking admission to a state school or state center.

(c) An MRA must request an applicant's enrollment if:

(1) the program provider selected by the applicant or the applicant's LAR notifies the MRA in writing that admission to the program provider's facility has been offered to the applicant; and

(2) the applicant or LAR notifies the MRA that the applicant or LAR chooses to accept the admission offered by the provider.

(d) If an MRA receives the notifications described in subsection (c) of this section, the MRA must comply with §415.159 (c) of this title (relating to Assessment of Individual's Need for Services and Supports) including providing an explanation to the applicant or LAR of the services supports for which the applicant may be eligible.

(e) To request an applicant's enrollment, an MRA must, within 15 working days after the MRA receives both notifications described in subsection (c) of this section:

(1) initiate, monitor, and support the processes necessary to obtain a financial eligibility determination for the applicant if Medicaid financial eligibility has not been established;

(2) obtain an ICAP score for the applicant by:

(A) reviewing and endorsing an existing ICAP for the applicant; or

(B) administering the ICAP if an ICAP score for the applicant does not exist, is not available, or is not endorsed by the MRA;

(3) request or review an LOC determination and LON for the applicant by:

(A) completing and electronically submitting an MR/RC Assessment, if the applicant does not have a current LOC determination; or

(B) reviewing the existing MR/RC Assessment for the applicant if the applicant has a current LOC determination and:

(i) if the MRA does not endorse the existing MR/RC Assessment, completing and electronically submitting a new MR/RC Assessment recommending a revised LOC or LON; or

(ii) if the MRA endorses the existing MR/RC Assessment, notifying the selected program provider in writing that no changes to the current LOC or LON are recommended.

(f) If the department notifies an MRA that it has authorized an applicant's LOC, the MRA must immediately notify the applicant or LAR of such authorization and provide the selected program provider with copies of all enrollment documentation and associated supporting documentation including relevant assessment results and recommendations and the applicant's ICAP booklet and, if available, the applicant's service plan.

(g) To request an applicant's enrollment, a program provider must ensure that the applicant has a current LOC determination.

(1) If an applicant does not have a current LOC determination, the program provider must complete and electronically submit an MR/RC Assessment to the department.

(2) If the program provider submits an MR/RC Assessment, the department will notify the program provider electronically if the LOC is authorized or send written notification to the program provider and the applicant or LAR if the LOC is denied.

(h) An applicant's enrollment is complete if:

(1) the department has authorized an LOC for the applicant;

(2) the Social Security Administration has determined that the applicant is eligible for SSI or TDHS determines the applicant is financially eligible for Medicaid; and

(3) the program provider has electronically submitted a completed Client Movement Form to the department.

(i) A program provider must maintain a paper copy of the completed MR/RC Assessment with all the necessary signatures and documentation supporting the recommended LOC and LON in the applicant's record.

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 6, 2001.

TRD-200103856

Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: September 1, 2001
Proposal publication date: March 30, 2001
For further information, please call: (512) 206-5232

♦ ♦ ♦

DIVISION 6. PERSONAL FUNDS

25 TAC §§419.255, 419.256, 419.260

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

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 6, 2001.

TRD-200103857
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: September 1, 2001
Proposal publication date: March 30, 2001
For further information, please call: (512) 206-5232

♦ ♦ ♦

DIVISION 7. PROVIDER AGREEMENT SANCTIONS

25 TAC §419.269

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

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 6, 2001.

TRD-200103858
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: September 1, 2001
Proposal publication date: March 30, 2001
For further information, please call: (512) 206-5232

♦ ♦ ♦

DIVISION 11. REFERENCES AND DISTRIBUTION

25 TAC §419.299

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

§419.299. References.

Regulations and statutes referenced in this subchapter include:

(1) Social Security Act §1915(c);

(2) 42 USC, §1302a-7b(f);

(3) 20 CFR Part 416, Subpart F;

(4) 42 CFR Parts 440, 441, 442, 455, 456, and 483;

(5) 42 CFR §483.420(d)(2);

(6) 42 CFR §483.440(b)(4) and (5), and (f)(3);

(7) 45 CFR Parts 46, 80, 84, 90, and 91.

(8) Texas Government Code, §531.153;

(9) THSC, Chapter 252;

(10) THSC, §§252.003, 252.031, 252.035, 252.061, and 252.093;

(11) THSC, §§533.035 and 533.062;

(12) Texas Human Resources Code, §32.024;

(13) Chapter 409, Subchapter A of this title (relating to General Reimbursement Methodology for all Medical Assistance Programs);

(14) Chapter 409, Subchapter B of this title (relating to Adverse Actions);

(15) Chapter 409, Subchapter C of this title (relating to Fraud and Abuse and Recovery of Benefits);

(16) Chapter 404, Subchapter B of this title (relating to Abuse, Neglect, and Exploitation of People Served by Providers of Local Authorities);

(17) Chapter 411, Subchapter B of this title, (relating to Interagency Agreements);

(18) Chapter 414, Subchapter L of this title (relating to Abuse, Neglect, and Exploitation in Local Authorities and Community Centers;

(19) Chapter 419, Subchapter G of this title (relating to Medicaid Fair Hearings);

(20) §415.159 (c) of this title (relating to Assessment of Individual's Need for Services and Supports);

(21) 1 TAC Chapter 355;

(22) 1 TAC Chapter 355, Subchapter D (relating to Reimbursement Methodology);

(23) 1 TAC Chapter §355.456(b);

(24) 1 TAC §§355.701-355.709;

(25) 40 TAC Chapter 90 (relating to Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions);

(26) 40 TAC, Chapter 90, Subchapter C (relating to Standards for Licensure);

(27) 40 TAC, Chapter 90, Subchapter D (relating to General Requirements for Facility Construction); and

(28) 40 TAC, Chapter 90, Subchapter F (relating to Inspections, Surveys, and Visits).

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 6, 2001.

TRD-200103859

Andrew Hardin

Chair, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Effective date: September 1, 2001

Proposal publication date: March 30, 2001

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

♦ ♦ ♦

SUBCHAPTER E. ICF/MR PROGRAMS

The Texas Department of Mental Health and Mental Retardation (department) adopts new §419.212, concerning non-licensed providers meeting licensure standards, of Chapter 419, Subchapter E, concerning ICF/MR programs, is adopted without changes to the text as proposed in the March 30, 2001, issue of the *Texas Register* (26 TexReg 2503). New §419.273, concerning administrative hearings is adopted with changes.

New §419.212 requires those program providers that are exempt from being licensed by the Texas Department of Human Services (TDHS) to comply with certain TDHS rules. New §419.273 describes the circumstances under which a program provider may request an administrative hearing. In addition, the section provides that program providers may request a hearing regarding a disputed level of need (LON) assignment only if reconsideration was requested by the program provider in accordance with department rule.

The new sections are part of a comprehensive review, revision, and reorganization of the department's ICF/MR Program rules in Chapter 406. As the sections in existing Chapter 406 are reviewed, the subject matter is incorporated into new sections in Chapter 419, Subchapter E. The first new sections concerning general requirements and personal funds were adopted in late 1999. In December 2000, the department adopted additional new sections concerning provider enrollment in Division 2, provider service requirements in Division 4, and provider agreement sanctions in Division 7. The comprehensive review, revision, and reorganization of the ICF/MR Program rules is being conducted in conjunction with the review of rules required by Texas Government Code, §2001.039.

Section 419.273 is revised upon adoption to permit a program provider to request and receive an administrative hearing to dispute the department's denial of a requested LON assignment if the program provider requested reconsideration of the denial in accordance with department rule.

A hearing to accept public comment was held on April 17, 2001, in Austin. No testimony was presented. Written comments were received from: the department's Mental Retardation Public Advisory Council (MRPAC), the Private Provider's Association of Texas (PPAT) and six private providers, including Bethesda Lutheran Homes and Services, Inc., Cypress; EduCare Community Living, Denton; Rock House, Inc., Stephenville; Southern Concepts, Inc., Granbury; Vita-Living, Inc., Houston; and Volunteers of America, Arlington.

Seven commenters requested that §419.273(b) be revised to permit program providers to request and receive an administrative hearing for a dispute regarding an LON that does not involve recoupment of payments made to the program provider. One commenter stated that the department was attempting to reduce its costs by eliminating the possibility that an independent review may disagree with the findings of department staff. The commenter further stated that private providers of ICF/MR program services fear that as funding for the program tightens, fiscal realities will drive the department's decisions about LONs rather than the identification of the true needs of the consumer. A second commenter stated that an independent reviewer in the form of an administrative law judge is an essential element to fairness, otherwise written documentation and budgetary shortfalls will be the only determining factors in setting a "fair" LON. A third commenter stated that having a disputed LON reviewed by an administrative law judge is "as close as it gets" to having the dispute reviewed by an impartial, outside party. A fourth commenter stated that previous department rules permitted a program provider to request an administrative hearing to dispute the department's denial of an LON, and that no compelling reason exists to eliminate this provision. The commenter stated that while very few disputes about LONs have resulted in an administrative hearing, the hearing is a critical step for the program provider in securing a "pervasive plus" LON (LON 9). The commenter stated that because a program provider must have additional staff in place to deal with an individual's extremely dangerous behavior before

applying for an LON 9, few providers will be willing to take individuals with behaviors that require an LON 9 without the assurance that they can request an administrative hearing if the department should deny the request. The commenter stated that program providers are likely to discharge those individuals who require an LON 9. The commenter stated that the department's own Mental Retardation Planning and Advisory Committee (MRPAC) has recommended that the right of a program provider to request an administrative hearing to dispute a denied LON be reinstated. A fifth commenter stated that administrative hearings about disputed LONs are part of due process and that program providers should be able to request a hearing to ensure a fair and equitable process for all. The commenter stated that having an appropriate LON for an individual ultimately affects the ability of a program provider to provide the necessary care to that individual. The commenter stated that several checks and balances are in place to ensure that appropriated funds are protected by the LON assignment process, therefore the department should ensure that there are means for protecting the individual's and provider's rights in determining LON. The department agrees and has revised §419.273(b) to continue to allow program providers to request an administrative hearing regarding a disputed LON if reconsideration is requested in accordance with department rule.

DIVISION 3. PROVIDER ADMINISTRATIVE REQUIREMENTS

25 TAC §419.212

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

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 6, 2001.

TRD-200103860
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: July 26, 2001
Proposal publication date: March 30, 2001
For further information, please call: (512) 206-5232

♦ ♦ ♦

DIVISION 8. ADMINISTRATIVE HEARINGS

25 TAC §419.273

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

§419.273. Administrative Hearings.

(a) A program provider may request an administrative hearing in accordance with Chapter 409, Subchapter B of this title (relating to Adverse Actions) if the department takes or proposes to take the following action:

(1) vendor hold;

(2) termination of a provider agreement;

(3) recoupment of payments made to the program provider; or

(4) denial of a program provider's request for payment.

(b) If the basis of an administrative hearing requested under subsection (a) of this section is a dispute regarding a LON assignment, a program provider may receive an administrative hearing only if reconsideration was requested by the program provider in accordance with department rule.

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

Filed with the Office of the Secretary of State on July 6, 2001.

TRD-200103861
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: July 26, 2001
Proposal publication date: March 20, 2001
For further information, please call: (512) 206-5232

♦ ♦ ♦

SUBCHAPTER E. ICF/MR PROGRAMS

The Texas Department of Mental Health and Mental Retardation (department) adopts the repeals of §419.223, concerning discharge from a facility; §419.262, concerning auditing; and §419.299, concerning references, without changes to the text as proposed in the March 30, 2001, issue of the *Texas Register* (26 TexReg 2504).

The provisions of repealed §419.223 are adopted with clarifying revisions in new §419.227, concerning discharge from a facility, elsewhere in this issue of the *Texas Register*. The repeal permits the department to organize the new sections within Division 4 of proposed Chapter 419, Subchapter E, concerning ICF/MR programs, in a more logical fashion. The provisions of repealed

§419.262 are incorporated along with other auditing provisions in new §419.269, concerning audits, which is adopted elsewhere in this issue of the *Texas Register*. The listing of references in repealed §419.299 are augmented by a much longer listing of references from the proposed sections in proposed §419.299, concerning references, which is adopted elsewhere in this issue of the *Texas Register*.

No comments were received concerning the repeals as proposed.

DIVISION 4. PROVIDER SERVICE REQUIREMENTS

25 TAC §419.223

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

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 6, 2001.

TRD-200103862
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: September 1, 2001
Proposal publication date: March 30, 2001
For further information, please call: (512) 206-5232

♦ ♦ ♦

DIVISION 6. PERSONAL FUNDS

25 TAC §419.262

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

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 6, 2001.

TRD-200103863
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: September 1, 2001
Proposal publication date: March 30, 2001
For further information, please call: (512) 206-5232

♦ ♦ ♦

DIVISION 11. REFERENCES AND DISTRIBUTION

25 TAC §419.299

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

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 6, 2001.

TRD-200103869
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: September 1, 2001
Proposal publication date: March 30, 2001
For further information, please call: (512) 206-5232

♦ ♦ ♦

SUBCHAPTER P. HOME AND COMMUNITY-BASED SERVICES--OBRA (HCS-O) PROGRAM

25 TAC §419.673, §419.674

The Texas Department of Mental Health and Mental Retardation (department) adopts amendments to §419.673 of Chapter 419, Subchapter P, concerning home and community-based services

- OBRA (HCS-O) program, without changes to the text as proposed in the February 9, 2001, issue of the *Texas Register* (26 TexReg 1242). Section 419.674 is adopted with changes.

The amendments correspond to new rules being proposed by the Texas Department of Protective and Regulatory Services (TDPRS), which is the investigative authority for allegations of abuse, neglect, and exploitation of individuals receiving services through the Home and Community-based Services - OBRA (HCS-O) Program.

The proposed amendments to §419.673 contain more specific requirements with regard to a program provider's responsibility to implement and maintain a plan for initial and periodic training of personnel. New language specifically requires training that assures program personnel are knowledgeable of how to identify, report, and prevent acts of abuse, neglect, or exploitation. The proposal would add the requirement for the program provider to search the Employee Misconduct Registry and Nurse Aid Registry maintained by the Texas Department of Human Services prior to employing or contracting with direct service personnel and refrain from employing a person designated on either registry as having abused, neglected or exploited a person receiving services.

The amendments to §419.674 require a program provider and its consumer/advocate advisory committee to review all allegations of abuse, neglect, and exploitation and to review the program provider's practices for preventing the occurrence or reoccurrence of abuse, neglect, or exploitation. The current requirement for the program provider to ensure that program personnel are instructed to report immediately all incidents of abuse, neglect, or exploitation to TDPRS is amended to further specify that the report must be made immediately but no later than one hour after personnel have knowledge or suspicion of such an incident. The amendments require the program provider to provide TDPRS with access to all records pertinent to an investigation of alleged abuse, neglect, or exploitation, and to preserve and protect all evidence related to the allegation as directed by TDPRS. The amendments extend from 10 to 14 calendar days the timeframe during which the program provider must report to the department its response to the findings of a TDPRS investigation. The amendments require the program provider to notify the alleged victim or the LAR of the investigative finding, the corrective action taken by the program provider, the process to appeal the investigative finding, and the process for requesting a copy of the investigative report. The program provider also is required to provide the alleged victim or LAR with a de-identified copy of TDPRS's investigative report, if the alleged victim or LAR requests a copy of the report.

Section 419.674(k)(3), which requires the program provider to notify the alleged victim or the alleged victim's LAR of the allegation report, is revised to require that the notification be accomplished as soon as possible but no later than 24 hours after the program provider reports or is notified of the allegation. Language also is added requiring the provider to explain to the alleged victim or the alleged victim's LAR what actions have been taken or will be taken in response to the allegation.

A hearing was held on March 5, 2001, in Austin to accept testimony from the public regarding the amendments. No testimony was presented. Written comments were received from the parent/guardian of a state mental retardation facility resident, Garland; and from the Parent Association for the Retarded of Texas (PART), Austin.

Concerning §419.673(c), two commenters requested that a timeframe be specified for the periodic training of program provider employees. The department responds that the purpose of this principle is to require the program provider to assure personnel training is accomplished based upon the current needs of the individuals served as well as upon any demonstration by program personnel that further training or "update" training is required. The principle as proposed reflects the department's expectation that personnel are continuously qualified with respect to meeting individual consumer needs and to identifying and reporting abuse, neglect, and exploitation, therefore, the department declines to include a specific timeframe as recommended.

Concerning §419.673(l), two commenters stated that conducting criminal history checks of applicants for employment, contractors, and employees and not employing or contracting with persons listed in either the Employee Misconduct Registry or the Nurse Aid Registry is a good way to protect individuals. The department appreciates the commenters' support and agrees that the addition of this requirement to the existing requirement for criminal history checks of applicants and employees will afford more protection for program consumers

Concerning §419.674(k)(3), two commenters requested that the language be revised to require an alleged victim of abuse, neglect, or exploitation to be notified of an allegation only if appropriate. The commenters stated that the alleged victim may function at the level of a baby or toddler and that notification might traumatize the individual further. The department shares the commenter's concern for the emotional well-being of the program's consumers especially in situations involving potential neglect, abuse, or exploitation of a consumer. The department also recognizes that when these situations occur, individuals, as well as their LARs, should be assured that the situation has been recognized and that action is being taken. The department believes communication of this assurance is owed to all individuals served, irrespective of their perceived level of functioning or understanding and, therefore, declines to revise the language as recommended.

With regard to the same section, the commenters also requested that a timeframe be specified for the alleged victim and the LAR to be notified of an allegation. The department agrees and has revised the rule to require this notification to be made as soon as possible but no later than 24 hours from the time the program provider reports or is notified of the allegation.

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

§419.674. Certification Principles: Quality Assurance.

(a) The program provider must pursue and promote the active and maximum cooperation with generic service agencies, other service

providers, individuals and advocates in planning and developing a full range of services and resources to match the needs of the individual as those needs are identified.

(b) The program provider must ensure a personalized service delivery program based upon the choices made by each individual, or the LAR on behalf of the individual, and those choices that are available to persons without mental retardation and other disabilities.

(c) The program provider shall:

(1) conduct an initial on-site inspection prior to initiating services in a residence and, thereafter, at least an annual on-site inspection of all residences of individuals living outside their own or family home to assure that, based on the individual's needs, the environment is healthy, comfortable, safe, appropriate and typical of other residences in the community, suited for the individual's abilities, and is in compliance with applicable federal, state, and local regulations for the community in which the individual lives; and

(2) ensure that the individual's IDT reviews the results of the on-site inspection prior to the individual residing in the residence and each inspection conducted at least annually thereafter and takes action as required to assure that the residence is appropriate and meets the needs of the individual.

(d) The program provider must ensure that:

(1) emergency plans are maintained for each residence other than an individual's own or family home;

(2) the emergency plans address relevant emergencies appropriate for the type of service, geographic location and the individuals living in the residence; and

(3) the individuals and service provider staff follow the plans during drills and actual emergencies.

(e) The program provider must assure that an individual living outside his or her family home and receiving supported living lives in a residence in which no more than two other individuals or other persons receiving similar services live unless the department has approved a residence in which four individuals will live in accordance with §419.678 of this title (relating to Department Approval of Residences). The program provider must assure that a residence in which four individuals live:

(1) is in continuous compliance with applicable provisions concerning Residential Board and Care Occupancies-Small Facilities of the edition of the NFPA 101 Life Safety Code, published by the National Fire Protection Association and adopted by the Texas State Fire Marshal's Office, as certified by the fire safety authority having jurisdiction for the location of the residence (e.g., the local fire marshal, building official) at the time the residence is approved by the department and at least annually thereafter;

(2) is approved by the department in accordance with §419.678 of this title (relating to Department Approval of Residences); and

(3) is in continuous compliance with all applicable health and safety laws, ordinances, and regulations.

(f) The program provider shall establish an on-going consumer/advocate advisory committee composed of individuals, individuals' LARs, community representatives, and family members that will meet at least quarterly. The committee will assist the program provider to perform the following activities at least annually:

(1) evaluating and addressing the satisfaction of individuals or individuals' LARs with the program provider's services;

(2) soliciting, addressing, and reviewing complaints from individuals or their LARs about the operations of the program provider;

(3) reviewing all allegations of abuse, neglect, and exploitation alleged to have been committed by program provider personnel against individuals and the program provider's practices for preventing the occurrence or reoccurrence of abuse, neglect and exploitation; and

(4) participating in a continuous quality improvement audit of the program provider's operations and offering recommendations for improvement of program operations for action by the program provider as necessary.

(g) The program provider shall make available all records, reports and other information related to the delivery of HCS-O program services information as requested by the department, other authorized agencies, or HFCA and deliver such items, as requested, to a specified location.

(h) The program provider shall conduct, at least annually, a satisfaction survey of individuals and their LARs and take action regarding any areas of dissatisfaction.

(i) The program provider shall publicize and make available a process for eliciting complaints and maintain a record of verifiable resolutions of complaints received from:

(1) individuals, their families or LARs;

(2) program provider's personnel or service providers; and

(3) the general public.

(j) The program provider must ensure that:

(1) the individual and the LAR are informed of how to report allegations of abuse, neglect, or exploitation to TDPRS and are provided with the TDPRS toll-free telephone number (1-800-647-7418) in writing;

(2) all program provider personnel are:

(A) instructed to report to TDPRS immediately, but not later than one hour after having knowledge or suspicion, that an individual has been or is being abused, neglected, or exploited; and

(B) provided with the TDPRS toll-free telephone number (1-800-647-7418) in writing; and

(3) all program provider personnel report suspected abuse, neglect, or exploitation as instructed.

(k) If the program provider suspects an individual has been or is being abused, neglected, or exploited or is notified of an allegation of abuse, neglect or exploitation, the program provider shall take necessary actions to secure the safety of the alleged victims, including but not limited to:

(1) obtaining immediate and on-going medical or psychological services for the alleged victim as necessary;

(2) if necessary, restricting access by the alleged perpetrator of the abuse, neglect or exploitation to the alleged victim or other individuals pending investigation of the allegation; and

(3) notifying, as soon as possible but no later than 24 hours after the program provider reports or is notified of an allegation, the alleged victim and the alleged victim's LAR of the allegation report and the actions that have been or will be taken.

(l) The program provider personnel shall cooperate with the TDPRS investigation of an allegation of abuse, neglect, or exploitation, including but not limited to:

(1) providing complete access to all HCS-O program service sites owned, operated, or controlled by the program provider;

(2) providing complete access to individuals and program provider personnel;

(3) providing access to all records pertinent to the investigation of the allegation; and

(4) preserving and protecting any evidence related to the allegation in accordance h TDPRS instructions.

(m) In all respite facilities and all residences in which HCS-O program services are provided and the supported living service provider or the program provider hold a property interest, program providers must post in a conspicuous location:

(1) the name, address and telephone number of the program provider;

(2) the effective date of the TDMHMR Waiver Program Provider Agreement; and

(3) the name of the legal entity named on the Waiver Program Provider Agreement.

(n) The program provider must:

(1) report the program provider's response to the finding of all TDPRS investigations of abuse, neglect, or exploitation to the department in accordance with department procedures within 14 calendar days of the program provider's receipt of the investigation findings; and

(2) promptly, but not later than five calendar days from the program provider's receipt of the TDPRS investigative report and finding, notify the alleged victim or the LAR of:

(A) the investigation finding;

(B) the corrective action taken by the program provider if TDPRS confirms that abuse, neglect, or exploitation occurred;

(C) the process to appeal the investigation finding as described in 40 TAC Chapter 711, Subchapter M (relating to Requesting an Appeal if You are the Reporter, Alleged Victim, Legal Guardian, or with Advocacy, Incorporated); and

(D) the process for requesting a copy of the investigative report from the program provider; and

(3) upon request of the alleged victim or LAR, provide to the alleged victim or LAR a copy of the TDPRS investigation report after concealing any information that would reveal the identity of the reporter or of any individual who is not the alleged victim.

(o) If abuse, neglect, or exploitation is confirmed by the TDPRS investigation, the program provider shall take appropriate action to prevent the reoccurrence of abuse, neglect or exploitation including, when warranted, disciplinary action against or termination of the employment of program provider personnel confirmed by the TDPRS investigation to have committed abuse, neglect, and exploitation.

(p) At least annually, the program provider must review incidents of confirmed abuse, neglect, or exploitation, complaints, and unusual incidents to identify program operations modifications that will prevent the reoccurrence of such incidents and improve service delivery.

(q) The program provider shall ensure that all personal information concerning an individual, such as lists of names, addresses and records obtained by the program provider is kept confidential, that the use or disclosure of such information and records is limited to purposes directly connected with the administration of the HCS-O program, and is otherwise neither directly nor indirectly used or disclosed unless the consent of the individual to whom the information applies or his or her LAR is obtained beforehand.

(r) The program provider shall apply a consistent method in assessing charges against the individual's personal funds that ensures that charges for items or services, including but not limited to room and board, are reasonable and comparable to the costs of similar items and services generally available in the community.

(s) The program provider shall assure the individual or his or her LAR has agreed in writing to all charges assessed by the program provider against the individual's personal funds prior the charges being assessed.

(t) The program provider shall not assess charges against the individual's personal funds for costs for items or services reimbursed through the HCS-O program.

(u) At the written request of an individual or his or her LAR, the program provider:

(1) must manage the individual's personal funds entrusted to the program provider;

(2) must not commingle the individual's personal funds with the program provider's funds; and

(3) must maintain a separate, detailed record of all deposits and expenditures for the individual.

(v) When behavior management techniques involving restriction of individual rights or intrusive techniques are used, the program provider shall ensure that the implementation of such techniques includes:

(1) approval by the individual's IDT;

(2) written consent of the individual or LAR;

(3) written notification to the individual or LAR of the right to discontinue participation at any time;

(4) assessment of the individual's needs and current level/severity of the targeted behavior(s);

(5) use of techniques appropriate to the level/severity of the targeted behavior(s);

(6) a written program developed by a psychologist with input from the individual, LAR, the individual's IDT, and other professional personnel;

(7) collection and monitoring of behavioral data concerning the targeted behavior(s);

(8) allowance for the decrease in the use of intervention based on behavioral data;

(9) allowance for revision of the program when desired behavior(s) are not displayed or techniques are not effective;

(10) consideration of the effects of the techniques in relation to the individual's physical and psychological well-being; and

(11) at least an annual review by the IDT to determine the effectiveness of the program and the need to continue the techniques.

(w) The program provider shall report the death of an individual to the department by the end of the next business day following the death, and, if the program provider reasonably believes that the individual's LAR does not know of the death, to the individual's LAR as soon as possible, but not later than 24 hours after the death.

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 6, 2001.

TRD-200103865
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: July 26, 2001
Proposal publication date: February 9, 2001
For further information, please call: (512) 206-5232

♦ ♦ ♦

PART 16. TEXAS HEALTH CARE INFORMATION COUNCIL

CHAPTER 1301. HEALTH CARE INFORMATION

SUBCHAPTER A. HOSPITAL DISCHARGE DATA RULES

25 TAC §§1301.11 - 1301.13, 1301.16 - 1301.20

The Texas Health Care Information Council (Council) adopts amendments to §§1301.11-1301.13 and 1301.16-1301.19, relating to hospital discharge data reporting procedures and new §1301.20 relating to its Scientific Review Panel. Sections 1301.11, 1301.12, 1301.16 - 1301.20 are adopted with changes to the proposed text as published in the March 16, 2001, issue of the *Texas Register* (26 TexReg 2121). Section 1301.13 is adopted without changes and will not be republished.

The Texas Health Care Information Council (Council) also adopts elsewhere in this issue of the *Texas Register* the review of §§1301.11-1301.19, pursuant to the Government Code, §2001.039. The proposed review was published in the July 9, 1999 issue of the *Texas Register* (24 TexReg 5219) and the text was amended once (Dec 15, 2000 issue of the *Texas Register* (25 TexReg 12430). The Council also adopts.

Section 1301.12 as adopted varies from the text as proposed because of a determination by counsel that the Council is not authorized to collect personal identifying information for health care providers, other than physicians. Counsel has determined that the adopted version does not vary substantially from the proposed text. Therefore, republication is not required.

The changes to §§ 1301.16, 1301.18, and 1301.20 are made in response to public comments. The Council's representative from the Office of the Attorney General has advised that the changes made in the sections as adopted affect no new persons, entities, or subjects other than those given notice and that compliance with the adopted sections will be less burdensome than under the proposed sections. Accordingly, republication of the adopted sections as new proposed rules is not required.

The Council is required by its enabling legislation in Health and Safety Code, Chapter 108, specifically §108.006, to "develop a statewide health care data collection system to facilitate the promotion and accessibility of cost-effective, good quality health care." The adopted amendments establish uniform physician identifier characters, provide clarification, or remove version specific language that is amended frequently or that no longer applies to Council data-collecting procedures. New § 1301.20 is adopted to establish guidelines for the Scientific Review Panel (Panel) as required by the Health and Safety Code, § 108.0135. The Panel will make decisions regarding the release of data elements that are not presented in a summarized or modified form in the public use data file to qualified researchers.

The Council received comments only from Texas Hospital Association in regards to the rule review. The Council held a public hearing on April 3, 2001 at which a representative of the Dallas-Fort Worth Hospital Council (DFWHC) presented oral comments. The Texas Hospital Association (THA) filed written comments, as did the DFWHC regarding the proposed amendments.

The agency's reason for adopting the rules contained in this chapter continues to exist.

TEXAS HOSPITAL ASSOCIATION'S COMMENTS AND THE COUNCIL'S RESPONSES TO THE RULE REVIEW PUBLISHED IN THE JULY 9, 1999 EDITION OF THE *TEXAS REGISTER* (24 TexReg 5219)

§1301.12(b)(3)

The commenter recommended the removal of Skilled Nursing Facility inpatient data from the public use data file (PUDF) and that the patients who were served in other specialty units (e.g., Rehabilitation, Substance Abuse and Psychiatric) be identified with a flag in the PUDF. The Council disagrees with removing SNF inpatient data from the public use data file because these patients will also be aged as required in §1301.18(c)(12). The relative lengths of stays for each specialty unit the patient was served in will be indicated on the public use data file with a maximum of five specialty units. This section will be deleted with the adoption of the amendments published in this text.

§1301.12(b)(4) and §1301.19(e)

The commenter recommended language to establish a required minimum data set and delete the second sentence in §1301.19(e). The Council agreed with establishing a state specific data set and adopts the language the presented in this text.

§1301.13(b)

The commenter proposed limiting the data collected from calendar year 1998 for test and certification purposes. The Council agrees with the commenter, but believes the language is no longer necessary and adopts the deletion of this subsection in this text.

§1301.13(c)

The commenter recommended language to extend the maximum number of days that the executive director could grant an extension to processing due dates from ten days to thirty working days, stating that ten working days does not provide enough time to meet the due dates with certain situations, such as computer failures. The Council agrees that ten working days may not be adequate for certain situations, but disagrees that the maximum length of time should be thirty working days. Computer failures should have proper backup systems. The Council will propose in a future set of amendments that the executive director be authorized to grant an extension to processing due dates of greater than 10 working days. The Council adopts in this text authorization to the executive director to extend deadlines for correcting data or certifying data.

§1301.14(a)(2)

The commenter recommended that no limitations be established on the number of tapes or diskettes per submission. The Council disagrees. The Council's rule allowing submission by tapes and diskettes is intended to assist smaller hospitals. The Council expects larger hospitals to transmit transaction sets by electronic data interchange (modem) or to have a vendor do it for them. The Council strongly encourages large-scale data submissions to be by modem.

§1301.15(a)(1)

The commenter recommended an increase from 30 to 90 days for hospitals that lose their reporting exemption status before the hospitals are responsible for collecting discharge data and to allow them at least 180 days to submit their first initial discharge file after the loss of their exempt status. The Council agrees with increasing the number of days to 90 calendar days between the loss of exempt status notice and the date the hospital is responsible for submitting data and will propose this in a future set of amendments. The Council disagrees with establishing the number of days after notice until the first initial submission to be greater than 180 days, because the hospitals first reported set of data could be almost one year after they lost their exemption. The Council will investigate the situation and propose a reasonable first data submission deadline in a future set of amendments.

§1301.15(b)(3)(B) and (b)(4)(B)

The commenter proposed language to §1301.15(b)(3)(B) and (b)(4)(B) to allow additional information to be presented during an appeal of the Council's executive directors decision, regarding exempt status of a hospital, to the Council board members. The Council agrees with the proposed language and will propose the amendments in the future.

§1301.16(b)

The commenter recommended new language for the third sentence of §1301.16(b) to increase from 10 to 14 the number of working days the hospital is allowed to correct and return data. The Council disagrees. This section deals only with improper media, physically damaged media or problems with the file structure of the submission. These are errors that would be corrected by the hospital generating and re-sending a replacement file. This would normally be done in a few days from the data used to prepare the original files, batches and claims. The Council adopts the clarification that the 10 days represents 10 calendar days.

§1301.16(c)(2)

The commenter stated that the language in §1301.16(c)(2) is confusing and proposed the following language: "Within 30 days of receiving initial notice of errors in a discharge report, the hospital shall correct all discharge files containing errors, add any discharge files determined to be missing from the initial discharge report and resubmit any or all discharge files." The Council agrees with the intent of the proposed language and adopts language to allow a hospital to submit complete and corrected files, batches and claims. The proposed amendment provides several options for correcting data, including the use of the data correction software provided by the Council. The current correction pathways follow: 1) The hospital can submit claims with adjustment or replacement bill type codes (e.g. XX6 (Adjustment) or XX7 (Replacement Claim)). 2) The hospital can submit files, batches and all individual claims for a selected time frame utilizing XX8 (Void/ Cancel previous claim) and then resubmit the corrected data using original bill types. The hospital may elect to submit XX8 claims, and then corrected original (XX0, XX1, XX2, XX3, XX4, or XX5) claims for only the errant claims. 3) Hospitals have the option of utilizing the Council supplied data correction software to make corrections, delete errant claims or mark individual claims as "accept as is "when the hospital cannot correct the claim due to circumstances in which the data cannot be obtained. 4) Hospitals that cannot submit adjustment (XX6), replacement (XX7) or Void/Cancel (XX8) claims and are not using the Council's data correction software will need to contact the Council and request to contract with the Council's agent (there is a cost to the hospital associated with this process) to have the files, batches or claims with errors deleted. After the errors are deleted, the correct claims can be submitted and processed. Hospitals that have numerous errors or errors on each claim may elect to use the latter method. Hospitals that do not delete errant claims or have claims deleted and submit corrected claims with the original bill types will be marked as duplicate claims and the encounter data will not be corrected, but will be processed and checked for errors. The adjustment, replacement and void/cancel claims will be merged at the time the Council creates the certification files and other review files.

§1301.16(e)

The commenter recommended new language for §1301.16(e) so that hospitals would be required to correct discharge claims to a substantial level of accuracy prior to the deadline for making corrections, stating concerns of possible fraud allegations. The commenter states that the hospitals must submit one response for Medicare and a different response for the Council. The Council disagrees. The commenter's recommended language is subjective and not enforceable. The Council has established its reporting requirements using the United States Department of Health and Human Service, Health Care Financing Administration's guidelines, and the data corresponds. The Council adopts the modified text in this publication that provides for the option to comment or correct errors "known to the hospital" within the due dates established in the text.

§1301.17(b)

The commenter suggested adding the word "substantially" prior to "accurate" in the first sentence of §1301.17(b). The Council disagrees with using the word "substantially" because the word is too subjective and would not be legally enforceable. The language of §1301.17(b) has been modified to state that the hospital's chief executive officer (CEO) or the designee must respond to and sign a form supplied by the Council regarding the accuracy of the data. For example, if the chief executive officer elects not to certify the encounter data because the CEO has evidence that the data does not accurately represent the inpatient data history of the hospital, then the CEO is required to indicate on the form supplied by the Council that the CEO or the CEO's designated agent do not certify the data. The CEO or the CEO's designated agent must also submit detailed comments explanation regarding the errors or a written request and provide the data necessary to correct the errors. The CEO or the CEO's designated agent should sign the form and send a facsimile communication to the Council by the deadlines specified in §1301.17(d) of this text. Error corrections so noted by the hospital are then due to the Council by the deadlines specified in §1301.17(b).

§1301.17(c)

The commenter recommended an amendment of the first sentence of §1301.17(c) to include the phrase "substantially accurate." The Council disagrees. The phrase is subjective and is not legally enforceable. The language in §1301.17(c) has been rewritten and modified to emphasize that the signed certification form submitted to Council indicates the data including any comments accurately represents the hospital's administrative status of discharged inpatients for the quarter.

The commenter suggested that the words "admitting" and "treating" have different meanings to different hospitals. The Council agrees and adopts the amendment deleting "admitting" and inserting "attending" and adding the definition of "Treating physician".

§1301.17(d)

The commenter recommended that hospitals should not be required to certify data that is more than six months old. The Council disagrees because by the time the certification is due, the data will be nine months old. The Council adopts language to provide the executive director the authority to extend the deadlines for certifying data for all hospitals when necessary.

§1301.18(e)(3)

The commenter recommended the inclusion of all 1998 discharge data as test data. The Council agreed and adopted language in the December 15, 2000 issue of the *Texas Register* (25 TexReg 12430).

§1301.19(b)

The commenter recommended an amendment that would require the Council to publish the dates on which specifications were posted, when they would become effective, and the period of data that would be affected. The Council agrees and will propose the language in a future set of amendments.

COMMENTS AND RESPONSES FROM PROPOSED AMENDMENTS IN THE MARCH 16, 2001 ISSUE OF THE *TEXAS REGISTER* (26 TexReg 2121).

Comments supported the definitions of ethnicity, required minimum data set, and research data file.

Both commenters opposed the proposed amended definition of "Uniform Facility Identifier" on the basis of costs to hospitals. The Council agrees that hospitals with multiple facilities that treat similar conditions will incur additional costs for submitting data by facility. The Council believes that the public benefit outweighs the costs to the affected hospitals. The amended definition will enable consumers to distinguish the quality of care between separate facilities. One commenter requested that a definition of "duplicating services" be added for clarification. The Council expects hospitals with similar treatment units located in two facilities to submit their discharge data separately for each facility. If hospitals have separate facilities but provide treatment for similar conditions in no more than one facility, then the data for all facilities may be submitted under one facility identifier.

The proposed amendment to § 1301.12(b)(1) requires hospitals to submit separate data sets for mother and baby. A commenter expressed belief that most hospitals already comply with this requirement. The Council agrees. The public use data file confirms this practice.

One commenter supported the proposed amendment to § 1301.12(b)(4) that clarifies the data elements to be submitted.

A commenter expressed support for the proposed deletion of § 1301.13(b) but suggested new language for the submission of data for testing purposes. The Council has investigated the possibility of allowing hospitals to submit test data to verify the hospital's data submission process and has determined that adding this capability is not fiscally sound at this time.

A commenter observed that the quarterly submission cycles for returning corrected data established in § 1301.17(b) are inconsistent and do not allow enough time for hospitals to make necessary corrections. The Council agrees that more time may be needed and has extended those dates one month each. The same commenter also recommended extending by five calendar days the deadline in § 1301.16(c)(3) for submitting corrections prior to certification. The Council agrees and extended the deadline from the fifteenth of the month to the first day of the following month and modified the certification schedule to accommodate the extension in the deadline for correcting data. The same commenter also recommended that the Council shorten the time (from 30 calendar days to ten calendar days) for Council to return errors and evidence of receipt of submitted data to the hospitals for error correction or notification in §1301.16(c)(1). The commenter stated that the ten days is closer to the current practice. The Council did not propose an amendment to this paragraph, but does not believe this to be a substantive change, therefore Council agrees with the commenter that this is current practice and the Council has changed the number of days from "30" to "10 calendar" days. The Council did propose in §1301.16(c)(3) and §1301.17(d) to grant authority to the Executive Director to extend the deadlines for correcting and certifying data when deemed necessary (e.g., problems with the Council's internal processes or changes in federal or state regulations).

The same commenter recommended that the Council consider implementing a process or procedure for hospitals to correct their data that would not have any additional costs to the hospital. The Council has considered this option. The Council expects hospitals to submit clean data. The data should infrequently contain errors. Even then, the Council provides hospitals an opportunity to correct errors, identified by the Council's audit process, at no cost. If hospitals use this opportunity to address these errors, then there will be little, if any, need to change claims during certification, minimizing or eliminating costs to the hospitals to correct data.

One commenter expressed opposition to the requirement in § 1301.16(c)(4) that hospitals submit missing discharge files but offered support for voluntarily submitting previously missing discharge claims by the following quarter. The Council disagrees with the suggested voluntary submission process. The Council believes that the opportunity for voluntary submissions would result in few, if any, additional filings with the Council. The Council is withdrawing this proposed paragraph to investigate the situation and other options.

One commenter stated that hospitals couldn't comment on each and every possible error as proposed by § 1301.16(e). The Council intends for hospitals to correct errors when they have the resources, and to comment on known errors that were not corrected, including those errors not identified by the Council's audit process but known to the hospital. The section as adopted refers to known errors. Hospitals may write general comments on known errors or specific comments on each known error. The Council intends for the hospital before certification to identify errors that are not previously corrected, and to identify them in the comments.

Both commenters recommended that the references to "Other physician #1" and "Other physician #2" in §§ 1301.17(c)(4), 1301.19(e)(41) and (44) should be removed. The Council agrees with the recommendation. The Council removed the references in the amendments.

Neither commenter supported the requirement as proposed that hospitals submit the names of the physicians or other health professionals as reported to and recorded by the state licensing boards in §1301.19(e)(42)-(44). One commenter stated that there is great inconsistency among hospitals in submitting this information. The Council agrees and has removed the requirement for hospitals to submit physician names and numbers only as reported to state licensing boards.

One commenter stated that hospitals do not have access to the Council's reference file. The Council disagrees and had published the name of the vendor, who creates the "physician" and "other health professionals" reference file from the state licensing boards and UPIN files, in Hospital Numbered Letter, Volume 4, Number 6.

One commenter recommended that the language in § 1301.17(g) include the phrase "errors known to the hospital". The Council agrees with the commenter and has modified the language to state that errors or omissions known to the hospital that are not corrected or commented on would be punishable by civil penalty. The Council modified § 1301.16(e) to provide consistent language errors or omissions known to the hospital.

The proposed deletion of §1301.18(e)(4) is withdrawn from this adopted text so that the Council can investigate other options regarding the release of the public use data file.

One commenter asked if there is a need to expand the coverage of §1301.18(f) to include the external use of the data by state agencies. The Council believes the data users agreement covers this condition.

One commenter opposed unrestricted access to the entire research file by Council's staff, referencing § 1301.18(l). The Council did not propose to amend this section.

One commenter wrote they supported the inclusion of paragraphs §1301.18(l)(3) and (4), to ensure that the research can be answered with the Council's data and that only the data that is necessary to answer the research question is released.

A commenter expressed support for amending § §1301.19(a)(1) to allow hospitals to submit data in the current HCFA approved versions or in the version that was accepted by HCFA at the time the patient was discharged.

The Council deleted the phrase "or at the time of submission" in the third sentence of §1301.19(a)(2), because it was duplicate message within the sentence.

One commenter recommended revising § 1301.19(e)(12) to clarify the Standard and Non-Standard Source of Payment Codes. The Council agrees with recommended revision and has made the modification to the language.

A commenter questioned the necessity for amending § 1301.19(e)(48) to require adding "Reason for No Social Security Number " to the required data element list. Section 1301.19(c)(3) already requires this code to be submitted when the default Social Security number values are submitted. Without the amendment, the Council cannot determine whether the omission was intentional or inadvertent, if the hospital submits the default of a "blank" field in Record 22 Field 5.

Both commenters objected to the proposed definition of "scientific review panel" that would authorize the Council the option to appoint or contract with an existing Institutional Review Board to serve as the Panel. The Council does not interpret §108.0135 as proscribing this action. Section 108.0135(a) states "the Council shall establish a scientific review panel to review and approve requests for other than public use data. The members of the panel shall have experience and expertise in ethics, patient confidentiality, and health care data." The Council believes so long as the Panel's members have the requisite experience and expertise, the statutory requirement is met. The utilization of an established board appears to offer the most efficient method to review the requests from both the cost and learning curve standpoints.

Section 1301.20(d)(2) the phrase "at least" is inserted after "will consist of" and prior to "five members" to provide consistency within the rules when the Council contracts with an agent which has more than five members in their established group.

One commenter recommended that the Scientific Review Panel meet at least every three months instead of every two months as proposed in § 1301.20(e)(1). The commenter stated that the quarterly meetings should be sufficient to conduct business, meet the needs of researchers, and reduce the cost to the Council. The Council agrees and has made the modification.

Both commenters disagreed with the proposed amendment to §1301.20(f)(2), recommending instead that the Council establish a fee schedule, rather than granting discretion to the Executive Director to set or waive the fees for use of the data files. The Council disagrees. The wording as proposed provides flexibility and allows the Executive Director the option to waive fees when doing so is in the public interest.

Section 1301.20(f)(4) the phrase "to the Council" is inserted after "exercise the right to appeal" in the last sentence to clarify that appeals would be made to Council members.

One commenter requested that the Council create a website similar to those of Wisconsin, Florida, or Utah for free public access. The Council is investigating the options regarding this recommendation. The Council is mindful, however, of Health and Safety Code §108.012(b) that requires the Council to set and charge fees for the data at a level to sufficiently operate the Council.

The amendments and new section are adopted under the Health and Safety Code, §§108.006, 108.009, and 108.0135. The Council interprets §108.006 as authorizing it to adopt rules necessary to carry out Chapter 108, including rules concerning data dissemination requirements. The Council interprets §108.009 as authorizing the Council to adopt rules regarding the collection of data from hospitals in uniform submission formats so incoming data will be substantially valid, consistent, compatible and manageable. The Council interprets § 108.0135 as requiring the Council to adopt rules to assist the Panel in determining whether to approve requests for information.

Health and Safety Code, §§108.002, 108.006, 108.009, 108.011, 108.012, 108.013 and 108.0135 are affected by these amendments and new section.

§1301.11. Definitions.

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

(1) Accurate and Consistent data - Data that has been edited by the Council and subjected to provider validation and certification.

(2) Attending Physician - The individual licensed under the Medical Practice Act (Occupations Code, Chapter 151) or the licensed health professional primarily responsible for the care of the patient during the hospital episode as reported on the claim. For Skilled Nursing Facility (SNF) services, the attending physician is the individual who certifies the SNF plan of care.

(3) Batch file --A set of computer records as specified in §1301.19 of this title (relating to Discharge Reports --Records, Data Fields and Codes) which contains one or more discharge files and other required header and trailer records. A batch contains discharge files for only one hospital.

(4) Certification Process-- The process by which a provider confirms the accuracy and completeness of the encounter data set required to produce the public use data file as specified in §1301.17 of this title.

(5) Charge--The amount billed by a provider for specific procedures or services provided to a patient before any adjustment for contractual allowances, government mandated fee schedules or write-offs for charity care, bad debt or administrative courtesy. The term does not include co-payments charged to health maintenance organization enrollees by providers paid by capitation or salary in a health maintenance organization.

(6) Comments- The notes or explanations submitted by the hospitals, physicians or other health professionals concerning the provider quality reports or the encounter data for public use as described in the Texas Health and Safety Code, §108.010(c) and (e) and §108.011(g) respectively.

(7) Council--The Texas Health Care Information Council.

(8) Data format--The sequence or location of data elements on a paper form or electronic record according to prescribed specifications.

(9) Discharge--The formal release of a patient by a hospital; that is, the termination of a period of hospitalization by death or by disposition to a residence or another health care provider.

(10) Discharge file --A set of computer records as specified in §1301.19 of this title (relating to Discharge Reports --Records, Data Fields and Codes) relating to a specific patient.

(11) Discharge report--A computer file as defined in §1301.19 of this title (relating to Discharge Reports--Records, Data Fields and Codes) periodically submitted on or on behalf of a Hospital in compliance with the provisions of this chapter.

(12) DRG - Diagnosis Related Group

(13) EDI - Electronic Data Interchange - A method of sending data electronically from one computer to another. EDI helps providers and payers maintain a flow of vital information by enabling the transmission of claims and managed care transactions.

(14) Edit--An electronic standardized process developed and implemented by the Council to identify potential errors and mistakes in data elements by reviewing data fields for the presence or absence of data and the accuracy and appropriateness of data.

(15) Electronic filing --The submission of computer records in machine readable form by modem transfer from one computer to another (EDI) or by recording the records on a nine track magnetic tape, computer diskette or other magnetic media acceptable to the executive director.

(16) Error -- Data submitted on a discharge report which are not consistent with the format and data standards contained in this section or with editing criteria established by the executive director, or the failure to submit required data.

(17) Ethnicity--The status of patients relative to Hispanic background. Hospitals shall report this data element according to the following ethnic types: Hispanic or Non-Hispanic.

(18) Executive director--The chief administrative officer of the Council, or, in the event the Council is without an executive director, the person designated by the chairperson of the Council to perform the functions and exercise the authority of the executive director.

(19) Facility Type Indicators - An indicator that provides information to the data user as to the type of facility or the primary health services delivered at that facility (e.g. Teaching, Acute Care, Rehabilitation, Psychiatric, Pediatric, Cancer, Skilled Nursing or other Long Term Care Facility). A facility may have more than one indicator. Hospitals may request updates to this field.

(20) Geographic identifiers --A set of codes indicating the public health region and county in which the patient resides.

(21) Health care facility--A hospital, an ambulatory surgery center licensed under Chapter 243 of the Health and Safety Code, a chemical dependency treatment facility licensed under Chapter 464 of the Health and Safety Code, a renal dialysis center, a birthing center, a rural health clinic or a federally qualified health center as defined by 42 United States Code, §1396(1)(2)(B).

(22) Hospital--A public, for-profit, or nonprofit institution licensed or owned by this state that is a general or special hospital, private mental hospital, chronic disease hospital or other type of hospital.

(23) ICD-International Classification of Disease.

(24) Inpatient--A patient, including a newborn infant, who is formally admitted to the inpatient service of a hospital and who is subsequently discharged, regardless of status or disposition. Inpatients include patients admitted to medical/surgical, intensive care, nursery, subacute, skilled nursing, long-term, psychiatric, substance abuse, physical rehabilitation and all other types of hospital units.

(25) Other exempted provider--A hospital exempt from state franchise, sales, ad valorem, or other state and local taxes that does not seek or receive reimbursement for providing health care services to patients from any source, including the patient or any person legally obligated to support the patient; a third party payer; or Medicaid, Medicare, or any other federal, state or local program for indigent health care.

(26) Other health professional--A person licensed to provide health care services other than a physician. An individual other than a physician who admits patients to hospitals or who provides diagnostic or therapeutic procedures to inpatients. The term encompasses persons licensed under various Texas practice statutes, such as psychologists, chiropractors, dentists, nurse practitioners, nurse midwives, and podiatrists who are authorized by the hospital to admit or treat patients.

(27) Patient control number--A number assigned to each patient by the hospital, which appears on each computer record in a patient discharge file. This number is not consistent for a given patient from one hospital to the next, or from one admission to the next in the same hospital. The Council deletes or encrypts this number to protect patient confidentiality prior to release of data.

(28) Physician--An individual licensed under the laws of this state to practice medicine under the Medical Practice Act, Occupations Code, Chapter 151.

(29) Provider--A physician or health care facility.

(30) Provider quality data --A report or reports authored by the Council on provider quality or outcomes of care, as defined in Chapter 108 of Health and Safety Code, created from data collected by the Council or obtained from other sources.

(31) Public use data file--A data file composed of discharge files with risk and severity adjustment scores which have been altered by the deletion, encryption or other modification of data fields to protect patient and physician confidentiality and to satisfy other restrictions on the release of hospital discharge data imposed by statute.

(32) Race--A division of patients according to traits that are transmissible by descent and sufficient to characterize them as distinctly human types. Hospitals shall report this data element according to the following racial types: American Indian, Eskimo, or Aleut; Asian or Pacific Islander; Black; White; or Other.

(33) Required minimum data set--The list of data elements which hospitals are required to submit in a discharge file for each inpatient stay in the hospital. The required minimum data set is specified in §1301.19(d) of this title (relating to Discharge Reports --Records, Data Fields and Codes).

(34) Research data file--A customized data file, which includes the data elements in the public use file and may include data elements other than the required minimum data set submitted to the Council, except those data elements that could reasonably identify a patient or physician. The data elements maybe released to a requestor when the requirements specified in §1301.18(f) of this title (relating to Hospital Discharge Data Release) are completed.

(35) Risk adjustment--A statistical method to account for a patient's severity of illness at the time of admission and the likelihood of development of a disease or outcome, prior to any medical intervention.

(36) Rural provider-A health care facility located in a county with a population of not more than 35,000 as of July 1 of the most recent year according to the most recent United States Bureau of the Census estimate; or located in a county with a population of more than 35,000 but with 100 or fewer licensed hospital beds and not located in an area that is delineated as an urbanized area by the United States Bureau of the Census; and is not state owned, or not managed or directly or indirectly owned by an individual, association, partnership, corporation, or other legal entity that owns or manages one or more other hospitals. A health care facility is not a rural provider if an individual or legal entity that manages or owns one or more other hospitals owns or controls more than 50% of the voting rights with respect to the governance of the facility.

(37) Scientific Review Panel - The Council's appointees or agent who have experience and expertise in ethics, patient confidentiality, and health care data who review and approve or disapprove requests for data or information other than the public use data. Described in §1301.20 of this title (relating to Scientific Review Panel).

(38) Service Unit Indicator - An indicator derived from submitted data (based on Bill type or Revenue Codes) and represents the type of service unit or units (e.g., Coronary Care Unit, Detoxification Unit, Intensive Care Unit, Hospice Unit, Nursery, Obstetric Unit, Oncology Unit, Pediatric Unit, Psychiatric Unit, Rehabilitation Unit, Sub acute Care Unit or Skilled Nursing Unit) where the patient received treatment.

(39) Severity adjustment--A method to stratify patient groups by degrees of illness and mortality.

(40) Submission--A set of computer records as specified in §1301.19 of this title (relating to Discharge Reports --Records, Data Fields and Codes) that constitutes the discharge report for one or more hospitals.

(41) Submitter--The person or organization, which physically prepares discharge reports for one or more hospitals and submits them to the Council. A submitter may be a hospital or an agent designated by a hospital or its owner.

(42) THCIC Identification Number - A string of six characters assigned by the Council to identify health care facilities for reporting and tracking purposes.

(43) Treating Physician -For the purposes of this title, the person licensed under the Medical Practice Act or any other health professional licensed by the state who has been reported as having treated the patient or who has consulted on the patient's case. The term includes any physician or other health professional listed on the discharge file other than the attending physician.

(44) Uniform facility identifier--A unique number assigned by the Council to each health care facility licensed in the state. For hospitals, this will include the hospital's state license number. For hospitals operating multiple facilities under one license number and duplicating services, the Council will assign a distinguishable uniform facility identifier for each separate facility. The relationship between facility identifier and the name and license number of the facility is public information.

(45) Uniform patient identifier--A unique identifier assigned by the Council to an individual patient and composed of numeric, alpha, or alphanumeric characters, which remains constant across hospitals and inpatient admissions. The relationship of the identifier to the patient-specific data elements used to assign it is confidential.

(46) Uniform physician identifier--A unique identifier assigned by the Council to a physician or other health professional who is reported as attending or treating a hospital inpatient and which remains constant across hospitals. The relationship of the identifier to the physician-specific data elements used to assign it is confidential. The uniform physician identifier shall consist of alphanumeric characters.

(47) Validation--The process by which a provider verifies the accuracy and completeness of data and corrects any errors identified before certification.

§1301.12. Collection of Hospital Discharge Data.

(a) All hospitals in operation for all or any of the reporting periods described in §1301.13 of this title (relating to Schedule for Filing Discharge Reports) shall submit discharge files as specified in §1301.19 of this title (relating to Discharge Reports --Records, Data Fields and Codes) on all discharged inpatients to the Council. To the extent the admission, treatment, or discharge is made by a health professional, other than a physician, data elements specified in §1301.19(e)(39)-(42) shall be filled accordingly or data elements (39)-(40) shall be marked with one of the Council approved temporary "Physician" or "Other health professional" code numbers and data elements (41)-(42) may be left blank. Hospitals owned by the federal government and hospitals exempted as rural providers may submit hospital discharge files.

(b) All inpatient discharges shall be reported. Except as noted in paragraphs (1)-(5) of this subsection, one or more discharge files shall be submitted for each patient for each discharge covering all services and charges from admission through discharge.

(1) Separate discharge files shall be submitted for mothers and newborns.

(2) Hospitals shall either submit separate discharge files corresponding to each interim, revised, or final discharge files or submit a single consolidated final discharge file for each discharged patient.

(3) For all patients for which the hospital prepares one or more bills for inpatient services, the hospital shall submit a discharge file corresponding to each bill containing the required data elements required by §1301.19 of this title (relating to Discharge Reports - Records, Data Fields and Codes). For all patients for which the hospital does not prepare a bill for inpatient services, the hospital shall submit a discharge file containing the required minimum data set.

(4) For all patients that are covered by 42 USC 290dd-2 and 42 CFR Part 2.1, a hospital shall submit a discharge file containing the required data elements specified by §1301.19 of this title (relating to Discharge Reports - Records, Data Fields and Codes). The hospital shall replace the patient identifying information with the default values specified in §1301.19(f) of this title (relating to Discharge Reports - Records, Data Fields and Codes) or submit the patient identifying information if release of patient identifying information is authorized in writing by the patient or patient's guardian.

(c) All hospitals shall file discharge reports by electronic filing unless the hospital receives an exemption letter from the Council.

(d) All hospitals shall submit discharge files and discharge reports in the format specified in § 1301.19 of this title (relating to Discharge Reports --Records, Data Fields and Codes).

(e) Hospitals shall submit discharge reports, data certifications, exemption requests and other required information to the Council or its agents at physical or telephonic addresses specified by the executive director. The executive director shall notify all hospitals and submitters in writing and by publication in the Texas Register at least 30 calendar days before any change in the addresses.

(f) Hospitals may submit discharge reports, or may designate an agent to submit the reports. If a hospital designates an agent, it shall inform the Council of the designation in writing at least 30 calendar days prior to the agent's submission of any discharge report. The hospital shall inform the Council in writing at least 30 calendar days prior to changing agents or making the submissions itself. Designation of an agent does not relieve the hospital of responsibility for compliance with this chapter or other related law.

(g) If requested by the Council, a hospital shall provide the executive director or the director's agent, the Texas Department of Health, access to, copies of and/or information from the hospital documents and records underlying and documenting the discharge reports submitted, as well as other patient related documentation deemed necessary to audit hospital data to verify its accuracy and reliability. Each request from the Council shall detail the reasons for such request, provide the hospital with at least 14 calendar days advance notice, and ensure that confidentiality of patient records is maintained.

§1301.16. Acceptance of Discharge Reports and Correction of Errors.

(a) To verify the accuracy of all discharge files prior to public release, the executive director shall establish procedures for the review of all discharge reports to determine whether the report is acceptable, as required by Health and Safety Code, §108.011.

(b) Upon receipt of a discharge report, the executive director shall determine if it satisfies minimum criteria for processing. If it does not, the executive director shall return the discharge report in the same submission format and media that is approved for that provider and state the deficiencies in writing within ten calendar days of receipt. The hospital shall resubmit the report within ten calendar days of notification by the executive director. A discharge report does not meet minimum standards for processing under the following circumstances as shown in paragraphs (1)-(3) of this subsection.

(1) The physical media and labeling do not conform to the specifications in §1301.14 of this title (relating to Instructions for Filing Discharge Reports).

(2) The physical media are unreadable due to physical damage.

(3) The file structure does not conform to the specifications in §1301.19 of this title (relating to Discharge Reports - Records, Data Fields and Codes), unless the hospital has received a letter from the Council authorizing filing in another format.

(c) Correction of Errors.

(1) The executive director shall review all discharge reports accepted for processing and will process all discharge files against the editing criteria established by this section and by the executive director. Within 10 calendar days of receipt of an accepted discharge report the executive director shall notify the hospital in detail of all errors detected in the discharge report.

(2) Within 30 calendar days of receiving initial notice of errors in a discharge report, the hospital shall correct all discharge files containing errors, add any discharge files determined to be missing from the initial discharge report and resubmit the corrected and/or previously missing discharge files. If the hospital disagrees with any identified error, the hospital may indicate that the discharge file is as accurate as it can be or cannot be corrected. Each hospital shall submit such modified and/or additional discharge files as may be required to allow the chief executive officer or the chief executive officer's designated agent to certify the quarterly discharge report as required by §1301.17 of this title (relating to Certification of Discharge Reports). Corrections to a discharge report shall be submitted on approved media and formats as specified in §1301.14 of this title (relating to Instructions for Filing Discharge Reports) and §1301.19 of this title (relating to Discharge Reports-Records, Data Fields and Codes) unless the executive director approves another medium or format.

(3) Within ten calendar days of receiving corrections to a discharge report from a hospital, the executive director shall notify the hospital of any remaining errors. The hospital shall have ten calendar days from receipt of this notice to correct the errors noted or indicate why the data should be deemed acceptable and complete. This process may be repeated until the data is substantially accurate and the hospital is able to certify the discharge report as required by §1301.17 of this title (relating to Certification of Discharge Reports) or the deadline for submitting corrections prior to certification is reached. Corrected data is required to be submitted on or before the following dates for the respective quarter's discharges; Quarter 1 - August 1, Quarter 2 - November 1, Quarter 3 - February 1, Quarter 4 - May 1. No individual hospitals will be granted extensions to the dates. The executive director may grant an extension to all hospitals when deemed necessary.

(d) The executive director will document and the Council will approve all acceptance and editing criteria utilized in reviewing discharge reports. If acceptance and editing criteria are incorporated into computer software, and if the software is the property of the Council, the executive director will make copies of the portions of the software containing the criteria available on paper or magnetic media. The executive director shall make this information available to submitters without charge and to others for the cost of reproduction.

(e) Failure to correct or comment on a discharge report which has been filed but contains errors or omissions, known to the hospital, within the due dates in §1301.13 of this title (relating to Schedule for

Filing Discharge Reports) is punishable by a civil penalty pursuant to Health and Safety Code, §108.014.

§1301.17. Certification of Discharge Reports.

(a) Within five months after the end of each reporting quarter the executive director shall compile one or more electronic data files for each reporting hospital using all discharge files received from each hospital. The file shall have one record for each patient discharged during the reporting quarter and one record for any patient discharged during a previous reporting quarter for whom additional discharge files have been received. This file will include all data submitted by the hospital which the executive director intends to use in the creation of the public use data file. The data files, including reports and any additional information returned to the hospital, allows the hospital to provide physicians and other health professionals the opportunity to review, request correction of, and comment on records of discharged patients for whom they are shown as attending or treating. The executive director shall determine the format and medium in which the quarterly file will be delivered to hospitals.

(b) The chief executive officer or chief executive officer's designated agent of each hospital shall indicate whether the hospital is certifying or not certifying the discharge encounter data specified in subsection (a) of this section, sign and return the form corresponding to the discharge report for each quarter using forms supplied by the Council. The certification form may be signed by a person designated by the chief executive officer and acting as the officer's agent. Designation of an agent does not relieve the chief executive officer of personal responsibility for the certification. If the chief executive officer or chief executive officer's designated agent does not believe the quarterly file is accurate, the officer shall provide the executive director with detailed comments regarding the errors or submit a written request (on a form supplied by the Council) and provide the data necessary to correct any inaccuracy and certify the file subject to those corrections being made prior to the deadlines specified in this subsection. Corrections to certification discharge data shall be submitted on or prior to the following schedule: Quarter 1 - October 15; Quarter 2 - January 15; Quarter 3 - April 15; Quarter 4 - July 15. Chief Executive Officers or designees that elect not to certify shall submit a reasoned justification explaining their decision to not certify their discharge encounter data and attach the justification to the certification form. Election to not certify data does not prevent data from appearing in the public use data file. Data that is not corrected and submitted by the deadline may appear in the public use data file.

(c) The signed certification form shall represent that:

(1) policies and procedures are in place within the hospital's processes to validate and assure the accuracy of the discharge encounter data and any corrections submitted; and

(2) all errors and omissions known to the hospital have been corrected or the hospital has submitted comments describing the errors and the reasons why they could not be corrected; and

(3) to the best of their knowledge and belief, the data submitted accurately represents the hospital's administrative status of discharged inpatients for the reporting quarter; and

(4) the hospital has provided physicians and other health professionals a reasonable opportunity to review and comment on the discharge data of patients for which they were reported in one of the available physician number and name fields provided on the acceptable formats specified in §1301.19 of this title (relating to Discharge Reports --Records, Data Fields and Codes) (for example, "attending physician" or "operating or other physician" as applicable. The physicians or other health professionals may write comments and have errors brought to the attention of the chief executive officer or the chief executive officer's designated agent and the chief executive officer or the chief executive officer's designated agent, shall address any comments by the physicians or other health professionals.

(5) if the chief executive officer or the officer's designee elects not to certify the discharge encounter data for a specific quarter, a written justification of any unresolved data issues concerning the accuracy and completeness of the data at the time of the certification shall be included on the certification form. Discharge data that has been edited, returned to hospital and is not certified may be released and published in the public use data file.

(d) Each hospital shall submit its certification form for each quarter's data to the Council by the first day of the ninth month (Quarter 1 - December 1; Quarter 2 - March 1; Quarter 3 - June 1; Quarter 4 - September 1) following the last day of the reporting quarter as specified in §1301.13 (a) (1)-(4) of this title (relating to Schedule for Filing Discharge Reports). Individual hospital requests for an extension to these deadlines will not be granted. The executive director may extend the deadline for all hospitals when deemed necessary.

(e) Hospitals, physicians or other health professionals may submit concise written comments regarding any data submitted by them or relating to services, they have delivered which may be released as public use data. Comments shall be submitted to the Council on or before the dates specified in subsection (d) of this section, regarding the submission of the certification form. Commenters are responsible for assuring that the comments contain no patient or physician identifying information. Comments shall be submitted electronically using the method described in §1301.14(a) and (b) of this title (relating to Instructions for Filing Discharge Reports).

(f) Failure to submit a signed certification form that is supplied by the Council on or before the dates specified in subsection (d) of this section corresponding to discharge data previously submitted is punishable by a civil penalty pursuant to Health and Safety Code, §108.014.

(g) Failure to either correct a discharge report which has been submitted and contains errors or omissions known to the hospital on or prior to the dates specified in subsection (b) of this section or to address in the comments the errors known to the hospital contained in the data and return the comments on or prior to the dates specified in subsection (d) of this section is punishable by a civil penalty pursuant to Health and Safety Code, §108.014(b).

§1301.18. Hospital Discharge Data Release.

(a) Council records are public records under Government Code, Chapter 552, except as specifically exempted by Health and Safety Code, §108.010 and §108.013. Copies of such records may be obtained upon request and upon payment of user fees established by the Council. The public use data file shall be available for public inspection during normal business hours. Discharge files in the original format as submitted to the Council are not available to the public, are not stored at the Council's office and are exempt from disclosure pursuant to Health and Safety Code, §108.010 and §108.013, and shall not be released. Likewise, patient and physician identifying data collected by the Council through editing of hospital data shall not be released.

(b) Creation of codes and identifiers. The executive director shall develop the following codes and identifiers, as listed in paragraphs (1)-(2) of this subsection, required for creation of the public use data file and for other purposes.

(1) The executive director shall create a process for assigning uniform patient identifiers, uniform physician identifiers and uniform other health professional identifiers using data elements collected.

This process is confidential and not subject to public disclosure. Any documents or records produced describing the process or disclosing the person associated with an identifier are confidential and not subject to public disclosure.

(2) The executive director shall create a process for assigning geographic identifiers to each discharge record.

(c) Creation of public use data file. The executive director will create a public use data file by creating a single record for each inpatient discharge and adding, modifying or deleting data elements in the following manner as listed in paragraphs (1)-(11) of this subsection:

(1) delete patient, and insured name, Social Security Number, address and certificate data elements and any patient identifying information, if submitted; delete patient control and medical record numbers.

(2) convert patient birth date to age;

(3) convert admission and discharge dates to a length of stay measured in days and a code for the day of the week of the admission;

(4) convert procedure and occurrence dates to day of stay values;

(5) delete physician and other health professional names and numbers and assign a alphanumeric uniform physician identifier for the physicians and other health professionals who were reported as attending or treating discharged patients;

(6) assign codes indicating the primary and secondary sources of payment;

(7) the minimum cell size required by §108.011(i)(2) of the Health and Safety Code shall be five, unless the executive director determines that a higher cell size is required to protect the confidentiality of an individual patient or physician. When determining a higher cell size, the executive director shall consider comments submitted by a hospital and recommendations submitted by the technical advisory committee as identified in the Texas Health and Safety Code §108.003(g)(5);

(8) convert all procedure codes to ICD codes (in the version that is current for the date the data was due to be submitted or the version in effect at the date of service);

(9) add risk and severity adjustment scores utilizing an algorithm approved by the Council;

(10) suppress admission source data at patient level when the admission type code represents "Newborn";

(11) data elements to be included in the public use data file:

(A) Discharge Year and Quarter

(B) Provider Name (Facility Name)

(C) THCIC Identification Number

(D) Facility Type Indicators

(E) Patient Sex/Gender

(F) Type of Admission

(G) Source of Admission

(H) Patient ZIP Code

(I) County Code

(J) Public Health Region Code

(K) Patient State

(L) Patient Status

(M) Patient Race

(N) Patient Ethnicity

(O) Source of Payment Code, Non-Standard Codes (Primary payer (and Secondary payer (if applicable))) (Beginning with third quarter 2000 data the second payer code information will be published)

(P) Source of Payment Code, Standard Codes (Primary payer (and Secondary payer (if applicable))) (Beginning with third quarter 2000 data the second payer code information will be published)

(Q) Type of Bill

(R) Encounter Indicator: This indicates whether more than one claim was used to create the encounter

(S) Principal Diagnosis Code (Current version of ICD codes at the time data is submitted)

(T) Other Diagnosis Codes (1)(Current version of ICD codes at the time data is submitted)

(U) Other Diagnosis Codes (2)(Current version of ICD codes at the time data is submitted)

(V) Other Diagnosis Codes (3)(Current version of ICD codes at the time data is submitted)

(W) Other Diagnosis Codes (4)(Current version of ICD codes at the time data is submitted)

(X) Other Diagnosis Codes (5)(Current version of ICD codes at the time data is submitted)

(Y) Other Diagnosis Codes (6)(Current version of ICD codes at the time data is submitted)

(Z) Other Diagnosis Codes (7)(Current version of ICD codes at the time data is submitted)

(AA) Other Diagnosis Codes (8)(Current version of ICD codes at the time data is submitted)

(BB) Principal Procedure code (if applicable)(Current version of ICD codes at the time data is submitted)

(CC) Other Procedure code (1)(Current version of ICD codes at the time data is submitted)

(DD) Other Procedure code (2)(Current version of ICD codes at the time data is submitted)

(EE) Other Procedure code (3)(Current version of ICD codes at the time data is submitted)

(FF) Other Procedure code (4)(Current version of ICD codes at the time data is submitted)

(GG) Other Procedure code (5)(Current version of ICD codes at the time data is submitted)

(HH) Admitting Diagnosis (Current version of ICD codes at the time data is submitted)

(II) External Cause of Injury (if applicable)(Current version of ICD codes at the time data is submitted)

(JJ) Day of Week Patient is admitted code (Sun. = 1, Mon. = 2, Tues. = 3, Wed. = 4, Thur. = 5, Fri. = 6, Sat. = 7)

(KK) Length of Stay

(LL) Age of patient

(MM) Day number of Principal Procedure (Calculated Principal Procedure Date minus Admission/Start of Care Date)

(NN) Day number of Procedure (1) (Calculated Procedure Date (1) minus Admission/Start of Care Date)

(OO) Day number of Procedure (2) (Calculated Procedure Date (2) minus Admission/Start of Care Date)

(PP) Day number of Procedure (3) (Calculated Procedure Date (3) minus Admission/Start of Care Date)

(QQ) Day number of Procedure (4) (Calculated Procedure Date (4) minus Admission/Start of Care Date)

(RR) Day number of Procedure (5) (Calculated Procedure Date (5) minus Admission/Start of Care Date)

(SS) Major Diagnostic Category (MDC)

(TT) HCFA-DRG Code (Obtained from the 3M HCFA-DRG Grouper)

(UU) APR-DRG Code (Obtained from 3M APR-DRG Grouper)

(VV) Risk of Mortality Score (Obtained from 3M APR-DRG Grouper)

(WW) Severity of Illness Score (Obtained from 3M APR-DRG Grouper)

(XX) Uniform Physician Identifier assigned to Attending Physician (Beginning with 2000 data)

(YY) Uniform Physician Identifier assigned to Operating or Other Physician (Beginning with 2000 data)

(ZZ) Service unit indicator from which the patient received services

(AAA) Accommodations Private Room Charges (Beginning with third quarter 2000 data)

(BBB) Accommodations Semi-Private Charges (Beginning with third quarter 2000 data)

(CCC) Accommodations Ward Charges (Beginning with third quarter 2000 data)

(DDD) Accommodations Intensive Care Charges (Beginning with third quarter 2000 data)

(EEE) Accommodations Coronary Care Charges (Beginning with third quarter 2000 data)

(FFF) Ancillary Service- Other Charges (Beginning with third quarter 2000 data)

(GGG) Ancillary Service- Pharmacy Charges (Beginning with third quarter 2000 data)

(HHH) Ancillary Service- Medical/Surgical Supply Charges (Beginning with third quarter 2000 data)

(III) Ancillary Service- Durable Medical Equipment Charges (Beginning with third quarter 2000 data)

(JJJ) Ancillary Service- Used Durable Medical Equipment Charges (Beginning with third quarter 2000 data)

(KKK) Ancillary Service- Physical Therapy Charges (Beginning with third quarter 2000 data)

(LLL) Ancillary Service- Occupational Therapy Charges (Beginning with third quarter 2000 data)

(MMM) Ancillary Service- Speech Pathology Charges (Beginning with third quarter 2000 data)

(NNN) Ancillary Service- Inhalation Therapy Charges (Beginning with third quarter 2000 data)

(OOO) Ancillary Service- Blood Charges (Beginning with third quarter 2000 data)

(PPP) Ancillary Service- Blood Administration Charges (Beginning with third quarter 2000 data)

(QQQ) Ancillary Service- Operating Room Charges (Beginning with third quarter 2000 data)

(RRR) Ancillary Service- Lithotripsy Charges (Beginning with third quarter 2000 data)

(SSS) Ancillary Service- Cardiology Charges (Beginning with third quarter 2000 data)

(TTT) Ancillary Service- Anesthesia Charges (Beginning with third quarter 2000 data)

(UUU) Ancillary Service- Laboratory Charges (Beginning with third quarter 2000 data)

(VVV) Ancillary Service- Radiology Charges (Beginning with third quarter 2000 data)

(WWW) Ancillary Service- MRI Charges (Beginning with third quarter 2000 data)

(XXX) Ancillary Service- Outpatient Services Charges (Beginning with third quarter 2000 data)

(YYY) Ancillary Service- Emergency Service Charges (Beginning with third quarter 2000 data)

(ZZZ) Ancillary Service- Ambulance Charges (Beginning with third quarter 2000 data)

(AAAA) Ancillary Service- Professional Fees Charges (Beginning with third quarter 2000 data)

(BBBB) Ancillary Service- Organ Acquisition Charges (Beginning with third quarter 2000 data)

(CCCC) Ancillary Service- ESRD Revenue Setting Charges (Beginning with third quarter 2000 data)

(DDDD) Ancillary Service - Clinic Visit Charges (Beginning with third quarter 2000 data)

(EEEE) Total Charges - Accommodations, for the Claim (Beginning with third quarter 2000 data)

(FFFF) Total Charges - Ancillary, for the Claim (Beginning with third quarter 2000 data)

(GGGG) Total Non-Covered Accommodation Charges, for the Claim (Beginning with third quarter 2000 data)

(HHHH) Total Non-Covered Ancillary Charges, for the Claim (Beginning with third quarter 2000 data)

(IIII) Total Charges, for the Claim (Beginning with third quarter 2000 data)

(JJJJ) Total Non-Covered Charges, for the Claim (Beginning with third quarter 2000 data);

(d) Release of public use data files. The Council shall release in an aggregate form without uniform patient, physician or other

health professional identifiers public use data relating to hospitals described by the Health and Safety Code, §108.0025(1) that are not rural providers because they do not meet the requirements of §108.0025(2).

(e) The executive director will make available a public use data file on electronic, magnetic or optical media for each quarter:

(1) The executive director shall release public use data from hospitals that have certified the data as required by §1301.17 of this title (relating to Certification of Discharge Reports). A hospital's failure to execute the certification form by the dates specified in §1301.17(d) of this title, or elects to not certify the discharge encounter data shall not prevent the executive director from releasing the hospital's data if the director believes the data submitted is reasonably accurate and complete. The executive director, with the recommendation of the Hospital Discharge Data Committee, may suppress for any quarter's data one or more data elements if deemed necessary to comply with provisions of the statutes. If an element is ordered suppressed by a judicial authority, the executive director may suppress the element without the recommendation of the Hospital Discharge Data Committee.

(2) If additional discharge files (not previously submitted as specified in §1301.16(c)(4) of this title (relating to Acceptance of Discharge Reports and Correction of Errors), excluding replacement, adjustments and void/cancel discharge files) become available after the initial release of the public use data file for any quarter, the executive director will add the discharge files, that are received on or prior to the date specified in §1301.13(a)(1) of this title (relating to Schedule for Filing Discharge Reports) of the following year, to the public use data file and make the additional records available to the public.

(3) The other sections of these rules notwithstanding, the executive director shall not create a public use data file from the discharge reports covering discharges occurring in 1998. It is the intent of the Council to utilize this data only for testing and calibration of its data processing systems and to allow hospitals the opportunity to test and calibrate their own data reporting systems.

(4) The first public use data file available for release will cover discharges for the first and second quarter of 1999. The Council will initially release six months of data in order to provide a more reliable body of data for analysis and decision-making and to make available public use data files on a quarterly schedule thereafter.

(f) Texas State agencies that request data solely for internal use in accordance with Health and Safety Code, §108.012(b) shall abide by the data users agreement.

(g) The executive director shall establish procedures for screening all requests to assure that filling the request will not violate the provisions of Health and Safety Code, §108.013(c).

(h) The data elements specified for discharge reports in §1301.19 of this title (relating to Discharge Reports --Records, Data Fields and Codes) do not constitute "Provider Quality Data" as discussed in Health and Safety Code, §108.010.

(i) A public use data file which is specified by the requestor shall not be considered a "report issued by the Council" as referenced in Health and Safety Code, §108.011(f).

(j) Requests for data files including data on one or more providers are matters of public record and copies of all requests shall be maintained by the Council for two years from the date of receipt. The executive director shall make available on the Council's Internet site and publish in the Council's numbered letter for hospitals a summary of all requests received for public use data.

(k) With any public use data file prepared by the Council, the executive director shall attach all comments submitted by providers, which relate to any data included in the file. The Council shall also make these comments available at the Council's offices and on the Council's Internet site.

(l) A research data file may be released provided the following criteria are met:

(1) the Texas Health Care Information Council Research Data Request Form is completed and submitted to the Council's executive director; and

(2) the requestor has made payment according to the Council's fee schedule. The Council's fee includes a non-refundable "Review of Request Fee"; and

(3) the Scientific Review Panel reviews the research request and has determined the proposed research outcome can be achieved with the requested data; and

(4) the Council's Scientific Review Panel grants authorization to the request or restricts access to specified data elements determined to be inappropriate for the research proposal in accordance with this subsection of this title (relating to Scientific Review Panel); and

(5) the requestor agrees to dispose of the research data using authorized methods by the established end date stated on the written data release agreement, and

(6) the requestor has signed a written data release agreement.

§1301.19. Discharge Reports --Records, Data Fields and Codes.

(a) Hospitals that have not obtained an exemption letter authorized by §1301.15 of this title (relating to Exemptions from Filing) shall submit discharge reports in one of the following formats as listed in paragraphs (1)-(3) of this subsection:

(1) electronically in the national standard flat file format for inpatient hospital bills defined by the United States Department of Health and Human Services, Health Care Finance Administration (HCFA), commonly known as the HCFA UB-92 Electronic Format. HCFA updates this format from time to time by issuing new versions. The Council will accept discharge reports in the latest version or versions accepted by HCFA at the service end date specified in the discharge file or at the time of submission of the data to THCIC.

(2) electronically in the file format for inpatient hospital bills defined by the American National Standards Institute (ANSI), commonly known as the ANSI X12N form 837. ANSI updates this format from time to time by issuing new versions. The Council will accept discharge reports in the latest version or in a version approved by HCFA at the service end date specified in the discharge file.

(3) for paper filing, the UB-92 paper form currently approved by the Health Care Finance Administration, also known as the HCFA 1450 paper version.

(b) Except as otherwise provided in this section, discharge reports shall be submitted using the data element specifications as required by HCFA. Hospitals shall submit discharge reports using the data element specifications in effect as of the date of the discharge or as of the date submitted. The Council will make detailed specifications for these data elements available to submitters and to the public.

(c) In addition to the data elements contained in the Texas UB-92 Manual, the Council has defined the following data elements shown in this subsection and has defined the location in the HCFA UB-92 Electronic Format where each element is to be reported. Data element content, format and locations may change as federal and state

legislative requirements change in regards to Public Law 104-191, Health Insurance Portability and Accountability Act of 1996 (HIPAA) is implemented.

(1) Patient race - This data element shall be reported at Record Type 22, Field 7, Beginning Position 86; Form Locator 11 (upper line) as a numeric value. Acceptable codes are 1 = American Indian/Eskimo/Aleut, 2 = Asian or Pacific Islander, 3 = Black, 4 = White and 5 = Other. In order to obtain this data, the hospital staff retrieves the patient's response from a written form or asks the patient, or the person speaking for the patient to classify the patient. If the patient, or person speaking for the patient, declines to answer, the hospital staff is to use its best judgment to make the correct classification based on available data.

(2) Patient ethnicity - This data element shall be reported at Record Type 22, Field 8, Beginning Position 98; Form Locator 11 (lower line) as a numeric value. Acceptable codes are 1 = Hispanic Origin and 2 = Not of Hispanic Origin. In order to obtain this data, the hospital staff retrieves the patient's response from a written form or asks the patient, or the person speaking for the patient to classify the patient. If the patient, or person speaking for the patient, declines to answer, the hospital staff is to use its best judgment to make the correct classification based on available data.

(3) Patient Social Security Number - This data element shall be reported at Record Type 22, Field 5, Beginning Position 27; Form Locator 2 (upper line) a numeric value. In the event the patient is a newborn or child of United States citizenship for whom a Social Security Number has not been assigned, the hospital shall leave the field blank or shall insert "999999999" and shall indicate a response code in the Record Type 22, Field 6, Beginning Position 56; Form Locator 2 (lower line) as to the reason no Social Security Number was submitted. Acceptable codes are: F = Foreign national, does not have a Social Security Number; N = Newborn or Infant of United States citizenship for whom a Social Security Number has not been assigned; O = Other; R = Refused to provide a social security number;

(4) Source of payment code - This data element shall be reported at Record 30, Field 04, Beginning Position 25 as an alphanumeric value. Primary and secondary payer source codes shall be submitted when the hospital submits claim data for the patient to more than one payer.

(A) Acceptable codes are:

(i) A = Self pay;

(ii) B = Workers' Compensation;

(iii) C = Medicare;

(iv) D = Medicaid;

(v) E = Other Federal Programs (includes Veterans Administration);

(vi) F = Commercial;

(vii) G = Blue Cross;

(viii) H = Champus;

(ix) I = Other.

(B) Non-Standard Codes shall be reported at the Alternate Code Site Record 22, Field 9, Position 111:

(i) T = State or Local Government Programs;

(ii) U = Commercial PPO;

(iii) V = Medicare Managed Care;

(iv) X = Medicaid Managed Care;

(v) Y = Commercial HMO;

(vi) Z = Charity.

(5) Facility Name - This data element shall be the name of the hospital where the services were rendered and shall be reported at Record Type 10, Field 12.

(6) Facility Address - This data element shall be the actual physical address of the hospital where the services were rendered and shall be reported at Record Type 10, Field 13.

(7) Facility City - This data element shall be the name of the city where the hospital that rendered the services is located and shall be reported in Record Type 10, Field 14.

(d) Data may be numeric or alphanumeric. All numeric data shall be right justified and zero-filled. All alphanumeric data shall be left justified. The length of all records is 192 characters. Conditional data fields shall be filled with spaces when other data is not present.

(e) Hospitals shall submit the required minimum data set for all patients for which a discharge file is required by this title. The required minimum data set includes the following data elements as listed in paragraphs (1)-(46) of this subsection:

(1) Patient race;

(2) Patient ethnicity;

(3) Patient Social Security Number;

(4) Patient control number;

(5) Patient last name;

(6) Patient first name;

(7) Patient middle initial;

(8) Patient sex;

(9) Patient birth date;

(10) Type of admission;

(11) Source of admission;

(12) Source of Payment Code (THCIC's standard codes and non-standard codes for the Primary and Secondary payers);

(13) Patient address;

(14) Patient city;

(15) Patient state;

(16) Patient zip;

(17) Admission/start of care date;

(18) Statement covers period from;

(19) Statement covers period through;

(20) Patient status;

(21) Medical record number;

(22) Type of bill;

(23) Accommodations revenue codes (all applicable);

(24) Accommodations rates (all applicable);

(25) Accommodation days (all applicable);

(26) Accommodation total charges (all applicable);

(27) Inpatient ancillary revenue code (all applicable);

(28) Units of service (all applicable);

(29) Ancillary charges total (all applicable);

(30) Principal diagnosis code;

(31) Other diagnosis codes (all applicable);

(32) Principal surgical procedure code (if applicable);

(33) Principal surgical procedure date (if applicable);

(34) Other surgical procedure codes (all applicable);

(35) Other surgical procedure dates (all applicable);

(36) Admitting diagnosis;

(37) External cause of injury (if applicable);

(38) Procedure coding method used;

(39) Attending physician number;

(40) Operating or other physician number (if applicable);

(41) Attending physician name;

(42) Operating or other physician name (if applicable);

(43) Facility Name;

(44) Facility Address;

(45) Facility City;

(46) Reason for no Social Security number.

(f) For patients which are covered by 42 USC 290dd-2 and 42 CFR Part 2.1, the hospital shall submit the following patient identifying information or default values in the specified Record and Field locations as required by subsection (a) of this section or the Form Locator for authorized hospitals as required by §1301.14(c) of this title (relating to Instructions for Filing Discharge Reports, Paper Forms):

(1) Control Number - This alphanumeric patient control number shall be reported in Record 20 Field 03, or Form Locator 3 . This number is unique to the institution and episode of care and will be used by the hospital to review and certify data.

(2) Last Name - The patient's last name shall be removed and replaced with "Doe" in Record 20 Field 04, Form Locator 12.

(3) First Name - The patient's first name shall be removed and replaced with "Jane" if female, or "John" if male, and can include a sequential number (e.g., John1, John2, John3... etc.) in Record 20 Field 05, Form Locator 12.

(4) Middle Initial - The patient's middle initial shall be removed and left blank (space filled) in Record 20 Field 06, Form Locator 12.

(5) Date of Birth - The patient's date of birth shall be placed in Record 20 Field 08, Form Locator 14.

(6) Address - The patient's residence address shall be removed and replaced with the hospital's street address in Record 20 Field 12, Form Locator 13.

(7) City - The patient's city of residence shall be reported in Record 20 Field 14, Form Locator 13.

(8) State - The patient's state of residence shall be reported in Record 20 Field 15, Form Locator 13.

(9) ZIP Code - The patient's ZIP code of residence shall be reported in Record 20 Field 16, Form Locator 13.

(10) Medical Record Number - The patient's medical record number shall be removed and replace with "99999" and reported in Record 20 Field 25, Form Locator 23.

(11) Social Security Number - The patient's Social Security Number shall be removed and replaced with "999999999" in Record 22 Field 05, Form Locator 2 (Upper Line). Also, place the letter "O" in Record 22 Field 06, Form Locator 2 (Lower Line) as specified in subsection (c)(3) of this section.

(g) A submission will consist of a set of the following types of records from the HCFA UB-92 Electronic Format specification as shown in paragraphs (1)-(13) of this subsection.

(1) Processor Label Data (Record 01). Files will be formatted so that this is a data record, not a conventional label. From a system standpoint, this will be a "labelless" file. This record will be the first record in the file.

(2) Provider Data (Record 10). The provider's batch record describes the types of claims submitted for a specific provider. Field 02 of this record identifies the specific type of claim. A provider may be authorized to submit more than one claim type. In that case, more than one batch will be required to identify each claim type. Each claim in the batch will be edited for claim type. Record 40, Field 04 identifies claim type and will be matched to the batch record for claim type. Each batch record must be followed by claim records and then Provider Batch Control Record (Record 95). This record is required at the beginning of each batch.

(3) Patient Data (Record 20). The patient record is the first record of a claim. It is required for all claim types as it contains the patient's demographic data.

(4) Third Party Payer Data (Record 30). The third party payer record identifies the primary insurance payer information and the secondary insurance payer for each patient. If the patient has no third party payer and is paying with personal finances, the hospital shall submit one Record 30 01 (or first Record 30) with Field 04 = A and Record 22 01 Field 09 shall be left "blank". If a non-standard source of payment code is selected, the hospital shall submit a Record 30 with Field 04 = I (Other) or "the most appropriate corresponding standard source of payment code" and the selected non-standard source of payment code shall appear in Record 22, Field 09. For example: If the patient has no third party payer and is treated as a charity patient, where no reimbursement is expected. The hospital shall submit one Record 30 01 with Field 04 = I and a Record 22 01 with Field 09 = Z, if the patient has a commercial PPO plan as the primary payer and Medicare Managed Care Plan for a secondary source of payment, the hospital shall submit two Record 30s'; Record 30 01 Field 04 = F (Commercial) and Record 22 01 Field 09 = U (Commercial PPO), Record 30 02 Field 04 = C (Medicare) and Record 22 Field 09 = V (Medicare Managed Care). Records must be in the correct payer priority sequence. The '01' (First Record 30 and Record 22) Record determines which source of payment code will be considered as primary.

(5) Claim Data (Record 40). The claim data record identifies miscellaneous data needed to process a claim.

(6) Claim Data Conditions and Values (Record 41). This record is used to report condition and value codes. If none are needed, this record is not necessary.

(7) Inpatient Accommodations (Record 50). This record identifies the room charges (revenue codes 100-219) for an inpatient claim.

(8) Inpatient Ancillary Services (Record 60). This record identifies the inpatient ancillary services (revenue codes 220-999).

Revenue code "001" (total) is required for all lines of business. It must be the last revenue code listed and must contain the correct totals.

(9) Medical Data (Record 70). This record identifies the diagnosis and surgical procedure code requirements.

(10) Physician Data (Record 80). This record is for the Texas physician license number as assigned by the state licensing boards and name or Unique Physician Identification Number (UPIN) assigned by HCFA and name.

(11) Discharge Totals (Record 90). This record is the final record for each discharge and is required for all discharge types. The record count and charges associated with the discharges will be edited to this record. The discharge will be rejected when the counts or totals do not agree to those accumulated while processing the individual records of each discharge. If a record is not submitted for a discharge, enter "0" for that record count.

(12) Provider Batch Control (Record 95). The provider's batch control record contains information for all the claims of a specific claim type. The system will accumulate totals as it processes each claim. The totals are then edited to the batch totals record. When the totals are out of balance, the batch will be rejected.

(13) File Control Totals (Record 99). The processor's file control record contains control information for all the claims in the file.

§1301.20. Scientific Review Panel.

(a) The Council establishes the Scientific Review Panel (Panel) for the purposes of:

(1) evaluating applications for various measures or variables that are found in the Council's hospital discharge data "research" file; and

(2) deciding whether the data requests should be granted.

(b) The Scientific Review Panel is abolished at such time as the Council ceases to maintain a hospital discharge data "research" file.

(c) The Council may establish the scientific review function through a contract with an existing institutional review board that meets federal guidelines or by appointing a separate review panel.

(d) Membership if scientific review panel is appointed.

(1) A person interested in membership on the Scientific Review Panel must submit an application, on a form specified by the Council, to the Executive Director of the Council.

(2) The Scientific Review Panel will consist of at least five members.

(3) The Council's Appointments Committee shall review all applications for membership and make recommendations to the Council. When making its recommendations, the Appointments Committee shall consider the qualification criteria in the Health and Safety Code, §108.0135 for each member and the restrictions on composition of committees in Government Code §2110.002.

(4) The Council, at its, discretion, shall appoint persons to the Scientific Review Panel. Members shall have experience and expertise in ethics, patient confidentiality, and health care data.

(5) Members shall be appointed for three-year terms, except that for the initial appointees, the terms of one-third of the members shall be for three years, another one-third for two years, and the remaining members for one year. The Appointments Committee shall assign the initial term of each member or position so as to provide for a staggered system of terms.

(6) The Council may remove a member from the Scientific Review Panel if he or she is absent from three consecutive meetings. The Chair of the Scientific Review Panel may recommend the removal of a member for non-attendance to the Council's appointments committee, which shall review the matter and make a recommendation to the Council.

(7) If a vacancy on the Scientific Review Panel occurs, the Council shall appoint an individual to serve the unexpired portion of that term.

(8) The Chair of the Scientific Review Panel is designated by the Chair of the Council from current members of the Panel. This person shall serve in that capacity at the pleasure of the Council Chair.

(e) Meetings.

(1) The Scientific Review Panel shall meet as necessary to conduct business, but in any case, at least once every three months if applications for all or part of the research file are pending.

(2) A simple majority of the members of the Scientific Review Panel shall constitute a quorum for the purpose of transacting business. All action of the Panel must be approved by majority vote. Each member shall have one vote and may not vote by proxy or in absentia.

(3) Meetings of the Panel or Subcommittees of the Panel shall be posted and conducted in accordance with the Texas Open Meets Act, Government Code, Chapter 551. All meetings of the Panel or any Subcommittee will be recorded.

(4) Minutes of all Panel and Subcommittee meetings shall be maintained by Council staff and shall include the names of members in attendance and a record of all formal actions and votes taken.

(5) Council staff shall provide administrative support for the Panel and any Subcommittees, including making of meeting arrangements. Each Panel or Subcommittee member shall be informed of a meeting at least ten calendar days prior to a meeting.

(6) The Panel and Subcommittees shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(f) Decision-Making Guidelines.

(1) Requests should reasonably identify and justify the requested data elements. Requesters who have detailed information that would assist in justifying the records request are urged to provide such information in order to expedite the handling of the request. Envelopes in which written requests are submitted should be clearly identified as Open Records requests. Requests should include the fee or request determination of the fee.

(2) Fee structures for the public use data file and the research file shall be set by the executive director, in consultation with the Council.

(3) Waiver or reduction of the fees charged for the public use data file or the research file may be made upon a determination by the Executive Director when such waiver or reduction is in the Council's interest.

(4) All requests for data must be submitted in writing, either on the form provided by the Council or on a similar form containing all of the same information. Denials of written requests will be in writing and will contain the reasons for the denial including, as appropriate, a statement that a document or data element requested is nonexistent or is not reasonably described, or is subject to one or more

clearly described exemption(s). Denials will also provide the requester with appropriate information on how to exercise the right of appeal to the Council.

(5) In cases where there is an alleged conflict between the Texas Open Records Act and the Council's procedures, the Executive Director will refer the issue to the Office of the Attorney General.

(6) Records will not be created by compiling selected items from the files, and records will not be created to provide the requester with such data as ratios, proportions, percentages, per capitas, frequency distributions, trends, correlations, and comparisons. If such data have been compiled and are available in the form of a record, the record may be made available as provided herein.

(g) Reports to the Council. The Chair of the Scientific Review Panel shall file with the Executive Director of the Council a written report of all action taken at any meeting of the Panel or of a Subcommittee within 3 working days of such meeting, including a detailed list of how each participating member voted.

This agency hereby certifies that the 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 9, 2001.

TRD-200103904
Jim Loyd
Executive Director
Texas Health Care Information Council
Effective date: July 29, 2001
Proposal publication date: March 16, 2001
For further information, please call: (512) 482-3312

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER A. HARMFUL OR POTENTIALLY HARMFUL EXOTIC FISH, SHELLFISH, AND AQUATIC PLANTS

31 TAC §57.135

The Texas Parks and Wildlife Commission adopts an amendment to §57.135, concerning a Memorandum of Understanding (MOU) between TPWD, the Texas Natural Resource Conservation Commission (TNRCC) and the Texas Department of Agriculture (TDA), without changes to the proposed text as published in the April 27, 2001, issue of the *Texas Register* (26 TexReg 3136).

The proposed amendment is necessary to implement the provisions of Senate Bill (SB) 873, 76th Legislature, 1999, which amended Chapter 134 of the Texas Agriculture Code to direct TPWD, TNRCC and TDA to develop an MOU to coordinate the regulation of matters related to aquaculture.

The amendment adopts by reference a revised MOU adopted by the Texas Natural Resource Conservation Commission in the January 5, 2001, issue of the *Texas Register*(26 TexReg 204), and make the MOU applicable to the Texas Department of Agriculture. The amended MOU delineates each agency's responsibilities under the MOU, outlines coordination procedures for the review of individual permit applications, registration applications, requests for exemption and notices of intent to be covered under a general permit and establishes the operating procedures and scope of the ARC.

The department received no comments concerning adoption of the proposed rule.

The rule is adopted under Agriculture Code, §134.005, which requires the commission to adopt rules to carry out its duties under the 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 6, 2001.

TRD-200103871
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: July 26, 2001
Proposal publication date: April 27, 2001
For further information, please call: (512) 389-4775

♦ ♦ ♦

CHAPTER 65. WILDLIFE

SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION

The Texas Parks and Wildlife adopts amendments to §§65.3, 65.10, 65.11, 65.26, 65.27, 65.42, 65.44, 65.62, 65.64, 65.72, 65.78, the repeal of §§65.29 - 65.32, and new §§65.29 - 65.33, concerning the Statewide Hunting and Fishing Proclamation. Sections 65.3, 65.10, 65.26, 65.29, 65.31, 65.42, 65.62, 65.64 are adopted with changes to the proposed text as published in the February 23, 2001, issue of the *Texas Register* (26 TexReg 1664). The repeal of §§65.29 - 65.32, the amendments to §§65.11, 65.27, 65.44, 65.72, 65.78, and new §§65.30, 65.32, and 65.33 are adopted without changes to the proposed text and will not be republished.

The change to §65.3, concerning Definitions, clarifies the definition for 'final processing' and redesignates it to preserve alphabetical order of the section. The change to §65.10, concerning Possession of Wildlife Resources, consists of nonsubstantive grammatical alterations intended to clarify the proof-of-sex provisions for turkey and pheasant. The change to §65.26, concerning Managed Lands Deer Permits, alters cross-references to comport with changes to section designations elsewhere in the rulemaking, adds language to clearly identify the period of validity for Level 1 and Level 2 MLD permits, eliminates a proposed license log, implements provisions to allow partial permit issuance pending the completion of survey activities, and further provides that untagged deer on MLD properties to be transported to a central tagging location on the property. The change to 65.29, concerning Bonus Tags, allows bonus tags to be used during special public hunts authorized by the department. The change §65.31, concerning Desert Bighorn Sheep Permits, replaces the term 'lawful representative' with 'authorized employee' to be consistent with regulatory language in other sections. The change

to §65.42, concerning Deer, combines subsections (a)(3) and (4) to avoid repetition and renumbers paragraphs and cross-references accordingly, adds clarifying language to subsection (b)(4) and (5) to eliminate confusion about aggregate bag limits in 'one-buck' counties, terminates the muzzleloader-only season in Howard and Irion counties, alters language in paragraphs (5)(D) and (E) and (6)(C) to remove inaccurate references to river authorities and to specify that antlerless deer may not be taken without certain permits on certain units of public lands, and reduces the scope of the proposed additions to youth-only seasons, creating only one additional weekend of youth-only hunting in January while allowing the take of buck deer on Level II MLD properties during that season. The change to §65.62, concerning Quail, implements an early opening day only in those years that quail season would otherwise open concurrently with white-tailed deer season, and eliminates the youth-only season, which conflicts with the early opener. The change to §65.64, concerning Turkey, eliminates subsection (b)(1)(F) and relocates those provisions in subsection (b)(1)(C) to eliminate redundancy, and reduces the scope of the proposed additions to youth-only seasons, instituting one additional weekend of youth-only hunting in January.

The repeals are necessary to reconstitute former §65.42(b)(11) as new §65.29, which causes former §§65.29 - 65.32 to be redesignated without change as new §§65.30 - 65.33. The amendment to 65.3, concerning Definitions, adds a new definition for 'final processing.' The amendment is necessary for the department to ensure that provisions governing daily bag and possession limits can be enforced. The amendment to §65.10, concerning Possession of Wildlife Resources, liberalizes the proof-of-sex requirement for turkey, clarifies the requirements for pheasant, and nonsubstantively restructures the section's contents for clarity's sake. The amendment is necessary to create an unambiguous standard for the identification of harvested turkey. The amendment to §65.11, concerning Lawful Means, which clarifies an ambiguity concerning the use of lawful archery equipment, is necessary to make it clear that muzzleloader-only open seasons are restricted to muzzleloading firearms only. The amendment to §65.26, concerning Managed Lands Deer Permits, authorizes a partial issuance of MLD permits in cases where the required survey data is still in the process of being collected, and allows hunters to transport harvested deer to a central location on the property where the deer was killed in order to affix the appropriate MLD tag to the animal. The amendment is necessary to accommodate landowners on whose property the vegetative cover prevents the conclusion of accurate surveys prior to the beginning of deer season, and to reduce confusion and time-loss surrounding the issuance and use of MLD permits by hunters. The amendment to §65.27, concerning Antlerless and Spike-Buck Deer Control Permits, allows such permits to be used during any open season for deer. The amendment is necessary to allow landowners and land managers greater flexibility in controlling deer overpopulation. The amendment to §65.42, concerning Deer, consists of several actions. The amendment would expand the statewide youth-only season to the third weekend in January. This is necessary to execute commission policy to provide greater opportunity to youth and to encourage mentoring. The amendment would also allow other governmental entities to require permits for the harvest of antlerless deer on certain federal and state lands in 11 East Texas counties, which is necessary to ensure a controlled harvest. Further, the amendment would add three counties to the LAMPS program, which is necessary to provide landowners and land managers with an additional option when other permit programs are unfeasible or inappropriate. Also included in the amendment is the partitioning of the bloc of current 'one--buck' counties, allowing a hunter to take one buck in each of two zones, which is necessary to advance the commission directive to provide the greatest opportunity possible without causing depletion or waste. Additionally, the amendment increases the bag limit for antlerless deer and institutes a 14-day antlerless and spike-buck season in 14 counties on the northern Edwards Plateau (which also necessitated the elimination of the muzzleloader-only season in those counties), increases the bag limit for buck deer in 12 South Texas counties, and adds one week to the front end of the season in 28 South Texas counties, all of which advance the commission policy of maximizing hunter opportunity whenever such actions are biologically justifiable and do not result in depletion or waste. Lastly, the amendment removes inaccurate references to river authorities in subsection (b)(5) and (6) while specifying that antlerless deer may not be taken without permits on certain units of public lands, and adjusts a roadway boundary in Victoria County in order to reduce hunter confusion. The amendment to §65.44, concerning Javelina, creates an open season in Archer County. The amendment is necessary to advance commission policy to maximize hunter opportunity. The amendment to §65.62, concerning Quail, alters the opening day to make it occur one week earlier than the opening day for white-tailed deer in years when the seasons would otherwise be concurrent. The amendment is necessary to stagger the opening days for deer and quail to enable persons to participate in both. The amendment to §65.64, concerning Turkey, implements a spring season for Eastern wild turkey in five additional counties, adds one additional weekend in January to the youth-only season, and opens the fall season in 28 South Texas counties on the first Saturday in November rather than the second Saturday in November. The amendment is necessary to implement commission policy to maximize hunter opportunity, to foster youth participation and mentoring activities in the hunting sports, and to establish turkey season to run concurrently with the proposed white-tailed deer season in 28 South Texas counties. The amendment to §65.72, concerning Fish, alters a number of regulations. The amendment changes largemouth bass regulations on Lake O.H. Ivie to allow two largemouth bass of greater than 18 inches to be retained per day, which is necessary to improve fishing quality by reducing the number of bass in the 14-18 inch range. The amendment also modifies regulations for largemouth bass on Lake Sweetwater to implement a slot-limit, which is necessary to reduce mortalities of fish within the slot limit in order to improve fishing quality. Additionally, the amendment alters regulations for largemouth bass on Pinkston Reservoir to implement a new slot limit, allowing the retention of only one largemouth bass of greater than 21 inches per day, and prohibits the use of trotlines, juglines, and throwlines on Lakes Coffee Mill and Davy Crockett, which is necessary to increase fishing quality and to create gear requirements consistent with federal regulations, as the affected impoundments are part of the Caddo National Grasslands. Further, the amendment modifies smallmouth bass regulations on seven lakes to replace the 18-inch minimum length limit/3-fish daily bag limit with a 14-inch minimum length limit/5-fish daily bag limit, which is necessary to simplify regulations. Finally, the amendment increases the bag and possession limits for Spanish mackerel, which is necessary in order to be consistent with regulations in federal waters. The amendment to §65.78, concerning Crabs and Ghost Shrimp, specifies that crab trap float markers be white, which is necessary to clearly delineate crab traps from other devices. The amendment is necessary to aid enforcement.

The amendment to §65.3 will function by defining a term that hunters will need to know in order to lawfully conduct their activities. The amendment to §65.10 will function by providing hunters with an exact description of what constitutes lawful proof-of-sex for turkey. The amendment to §65.11 will function by eliminating the impression that lawful archery equipment can be used to hunt deer during a muzzleloader-only open season. The amendment to §65.26 will function by allowing hunting activities on MLD properties pending the timely submission of survey data to the department, and by allowing a hunter to transport harvested deer to a central location on the property where the deer was killed in order to affix the appropriate MLD tag to the animal. The amendment to §65.27 will function by providing the maximum amount of time for landowners to utilize Antlerless and Spike-Buck Deer Control Permits. The amendment to §65.42, concerning Deer, will function by making regulatory language clearer and more understandable, by providing greater opportunity to hunters, and by providing additional flexibility to landowners to manage deer populations. The amendment to §65.44 will function by creating additional hunting opportunity for javelina. The amendment to §65.62 will function by opening quail season early in years when it would otherwise be concurrent with the opening day of white-tailed deer season. The amendment to §65.64 will function by furnishing additional opportunity for the hunting of Eastern wild turkey, by creating additional opportunity for youth to hunt turkey, and by establishing an opening day for the fall season concurrent with the opening day for white-tailed deer season. The amendment to §65.72 will function by establishing biologically sound limitations on the number and size of various species of fish that may be taken in the public waters of this state, and by creating restrictions on water bodies jointly regulated by state and federal authorities. The amendment to §65.78 will function by establishing a marking convention to create clear distinctions between types of crab traps.

The department received 643 comments opposing adoption of the proposal to add up to seven additional weekends of youth-hunting opportunity. Fifty-nine of the comments stated that the archery season should not be encroached upon by other seasons, 59 stated that youth-season would be taken advantage of by unscrupulous parents, 50 expressed opposition only to additional youth seasons in October, 33 comments stated that the current general season was sufficient for parents to take children hunting, 33 stated safety concerns. The department agrees in part with some of the comments, noting, however, that it has no statutory authority to regulate on the basis of public safety. Changes were made accordingly and the original proposal was truncated to imple(the)-430.(or)03r s140(s)2akregon w o286(ment)-34149uth t8(o)ua-360.2(sta10.3(n-2673ies)26.8(.9TD [90.1(The)-338(

The department received seven comments opposed to the proposal to create a uniform opening day for fall turkey season concurrent with the opening day for white-tailed deer. The department disagrees with the comments and responds that commission policy is to designate concurrent opening days for turkey and deer. With the adoption of the proposal to create a uniform statewide opening day for white-tailed deer, it is necessary to do the same to opening day for turkey in the affected counties. No changes were made as a result of the comments. The department received 201 comments supporting adoption of the proposed rule.

The department received seven comments opposing the proposal to open a spring season for Eastern wild turkey in five additional counties. Three of the comments stated that populations in the affected counties could not withstand hunting pressure. The department disagrees with the comments and responds that the extremely conservative harvest regime, coupled with the requirement that all birds be taken to check stations (enabling the department to establish highly reliable harvest data), allows for the implementation of the season. No changes were made as a result of the comments. The department received 184 comments supporting adoption of the proposed rule.

The department received four comments opposing adoption of the proposal to open a javelina season in Archer County. The department disagrees with the comments and responds that biological data indicate that a season can be provided without the threat of depletion or waste. No changes were made as a result of the comments. The department received 128 comments supporting adoption of the proposed rule.

The department received 88 comments opposed to the proposal to open quail season one week earlier than white-tailed deer season. Twenty-six commenters stated that there would be conflicts between archery hunters and quail hunters. The department agrees in part with the comments. The intent of the proposal was to eliminate the periodic occurrence of concurrent openers for both deer and quail, which in some cases forced persons hunting deer in one part of the state and quail in another to choose which opening day to take advantage of. The department has adopted regulatory wording that would allow an earlier opening day for quail only in years when there would otherwise be a concurrent opening day with deer season. The department received 158 comments supporting adoption of the proposed rule.

The department received 23 comments opposing adoption of the proposed harvest regulations for smallmouth bass on Lakes Belton (Bell County), Cisco (Eastland County), Greenbelt (Donley County), Oak Creek (Coke County), Stillhouse Hollow (Bell County), White River (Crosby County), Whitney (Bosque and Hill Counties) . The commenters stated that a belief that the change will negatively impact the quality of smallmouth bass angling, especially for larger fish. The department disagrees and responds that much of the angling for smallmouth bass is catch and release, and that periodic stocking exerts the greatest influence on the current population structure; therefore, the proposed changes will have little impact on smallmouth bass in these reservoirs. No changes were made as a result of the comments. The department received 57 comments in support of adoption of the proposed rule.

The department received 11 comments in opposition to the proposed harvest regulations for largemouth bass on Lake Sweetwater (Nolan County). The comments indicated philosophical opposition to slot limits as a management tool. The department disagrees with the comments and responds that slot limits are a biologically useful tool in fisheries management and should improve the quality of fishing. No changes were made as a result of the comments. The department received 56 comments in support of adoption of the proposed rule.

The department received 10 comments opposed to adoption of proposed harvest regulations for largemouth bass on Pinkston Reservoir (Shelby County). The commenters favored the current slot, other modifications of the slot, or increased stocking. The department disagrees with the comments and responds that the proposed changes are appropriate for the population structure and growth potential in Pinkston. No changes were made as a result of the comments. The department received 51 comments in support of adoption of the proposed rule.

The department received 20 comments in opposition to the proposed harvest regulations for largemouth bass on O. H. Ivie Reservoir (Coleman, Concho, Runnels Counties). The commenters favored various other options, such slot limits. The department disagrees with the comments and responds that the adopted regulations are believed to be the best way to remove the targeted sizes of bass from the reservoir. No changes were made as a result of the comments. The department received 59 comments in support of adoption of the proposed rule.

The department received 22 comments in opposition to the proposed gear restrictions on Lakes Coffee Mill and Davy Crockett (Fannin County). The commenters were philosophically opposed to restrictions on the use of trotlines, throwlines, and juglines in general. The department disagrees with the comments and responds that the restrictions are appropriate to achieve the goal of improving catfish angling, as well as to standardize regulations with those of the controlling authority for these water bodies. No changes were made as a result of the comments. The department received 42 comments in favor of adoption of the proposed regulation.

The department received 10 comments opposed to the adoption of the proposal to increase bag limits for Spanish mackerel. The department disagrees with the comments and responds that monitoring data indicate that the population is able to sustain additional harvest. No changes were made as a result of the comments. The department received 29 comments in favor of adoption of the proposed regulation.

The department received five comments in opposition to the proposal to require all non-commercial crab-trap floats to be white. Three of the comments stated that white would be difficult to see under low-light conditions. The department disagrees with the comments and responds that the regulation is not intended as an aid to navigation, but as a means of distinguishing non-commercial commercial crab traps from commercial crab traps.

Texas Wildlife Association commented in favor of adoption of the proposed rules.

DIVISION 1. GENERAL PROVISIONS

31 TAC §§65.3, 65.10, 65.11, 65.26, 65.27, 65.29 - 65.33

The amendments and new sections are adopted under the authority of Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provide the Commission with authority to establish wildlife resource regulations for this state.

§65.3. Definitions.

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

All other words and terms in this chapter shall have the meanings assigned in the Texas Parks and Wildlife Code.

(1) Agent--A person authorized by a landowner to act on behalf of the landowner. For the purposes of this chapter, the use of the term "landowner" also includes the landowner's agent.

(2) Annual bag limit--The quantity of a species of a wildlife resource that may be taken from September 1 of one year to August 31 of the following year.

(3) Antlerless deer--A deer having no hardened antler protruding through the skin.

(4) Artificial lure--Any lure (including flies) with hook or hooks attached that is man-made and is used as a bait while fishing.

(5) Bait--Something used to lure any wildlife resource.

(6) Baited area--Any area where minerals, vegetative material or any other food substances are placed so as to lure a wildlife resource to, on, or over that area.

(7) Bearded hen--A female turkey possessing a clearly visible beard protruding through the feathers of the breast.

(8) Buck deer--A deer having a hardened antler protruding through the skin.

(9) Cast net--A net which can be hand-thrown over an area.

(10) Coastal waters boundary--All public waters east and south of the following boundary are considered coastal waters: Beginning at the International Toll Bridge in Brownsville, thence northward along U.S. Highway 77 to the junction of Paredes Lines Road (F.M. Road 1847) in Brownsville, thence northward along F.M. Road 1847 to the junction of F.M. Road 106 east of Rio Hondo, thence westward along F.M. Road 106 to the junction of F.M. Road 508 in Rio Hondo, thence northward along F.M. Road 508 to the junction of F.M. Road 1420, thence northward along F.M. Road 1420 to the junction of State Highway 186 east of Raymondville, thence westward along State Highway 186 to the junction of U.S. Highway 77 near Raymondville, thence northward along U.S. Highway 77 to the junction of the Aransas River south of Woodsboro, thence eastward along the south shore of the Aransas River to the junction of the Aransas River Road at the Bonnie View boat ramp; thence northward along the Aransas River Road to the junction of F.M. Road 629; thence northward along F.M. Road 629 to the junction of F.M. Road 136; thence eastward along F.M. Road 136 to the junction of F.M. Road 2678; then northward along F.M. Road 2678 to the junction of F.M. Road 774 in Refugio, thence eastward along F.M. Road 774 to the junction of State Highway 35 south of Tivoli, thence northward along State Highway 35 to the junction of State Highway 185 between Bloomington and Seadrift, thence northwestward along State Highway 185 to the junction of F.M. Road 616 in Bloomington, thence northeastward along F.M. Road 616 to the junction of State Highway 35 east of Blessing, thence southward along State Highway 35 to the junction of F.M. Road 521 north of Palacios, thence northeastward along F.M. Road 521 to the junction of State Highway 36 south of Brazoria, thence southward along State Highway 36 to the junction of F.M. Road 2004, thence northward along F.M. Road 2004 to the junction of Interstate Highway 45 between Dickinson and La Marque, thence northwestward along Interstate Highway 45 to the junction of Interstate Highway 610 in Houston, thence east and northward along Interstate Highway 610 to the junction of Interstate Highway 10 in Houston, thence eastward along Interstate Highway 10 to the junction of State Highway 73 in Winnie, thence eastward along State Highway 73 to the junction of U.S. Highway 287 in Port Arthur, thence northwestward along U.S. Highway 287 to the junction of Interstate Highway 10 in Beaumont, thence eastward along Interstate Highway 10 to the Louisiana State Line. The waters of Spindletop Bayou inland from the concrete dam at Russels Landing on Spindletop Bayou in Jefferson County; public waters north of the dam on Lake Anahuac in Chambers County; the waters of Taylor Bayou and Big Hill Bayou inland from the saltwater locks on Taylor Bayou in Jefferson County; Lakeview City Park Lake, West Guth Park Pond, and Waldron Park Pond in Nueces County; Galveston County Reservoir and Galveston State Park ponds #1-7 in Galveston County; Lake Burke-Crenshaw and Lake Nassau in Harris County; Fort Brown Resaca, Resaca de la Guerra, Resaca de la Palma, Resaca de los Cuates, Resaca de los Fresnos, Resaca Rancho Viejo, and Town Resaca in Cameron County; and Little Chocolate Bayou Park Ponds #1 and #2 in Calhoun County are not considered coastal waters for purposes of this subchapter.

(11) Community fishing lake--All public impoundments 75 acres or smaller located totally within an incorporated city limits or a public park, and all impoundments of any size lying totally within the boundaries of a state park.

(12) Crab line--A baited line with no hook attached.

(13) Daily bag limit--The quantity of a species of a wildlife resource that may be lawfully taken in one day.

(14) Day--A 24-hour period of time that begins at midnight and ends at midnight.

(15) Dip net--A mesh bag suspended from a frame attached to a handle.

(16) Final processing - the cleaning of a dead wildlife resource for cooking or storage purposes.

(17) Fish--

(A) Game fish--Blue catfish, blue marlin, broadbill swordfish, brown trout, channel catfish, cobia, crappie (black and white), flathead catfish, Guadalupe bass, king mackerel, largemouth bass, longbill spearfish, pickerel, red drum, rainbow trout, sailfish, sauger, sharks, smallmouth bass, snook, Spanish mackerel, spotted bass, spotted seatrout, striped bass, tarpon, wahoo, walleye, white bass, white marlin, yellow bass, and hybrids or subspecies of the species listed in this subparagraph.

(B) Non-game fish--All species not listed as game fish, except endangered and threatened fish, which are defined and regulated under separate proclamations.

(18) Fishing--Taking or attempting to take aquatic animal life by any means.

(19) Fish length--That straight-line measurement (while the fish is lying on its side) from the tip of the snout (jaw closed) to the extreme tip of the tail when the tail is squeezed together or rotated to produce the maximum overall length.

(20) Fish species names--The names of fishes are those prescribed by the American Fisheries Society in the most recent edition of "A List of Common and Scientific Names of Fishes of The United States and Canada."

(21) Fully automatic firearm--Any firearm that is capable of firing more than one cartridge in succession by a single function of the trigger.

(22) Gaff--Any hand-held pole with a hook attached directly to the pole.

(23) Gear tag--A tag constructed of material as durable as the device to which it is attached. The gear tag must be legible, contain the name and address of the person using the device, and, except for saltwater trotlines, the date the device was set out.

(24) Gig--Any hand-held shaft with single or multiple points.

(25) Jug line--A fishing line with five or less hooks tied to a free-floating device.

(26) Lawful archery equipment--Longbow, recurved bow, and compound bow.

(27) License year--The period of time for which an annual hunting or fishing license is valid.

(28) Muzzleloader--Any firearm that is loaded only through the muzzle.

(29) Natural bait--A whole or cut-up portion of a fish or shellfish or a whole or cut-up portion of plant material in its natural state, provided that none of these may be altered beyond cutting into portions.

(30) Permanent residence--One's principal or ordinary home or dwelling place. This does not include a temporary abode or dwelling such as a hunting/fishing club, or any club house, cabin, tent, or trailer house used as a hunting/fishing club, or any hotel, motel, or rooming house used during a hunting, fishing, pleasure, or business trip.

(31) Pole and line--A line with hook, attached to a pole. This gear includes rod and reel.

(32) Possession limit--The maximum number of a wildlife resource that may be lawfully possessed at one time.

(33) Purse seine (net)--A net with flotation on the corkline adequate to support the net in open water without touching bottom, with a rope or wire cable strung through rings attached along the bottom edge to close the bottom of the net.

(34) Sail line--A type of trotline with one end of the main line fixed on the shore, the other end of the main line attached to a wind-powered floating device or sail.

(35) Sand Pump--A self-contained, hand-held, hand-operated suction device used to remove and capture Callianassid ghost shrimp (Callichirus islagrande, formerly Callianassa islagrande) from their burrows.

(36) Seine--A section of non-metallic mesh webbing, the top edge buoyed upwards by a floatline and the bottom edge weighted.

(37) Silencer or sound-suppressing device--Any device that reduces the normal noise level created when the firearm is discharged or fired.

(38) Spear--Any shaft with single or multiple points, barbed or barbless, which may be propelled by any means, but does not include arrows.

(39) Spear gun--Any hand-operated device designed and used for propelling a spear, but does not include the crossbow.

(40) Spike-buck deer--A buck deer with no antler having a fork or branching point.

(41) Throwline--A fishing line with five or less hooks and with one end attached to a permanent fixture. Components of a throwline may also include swivels, snaps, rubber and rigid support structures.

(42) Trap--A rigid device of various designs and dimensions used to entrap aquatic life.

(43) Trawl--A bag-shaped net which is dragged along the bottom or through the water to catch aquatic life.

(44) Trotline--A nonmetallic main fishing line with more than five hooks attached and with each end attached to a fixture.

(45) Umbrella net--A non-metallic mesh net that is suspended horizontally in the water by multiple lines attached to a rigid frame.

(46) Upper-limb disability--A permanent loss of the use of fingers, hand or arm in a manner that renders a person incapable of using a longbow, compound bow or recurved bow.

(47) Wildlife resources--All game animals, game birds, and aquatic animal life.

(48) Wounded deer--A deer leaving a blood trail.

§65.10. Possession of Wildlife Resources.

(a) For all wildlife resources taken for personal consumption and for which there is a possession limit, the possession limit shall not apply after the wildlife resource has reached the possessor's permanent residence and is finally processed.

(b) Proof of sex must remain with certain wildlife resources until the wildlife resource reaches either the possessor's permanent residence or a cold storage/processing facility and is finally processed. Proof of sex is as follows:

(1) turkey (in a county where the bag composition is restricted to gobblers and/or bearded hens):

(A) male turkey:

(i) one leg, including the spur, attached to the bird; or

(ii) the bird, accompanied by a patch of skin with breast feathers and beard attached.

(B) female turkey taken during the fall season: the bird, accompanied by a patch of skin with breast feathers and beard attached.

(2) deer:

(A) buck: the unskinned head, with antlers still attached;

(B) antlerless: the unskinned head;

(3) antelope: the unskinned head; and

(4) pheasant: one leg, including the spur, attached to the bird or the entire plumage attached to the bird.

(c) In lieu of proof of sex, the person who killed the wildlife resource may obtain a receipt from a taxidermist or a signed statement from the landowner, containing the following information:

(1) the name of person who killed the wildlife resource;

(2) the date the wildlife resource was killed;

(3) one of the following, as applicable:

(A) whether the deer was antlered or antlerless;

(B) the sex of the antelope;

(C) the sex of the turkey and whether a beard was attached; or

(D) the sex of the pheasant.

(d) A person may give, leave, receive, or possess any species of legally taken wildlife resource, or a part of the resource, that is required to have a tag or permit attached or is protected by a bag or possession limit, if the wildlife resource is accompanied by a wildlife resource document from the person who killed or caught the wildlife resource.

(1) For deer, turkey, or antelope, a properly executed wildlife resource document shall accompany the wildlife resource until it reaches either the possessor's permanent residence or a cold storage/processing facility and is finally processed.

(2) For all other wildlife resources, a properly executed wildlife resource document shall accompany the wildlife resource until it reaches the possessor's permanent residence and is finally processed.

(3) The wildlife resource document must contain the following information:

(A) the name, signature, address, and hunting or fishing license number, as required, of the person who killed or caught the wildlife resource;

(B) the name of the person receiving the wildlife resource;

(C) a description of the wildlife resource (number and type of species or parts);

(D) the date the wildlife resource was killed or caught; and

(E) the location where the wildlife resource was killed or caught (name of ranch; area; lake, bay or stream; and county).

(e) It is a defense to prosecution if the person receiving the wildlife resource does not exceed any possession limit or possess a wildlife resource or a part of a wildlife resource that is required to be tagged if the wildlife resource or part of the wildlife resource is tagged.

§65.26. Managed Lands Deer (MLD) Permits.

(a) MLD permits may be issued only to a landowner who has a current WMP in accordance with §65.25 of this title (relating to Wildlife Management Plan). In the case that a landowner is otherwise in fulfillment of the provisions of §65.25 of this title but does not have current survey data, the department may conditionally authorize partial issuance of MLD permits, not to exceed 30 per cent of the total MLD permits to be issued for that property during the affected license year, with the balance of MLD permits to be issued upon submission of the required survey data.

(b) An applicant may request the issuance of any type of MLD listed in this section.

(1) Level 1. Level 1 MLD permits authorize only the take of antlerless white-tailed or antlerless mule deer. A Level 1 MLD permit is valid during any open season in the county for which it is issued, and the bag limit for antlerless deer in that county applies.

(2) Level 2.

(A) Level 2 MLD permits authorize the take of buck and antlerless white-tailed deer as specified by the permit. A Level 2 MLD:

(i) antlerless permit is valid from the Saturday closest to September 30 through the last Sunday in January and during any open season on the property for which it is issued;

(ii) buck permit is valid from the opening day of the general open season in the county for which it is issued through the last Sunday in January and during any open season other than the archery-only open season on the property for which it is issued.

(B) On all tracts of land for which Level 2 MLD permits have been issued:

(i) the bag limit shall be five deer, no more than three bucks, regardless of the county bag limit; and

(ii) the provisions of §65.42(b)(8) of this title (relating to Archery-Only Open Season), §65.42(b)(9) of this title (relating to Muzzleloader-Only Open Season), and the stamp requirements of Parks and Wildlife Code, Chapter 43, Subchapters I and Q, do not apply.

(C) By acceptance of Level 2 MLD permits a landowner agrees to accomplish at least two habitat management recommendations contained in the WMP within three years of permit issuance, and agrees to maintain the habitat management practices for as long as Level 2 permits are accepted thereafter. A landowner who fails to accomplish at least two habitat management recommendations of the WMP within three years is not eligible for Level 2 permits the following year, but is eligible for Level 1 MLD permits or may choose to cease accepting MLD permits.

(3) Level 3. Level 3 MLD permits authorize the take of buck and antlerless white-tailed deer as specified by the permit. A Level 3 MLD permit is valid from the Saturday nearest September 30 through the last Sunday in January and during any open season on the property for which it is issued. On all tracts of land for which Level 3 MLD permits have been issued:

(A) the bag limit shall be five deer, no more than three bucks, regardless of the county bag limit; and

(B) the provisions of §65.42(b)(8) of this title, §65.42(b)(9) of this title, and the stamp requirements of Parks and Wildlife Code, Chapter 43, Subchapters I and Q, do not apply.

(C) By acceptance of Level 3 MLD permits a landowner agrees to accomplish at least four habitat management recommendations contained in the WMP within three years of permit issuance, and agrees to maintain the habitat management practices for as long as Level 3 permits are accepted thereafter. A landowner who fails to accomplish at least four habitat management recommendations of the WMP within three years is not eligible for Level 3 permits the following year, but may be eligible for other levels of MLD permits or may choose to cease accepting MLD permits.

(c) The number of MLD permits distributed to a hunter shall be at the discretion of the landowner.

(d) Except for deer taken under an Antlerless and Spike-Buck Control Permit, all deer harvested by MLD permit must immediately be tagged with an appropriate tag from the hunting license of the person who killed the deer or a valid bonus tag. If an appropriate MLD permit is not attached immediately at the time of kill, the person who killed the deer shall immediately take the carcass to a location on the property where an appropriate MLD tag shall be attached.

(e) If a landowner in possession of MLD permits does not wish to abide by the harvest quota or habitat management practices specified by the WMP, the landowner must return all MLD permits to the department by the Saturday closest to September 30.

(f) In the event that unforeseeable developments such as floods, droughts, or other natural disasters make the attainment of recommended habitat management practices impractical or impossible, the department may, on a case-by-case basis, waive the requirements of this section.

(g) The department reserves the right to deny further issuance of MLD permits to a landowner who exceeds the harvest quota specified by the WMP or who does not otherwise abide by the WMP. A property for which the department denies further permit issuance under this subsection is ineligible to receive MLD permits for a period of three years from the date of denial.

(h) Administratively complete applications received by the department before August 15 of each year shall be approved or denied by October 1 of the same year.

§65.29. Bonus Tag.

(a) A person in possession of a valid bonus deer tag may take one buck or antlerless white-tailed deer during an open white-tailed deer season in any county, irrespective of the county bag limit, provided that person also possesses one of the following:

(1) an appropriate, valid MLD permit (buck or antlerless);

(2) a valid LAMPS permit (antlerless only); or

(3) an appropriate, valid Special Permit (buck or antlerless) issued by the department for a public hunt, in which case the bonus tag is valid only on the property specified on the permit and only during the date and time specified on the permit.

(b) No person may:

(1) purchase more than five bonus tags per license year;

(2) use a bonus tag on more than one animal; or

(3) buy, sell, or otherwise exchange a bonus tag for remuneration or considerations of any kind; however, a bonus tag may be given to another person.

(c) A person who kills a deer shall immediately attach a properly executed bonus tag to the deer.

§65.31. Desert Bighorn Sheep Permits.

(a) No person may hunt desert bighorn sheep without first attending an orientation conducted by the department during the year for which the permit is issued.

(b) Any person hunting desert bighorn sheep shall notify the department between 14 and 21 days prior to the date of the hunt to arrange for the tagging required by subsection (c) of this section.

(c) Any person taking a desert bighorn sheep shall, within 72 hours of taking the sheep, ensure that the sheep is permanently tagged in one horn by a lawful representative of the department.

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 6, 2001.

TRD-200103872
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: July 26, 2001
Proposal publication date: February 23, 2001
For further information, please call: (512) 389-4775

♦ ♦ ♦

31 TAC §§65.29 - 65.32

The repeals are adopted under the authority of Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provide the Commission with authority to establish wildlife resource regulations for this state.

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 6, 2001.

TRD-200103875
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: July 26, 2001
Proposal publication date: February 23, 2001
For further information, please call: (512) 389-4775

♦ ♦ ♦

DIVISION 2. OPEN SEASONS AND BAG LIMITS--HUNTING PROVISIONS

31 TAC §§65.42, 65.44, 65.62, 65.64

The amendments are adopted under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.

§65.42. Deer.

(a) Except as provided in §65.27 of this title (relating to Antlerless and Spike-Buck Deer Control Permits) or §65.29 of this title (relating to Bonus Tags), no person may exceed the annual bag limit of five white-tailed deer (no more than three bucks) and two mule deer (no more than one buck).

(b) White-tailed deer. The open seasons and annual bag limits for white-tailed deer shall be as follows.

(1) In Brewster, Culberson, Jeff Davis, Pecos, Presidio, Reeves, Terrell, and Upton (that southeastern portion located both south of U.S. Highway 67 and east of State Highway 349) counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks.

(2) In Bandera, Bexar, Blanco, Brown, Burnet, Coke, Coleman, Comal (west of Interstate 35), Concho, Crockett, Edwards, Gillespie, Glasscock, Hays (west of Interstate 35), Howard, Irion, Kendall, Kerr, Kimble, Kinney (north of U.S. Highway 90), Llano, Mason, McCulloch, Medina (north of U.S. Highway 90), Menard, Mills, Mitchell, Nolan, Real, Reagan, Runnels, San Saba, Schleicher, Sterling, Sutton, Tom Green, Travis (west of Interstate 35), Uvalde (north of U.S. Highway 90) and Val Verde (north of U.S. Highway 90; and that portion located both south of U.S. 90 and west of Spur 239) counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: five deer, no more than two bucks.

(C) Special Late General Season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only.

(i) Open season: 14 consecutive days starting the first Monday following the first Sunday in January.

(ii) Bag limit: five antlerless or spike-buck deer in the aggregate, no more than two of which may be spike bucks.

(3) In Aransas, Atascosa, Bee, Brooks, Calhoun, Cameron, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kinney (south of U.S. Highway 90), Kleberg, LaSalle, Live Oak, Maverick,

McMullen, Medina (south of U.S. Highway 90), Nueces, Refugio, San Patricio, Starr, Uvalde (south of U.S. Highway 90), Val Verde (that southeastern portion located both south of U.S. Highway 90 and east of Spur 239), Webb, Willacy, Zapata, and Zavala counties, there is a general open season.

(A) Open season: the first Saturday in November through the third Sunday in January.

(B) Bag limit: five deer, no more than three bucks.

(C) Special Late General Season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only.

(i) Open season: 14 consecutive days starting the first Monday following the third Sunday in January.

(ii) Bag limit: five antlerless or spike-buck deer in the aggregate, no more than three of which may be spike bucks.

(4) No person may take or attempt to take more than one buck deer per license year from the counties (or portions of counties), in the aggregate, listed within this paragraph, except as provided in subsection (a) of this section or authorized under the provisions of §65.26 of this title (relating to Managed Land Deer Permits). For counties appearing both in this paragraph and paragraph (5) of this subsection, the bag limit is one buck deer, irrespective of the portion of the county in which take or attempted take occurs.

(A) In Archer, Baylor, Bell (west of Interstate 35), Bosque, Callahan, Clay, Comanche, Coryell, Eastland, Erath, Hamilton, Hood, Jack, Lampasas, Montague, Palo Pinto, Parker, Shackelford, Somervell, Stephens, Taylor, Throckmorton, Wise, and Young counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(B) In Armstrong, Borden, Briscoe, Carson, Childress, Collingsworth, Cottle, Crosby, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hansford, Hardeman, Haskell, Hemphill, Hutchinson, Jones, Kent, King, Knox, Lipscomb, Motley, Ochiltree, Randall, Roberts, Scurry, Stonewall, Swisher, Wheeler, Wichita, and Wilbarger counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) During the first 16 days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD permits have been issued for the tract of land. After the first 16 days, antlerless deer may be taken only by MLD antlerless permits.

(C) In Dallam, Hartley, Moore, Oldham, Potter, and Sherman Counties, there is a general open season.

(i) Open season: Saturday before Thanksgiving for 16 consecutive days.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) Antlerless deer may be taken only by MLD antlerless permits.

(5) No person may take or attempt to take more than one buck deer per license year from the counties (or portions of counties), in the aggregate, listed within this paragraph, except as provided in subsection (a) of this section or authorized under the provisions of §65.26 of this title (relating to Managed Land Deer Permits). For counties appearing both in this paragraph and paragraph (4) of this subsection, the bag limit is one buck deer, irrespective of the portion of the county in which take or attempted take occurs.

(A) In Grayson, McLennan, and Williamson (west of IH 35) counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) Special regulation. In Grayson County:

(I) lawful means are restricted to lawful archery equipment and crossbows only; and

(II) antlerless deer shall be taken by MLD permit only, except on the Hagerman National Wildlife Refuge.

(B) In Brazoria, Fort Bend, Goliad (south of U.S. Highway 59), Harris, Jackson (south of U.S. Highway 59), Matagorda, Victoria (south of U.S. Highway 59), and Wharton (south of U.S. Highway 59) counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) During the first 23 days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD permits have been issued for the tract of land. If MLD permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. After the first 23 days, antlerless deer may be taken only by MLD antlerless permits.

(C) In Cooke, Denton, Hill, Johnson, and Tarrant counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) During the first nine days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD permits have been issued for the tract of land. After the first nine days, antlerless deer may be taken only by MLD antlerless permits.

(D) In Anderson, Bowie, Brazos, Burleson, Camp, Cherokee, Delta, Fannin, Franklin, Freestone, Gregg, Grimes, Henderson, Hopkins, Houston, Hunt, Lamar, Leon, Limestone, Madison, Morris, Navarro, Rains, Red River, Robertson, Rusk, Smith, Titus, Upshur, Van Zandt, and Wood counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) Antlerless deer may be taken only by MLD antlerless permits or LAMPS permits. On National Forest lands, the take of antlerless deer shall be by permit only.

(E) In Cass, Harrison, Marion, Nacogdoches, Panola, Sabine, San Augustine and Shelby Counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) From Thanksgiving Day through the Sunday immediately following Thanksgiving Day, antlerless deer may be taken without antlerless deer permits unless MLD, LAMPS, or Wildlife Management Area permits have been issued for the tract of land. On National Forest, Corps of Engineers, and Sabine River Authority lands, the take of antlerless deer shall be by permit only. If MLD or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the first Saturday in November through the day before Thanksgiving Day, and from the Monday immediately following Thanksgiving Day through the first Sunday in January, antlerless deer may be taken only by MLD antlerless deer permits or LAMPS permits.

(F) In Austin, Bastrop, Bell (east of Interstate 35), Caldwell, Colorado, Comal (east of Interstate 35), Crane, DeWitt, Ector, Ellis, Falls, Fayette, Goliad (north of U.S. Highway 59), Gonzales, Guadalupe, Hays (east of Interstate 35), Jackson (north of U.S. Highway 59), Karnes, Kaufman, Lavaca, Lee, Loving, Midland, Milam, Travis (east of Interstate 35), Upton (that portion located north of U.S. Highway 67; and that area located both south of U.S. Highway 67 and west of state highway 349), Victoria (north of U.S. Highway 59), Waller, Ward, Washington, Wharton (north of U.S. Highway 59), Williamson (east of Interstate 35), and Wilson counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) Antlerless deer may be taken only by MLD antlerless permits.

(6) In Angelina, Chambers, Hardin, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, San Jacinto, Trinity, Tyler, and Walker counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks and no more than two antlerless.

(C) From opening day through the Sunday immediately following Thanksgiving , antlerless deer may be taken without antlerless deer permits unless MLD, LAMPS, or Wildlife Management Area permits have been issued for the tract of land. On National Forest, Corps of Engineers, Sabine River Authority, and Trinity River Authority lands, the take of antlerless deer shall be by permit only. If MLD or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the Monday following Thanksgiving, antlerless deer may be taken only by MLD antlerless permits or LAMPS permits. On tracts of land for which LAMPS permits have been issued, no LAMPS permit is required for the harvest of antlerless deer during the archery-only or muzzleloader-only open season.

(7) In Andrews, Bailey, Castro, Cochran, Collin, Dallas, Dawson, Deaf Smith, El Paso, Gaines, Galveston, Hale, Hockley, Hudspeth, Lamb, Lubbock, Lynn, Martin, Parmer, Rockwall, Terry, Winkler, and Yoakum counties, there is no general open season.

(8) Archery-only open seasons. In all counties where there is a general open season for white-tailed deer, there is an archery-only open season during which either sex of white-tailed deer may be taken as provided for in §65.11(2) and (3) of this title (relating to Means and Methods).

(A) Open season: the Saturday closest to September 30 for 30 consecutive days.

(B) Bag limit: the bag limit in any given county is as provided for that county during the general open season.

(9) Muzzleloader-only open seasons, and bag and possession limits shall be as follows.

(A) In Brewster, Culberson, Jeff Davis, Pecos, Presidio, Reeves, Terrell, and Upton (that portion located both south of U.S. Highway 67 and east of state highway 349) counties, there is an open season during which only antlerless and spike-buck deer may be taken only with a muzzleloader.

(i) Open Season: from the first Saturday following the closing of the general open season for nine consecutive days.

(ii) Bag limit: four antlerless or spike-buck deer in the aggregate, no more than two spike bucks.

(B) In Angelina, Chambers, Hardin, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, and Tyler counties, there is an open season during which only antlerless and spike-buck deer may be taken only with a muzzleloader.

(i) Open Season: from the first Saturday following the closing of the general open season for nine consecutive days.

(ii) Bag limit: four antlerless or spike-buck deer in the aggregate, no more than two spike bucks and no more than two antlerless.

(10) Special Youth-Only Seasons. Except on properties for which Level III MLD permits have been issued, there shall be special youth-only general hunting seasons in all counties where there is a general open season for white-tailed deer.

(A) early open season: the Saturday and Sunday immediately before the first Saturday in November.

(i) Bag limits, provisions for the take of antlerless deer, and special requirements in the individual counties listed in paragraphs (1)-(6) of this subsection shall be as specified for the first two days of the general open season in those counties, except as provided in clause (ii) of this subparagraph.

(ii) Provisions for the take of antlerless deer in the individual counties listed in paragraph (5)(E) of this subsection shall be as specified in those counties for the period of time from Thanksgiving Day through the Sunday immediately following Thanksgiving Day.

(B) late antlerless-only open season: the third weekend (Saturday and Sunday) in January, during which only antlerless deer may be taken. The bag limit shall be as specified for antlerless deer in the county by paragraphs (1)-(6) of this subsection and no TPW-issued permit is required. This subparagraph does not apply:

(i) in counties where the general season, special late season, or muzzleloader-only season is open; or

(ii) on properties for which Level II or III MLD permits have been issued.

(C) Only licensed hunters 16 years of age or younger may hunt deer by means of firearms during the season established by subparagraph (A) of this paragraph; all other deer hunting shall be by means of lawful archery equipment and crossbows only.

(D) Only licensed hunters 16 years of age or younger may hunt deer during the season established by subparagraph (B) of this paragraph.

(E) The stamp requirements of Parks and Wildlife Code, Chapter 43, Subchapters I and Q, do not apply during the seasons established by this paragraph.

(c) Mule deer. The open seasons and annual bag limits for mule deer shall be as follows.

(1) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hartley, Hemphill, Hutchinson, Kent, King, Lipscomb, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Roberts, Scurry, Stonewall, and Swisher counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for 16 consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(2) In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Hudspeth, Jeff Davis, Loving, Midland, Pecos, Presidio, Reagan, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties, there is a general open season.

(A) Open season: last Saturday in November for 16 consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(3) In Andrews (west of U.S. Highway 385), Bailey, Cochran, Hockley, Lamb, Terry, and Yoakum counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for nine consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(4) In all other counties, there is no general open season for mule deer.

(5) Archery-only open seasons and bag and possession limits shall be as follows. During an archery-only open season, deer may be taken only as provided for in §65.11(2) and (3) of this title (relating to Means and Methods).

(A) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Deaf Smith, Dickens, Donley, Ector, El Paso, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hartley, Hemphill, Hudspeth, Hutchinson, Jeff Davis, Kent, King, Lipscomb, Loving, Midland, Moore, Motley, Ochiltree, Oldham, Potter, Presidio, Randall, Reagan, Reeves, Roberts, Scurry, Stonewall, Swisher, Upton, Val Verde, Ward, and Winkler counties, there is an open season.

(i) Open season: from the Saturday closest to September 30 for 30 consecutive days.

(ii) Bag limit: one buck deer.

(B) In Brewster, Pecos, and Terrell counties, there is an open season.

(i) Open season: from the Saturday closest to September 30 for 30 consecutive days.

(ii) Bag limit: two deer, no more than one buck.

(C) In all other counties, there is no archery-only open season for mule deer.

§65.62. Quail: Open Seasons, Bag, and Possession Limits.

(a) In all counties there is an open season for quail beginning the Saturday closest to October 28 through the last Sunday in February.

(b) Daily bag limit: 15 quail.

(c) Possession limit: 45 quail.

(d) There is no open season on Mearns' quail (commonly called fool's quail).

§65.64. Turkey.

(a) The annual bag limit for Rio Grande and Eastern turkey, in the aggregate, is four.

(b) Rio Grande Turkey. The open seasons and bag limits for Rio Grande turkey shall be as follows.

(1) Fall seasons and bag limits:

(A) In Archer, Bandera, Bell, Bexar, Blanco, Bosque, Burnet, Clay, Comal, Comanche, Cooke, Coryell, Erath, Gillespie, Goliad, Gonzales, Hamilton, Hays, Hood, Jack, Karnes, Kendall, Kerr, Lampasas, Llano, McLennan, Medina (only north of U.S. Highway 90), Montague, Palo Pinto, Parker, Real, Somervell, Stephens, Travis, Wichita, Williamson, Wilson, Wise, and Young counties, there is a fall general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: four turkeys, gobblers or bearded hens.

(B) In Aransas, Atascosa, Bee, Calhoun, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, LaSalle, Live Oak, Maverick, McMullen, Medina (south of U.S. Highway 90), Nueces, Refugio, San Patricio, Starr, Webb, and Zavala counties, there is a fall general open season.

(i) Open season: first Saturday in November through the third Sunday in January.

(ii) Bag limit: four turkeys, gobblers or bearded hens.

(C) In Kinney (south of U.S. Highway 90) and Uvalde (south of U.S. Highway 90), and Val Verde (in that southeastern portion located both south of U.S. Highway 90 and east of Spur 239) counties, there is a fall general open season.

(i) Open season: first Saturday in November through the third Sunday in January.

(ii) Bag limit: four turkeys, either sex.

(D) In Brooks, Kenedy, Kleberg, and Willacy counties, there is a fall general open season.

(i) Open season: first Saturday in November through the last Sunday in February.

(ii) Bag limit: four turkeys, either sex.

(E) In Armstrong, Baylor, Borden, Briscoe, Brown, Callahan, Carson, Childress, Coke, Coleman, Collingsworth, Concho, Cottle, Crane, Crockett, Crosby, Dawson, Dickens, Donley, Eastland, Ector, Edwards, Fisher, Floyd, Foard, Garza, Glasscock, Gray, Hall, Hardeman, Hartley, Haskell, Hemphill, Howard, Hutchinson, Irion, Jones, Kent, Kimble, King, Kinney (north of U.S. Highway 90), Knox, Lipscomb, Lynn, Martin, Mason, McCulloch, Menard, Midland, Mills, Mitchell, Moore, Motley, Nolan, Ochiltree, Oldham, Pecos, Potter, Randall, Reagan, Roberts, Runnels, Sutton, San Saba, Schleicher, Scurry, Shackelford, Sterling, Stonewall, Swisher, Taylor, Terrell, Throckmorton, Tom Green, Upton, Uvalde (north of U.S. Highway 90), Ward, Wheeler, Wilbarger, and Val Verde (that portion located north of U.S. Highway 90; and that portion located both south of U.S. 90 and west of Spur 239) counties, there is a fall general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: four turkeys, either sex.

(2) Archery-only season and bag limits. In all counties where there is a general fall season for turkey there is an open season during which turkey may be taken only as provided for in §65.11(2) and (3) of this title (relating to Means and Methods).

(A) Open season: from the Saturday closest to September 30 for 30 consecutive days.

(B) Bag limit: in any given county, the annual bag limit is as provided by this section for the fall general season in that county.

(3) Spring season and bag limits.

(A) In Archer, Armstrong, Bandera, Baylor, Bell, Blanco, Borden, Bosque, Brewster, Briscoe, Brown, Burnet, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Donley, Eastland, Ector, Edwards, Ellis, Erath, Fisher, Floyd, Foard, Garza, Gillespie, Glasscock, Gray, Hall, Hamilton, Hardeman, Hartley, Haskell, Hays, Hemphill, Hill, Hood, Howard, Hutchinson, Irion, Jack, Jeff Davis, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Knox, Lampasas, Lipscomb, Llano, Lynn, Martin, Mason, McCulloch, McLennan, Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Pecos, Potter, Randall, Reagan, Real, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Throckmorton, Tom Green, Travis, Upton, Val Verde, Ward, Wheeler, Wichita, Wilbarger, Williamson, Wise, and Young counties, there is a spring general open season.

(i) Open season: first Saturday in April for 37 consecutive days.

(ii) Bag limit: four turkeys, gobblers only.

(B) In Bastrop, Caldwell, Colorado, De Witt, Fayette, Guadalupe, Jackson, Lavaca, Lee, Milam, and Victoria counties, there is a spring general open season.

(i) Open season: first Saturday in April for 37 consecutive days.

(ii) Bag limit: one turkey, gobblers only.

(C) In Aransas, Atascosa, Bee, Bexar, Brooks, Calhoun, Dimmit, Duval, Frio, Goliad, Gonzales, Hidalgo, Jim Hogg, Jim Wells, Karnes, Kenedy, Kinney, Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina, Nueces, Refugio, San Patricio, Starr, Uvalde, Webb, Willacy, Wilson, and Zavala counties, there is a spring general open season.

(i) Open season: last Saturday in March for 37 consecutive days.

(ii) Bag limit: four turkeys, gobblers only.

(4) Special Youth-Only Season.

(A) There shall be a special youth-only general hunting season in all counties where there is a general open season.

(i) open season : the weekend (Saturday and Sunday) immediately preceding the first Saturday in November, and the third weekend (Saturday and Sunday) in January.

(ii) bag limit: as specified for individual counties in paragraph (1) of this subsection.

(B) Only licensed hunters 16 years of age or younger may hunt during the season established by this subsection.

(c) Eastern turkey. The open seasons and bag limits for Eastern turkey shall be as follows. In Angelina, Bowie, Camp, Cass, Cherokee, Delta, Fannin, Franklin, Grayson, Gregg, Harrison, Hopkins, Houston, Hunt, Jasper, Lamar, Marion, Montgomery (north of State Hwy. 105), Morris, Nacogdoches, Newton, Panola, Polk, Rains, Red River, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Trinity, Tyler (north of U.S. Hwy. 190), Upshur, Walker, and Wood counties, there is a spring season during which both Rio Grande and Eastern turkey may be lawfully hunted.

(1) Open season: the Monday nearest April 14 for 14 consecutive days.

(2) Bag limit (both species combined): one turkey, gobbler only.

(3) In the counties listed in this subsection:

(A) it is unlawful to hunt turkey by any means other than a shotgun, lawful archery equipment, or crossbows;

(B) it is unlawful for any person to take or attempt to take turkeys by the aid of baiting, or on or over a baited area; and

(C) all turkeys harvested during the open season must be registered at designated check stations within 24 hours of the time of kill. Harvested turkeys may be field dressed but must otherwise remain intact.

(d) In all counties not listed in subsection (b) or (c) of this section, the season is closed for hunting turkey.

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 6, 2001.

TRD-200103873

Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: July 26, 2001
Proposal publication date: February 23, 2001
For further information, please call: (512) 389-4775

♦ ♦ ♦

DIVISION 3. SEASONS AND BAG LIMITS--FISHING PROVISIONS

31 TAC §65.72, §65.78

The amendments are adopted under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.

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 6, 2001.

TRD-200103874
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: July 26, 2001
Proposal publication date: February 23, 2001
For further information, please call: (512) 389-4775

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.291

The Comptroller of Public Accounts adopts the repeal of §3.291, concerning contractors, without changes to the proposed text as published in the April 27, 2001, issue of the *Texas Register* (26 TexReg 3150).

The content of the existing §3.291 has been restructured and updated as a new §3.291.

No comments were received regarding adoption of the repeal.

This repeal is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The repeal implements Tax Code, §111.002.

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

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

TRD-200103809
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: July 22, 2001
Proposal publication date: April 27, 2001
For further information, please call: (512) 463-3699

♦ ♦ ♦

34 TAC §3.291

The Comptroller of Public Accounts adopts a new §3.291, concerning contractors, without changes to the proposed text as published in the April 27, 2001, issue of the *Texas Register* (26 TexReg 3150).

The new section replaces the existing §3.291, which is being repealed so that the content may be restructured and updated. The new section incorporates legislative changes made to Tax Code, §151.0048 and §151.311, and includes definitions of equipment, exempt contract, incorporated materials, new construction, and residence or residential property. The change to Tax Code, §151.0048, excludes real property services purchased by a contractor as part of the construction of new residential structures from the definition of real property services. The change to Tax Code, §151.311, exempts incorporated materials, certain consumable items, and certain taxable services purchased by a contractor who improves real property for an exempt organization exempted under Tax Code, §151.309 or §151.310. Other changes provide specific examples to clarify the tax responsibilities of contractors. The definition of new construction in subsection (a)(9) reflects the decision in Administrative Hearing No. 36,375, which holds that raising the roof of a building is not new construction if new usable square footage is not created.

Comments on the proposed new rule were received from the Texas Association of Builders. The association appreciated the additional definitions and examples found in the proposed rule, and that the rule covers the legislative change to Tax Code, §151.0048. The labor for a real property service purchased by a homebuilder, developer, or contractor, as part of the construction of a new residential structure, is not taxable under §151.0048.

The Texas Association of Builders commented that the comptroller should change rules so that builders may use cost-plus contracts without having to hold sales tax permits or be burdened with the collection and remittance of sales tax. Instead, builders would pay the sales tax up front to suppliers. The comptroller responded that the tax responsibility of a contractor under a lump sum or separated contract is determined by Tax Code, §151.056. For this reason, the proposed rule was not changed.

This new section is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The new rule implements Tax Code, §§151.0048, 151.056, 151.311, and 151.707.

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-200103810
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: July 22, 2001
Proposal publication date: April 27, 2001
For further information, please call: (512) 463-3699

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE PROBATION COMMISSION

CHAPTER 341. TEXAS JUVENILE PROBATION STANDARDS

37 TAC §§341.1 - 341.12, 341.21 - 341.23

The Texas Juvenile Probation Commission adopts the repeal of Chapter 341, §§341.1-341.12 and §§341.21-341.23, relating to Texas Juvenile Probation Commission standards without changes as published in the March 16, 2001, issue of the *Texas Register* (26 TexReg 2130) and will not be republished.

TJPC repeals this chapter in an effort not to overlap with adopted new standards which provide structural and substantive changes from the current standards.

No comments were received regarding adoption of the repeals.

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to modify or delete obsolete rules which provide minimum standards for the juvenile probation commission.

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 3, 2001.

TRD-200103819
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2001
Proposal publication date: March 16, 2001
For further information, please call: (512) 424-6710

♦ ♦ ♦

CHAPTER 341. TEXAS JUVENILE PROBATION COMMISSION STANDARDS

The Texas Juvenile Probation Commission adopts new Chapter 341, §§341.1-341.6, 341.13-341.17, 341.24-341.31, 341.38-341.42, 341.48-341.53, 341.58-341.62, 341.68, 341.75, 341.82-341.92, 341.98-341.109, 341.113, 341.114, 341.121-341.125, 341.132-341.137, 341.138-341.143, 341.150, 341.157, and 341.158, relating to Texas Juvenile Probation Commission standards. Sections 341.40, 341.84 and 341.88(c)(3) are adopted with non-substantive changes as published in the May 11, 2001, issue of the *Texas Register* (26 TexReg 3458). The remaining sections are adopted without changes and will not be republished.

TJPC adopts this rule in an effort to provide structural and substantive changes from the current standards.

Public Comment. Public comment was received from the Dallas County Juvenile Probation Department recommending that the NCIC check be run without the applicant's fingerprints. Other identifying information such as the applicant's date of birth, social security number, and Texas Driver's license number are sufficient to identify the correct individual without adding the additional cost of fingerprinting.

Agency Response. TJPC does not recommend making this change. TJPC included the fingerprint requirement to capture federal convictions and out-of-state convictions. While other identifying information such as the date of birth and Texas Driver's License number may be sufficient to access federal convictions in Texas, a fingerprint based search is the only way to find any convictions made under an alias.

Public Comment. Public comment was received from the Tarrant County Juvenile Probation Department. As written, the standard would prohibit part-time detention/corrections officers, uncertified personnel, probation aids, security control personnel, transportation personnel, volunteers and interns from applying mechanical restraints. Each of these persons could be in situations where the use of mechanical restraints may be required. It's possible to provide training regarding the proper application and removal of these devices to these categories of individuals.

Agency Response. TJPC does not recommend adopting this change. As written, the standard applies to situations where the use of mechanical restraint devices will prevent juveniles from harming either themselves or third persons. The use of mechanical restraint devices during transportation is addressed by a separate standard, 341.4(b)(3). Under 341.4(b)(3), the juvenile board must set a policy that addresses the use of mechanical restraints during transportation. The transportation standard does not place any restrictions on whom the juvenile board may designate as appropriate persons for applying and removing mechanical restraints during transport. Apart from uses for transportation, the Commission believes only certified officers should use mechanical restraint devices because of the volatile nature and potential for injury inherent during other types of restraints.

Public Comment. Public comment was received from the Tarrant County Juvenile Probation Department. As written the standard would prohibit new hires (probation officers who have yet to be certified), volunteers and interns from performing duties that assist departments in meeting their day-to-day work requirements.

Agency Response. TJPC does not recommend adopting this change. As with the licensures and certifications of other professions, only those individuals who are actively licensed or certified in a profession should be able to perform the duties of the profession.

SUBCHAPTER A. DEFINITIONS

37 TAC §341.1

This standard is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

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

Filed with the Office of the Secretary of State on July 3, 2001.

TRD-200103820
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2001
Proposal publication date: May 11, 2001
For further information, please call: (512) 424-6710

♦ ♦ ♦

SUBCHAPTER B. JUVENILE BOARD RESPONSIBILITIES

37 TAC §§341.2 - 341.6

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

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

Filed with the Office of the Secretary of State on July 3, 2001.

TRD-200103821
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2001
Proposal publication date: May 11, 2001
For further information, please call: (512) 424-6710

♦ ♦ ♦

SUBCHAPTER C. CHIEF ADMINISTRATIVE OFFICER RESPONSIBILITIES

37 TAC §§341.13 - 341.17

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

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

Filed with the Office of the Secretary of State on July 3, 2001.

TRD-200103822
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2001
Proposal publication date: May 11, 2001
For further information, please call: (512) 424-6710

♦ ♦ ♦

SUBCHAPTER D. FISCAL OFFICER RESPONSIBILITIES

37 TAC §§341.24 - 341.31

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

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

Filed with the Office of the Secretary of State on July 3, 2001.

TRD-200103823
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2001
Proposal publication date: May 11, 2001
For further information, please call: (512) 424-6710

♦ ♦ ♦

SUBCHAPTER E. EMPLOYMENT OF JUVENILE PROBATION OFFICERS

37 TAC §§341.38 - 341.42

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

§341.40. Criminal Records Check.

Prior to employing a person as a certified juvenile probation officer, supervisor of juvenile probation officers, or chief administrative officer, the chief administrative officer or juvenile board shall conduct and have returned a criminal history check in accordance with the following guidelines:

(1) The following criminal history checks shall be conducted:

(A) a Texas criminal history background search (TCIC);

(B) a local law enforcement sex offender registration records check in the city or county where the application was made; and

(C) a Federal Bureau of Investigation fingerprint based criminal history background search (NCIC).

(2) In addition to the requirements of paragraph (1) of this section, if the applicant currently resides in one of the following states, or resided in one of the following states within the 10 years prior to the date the employment application was made, a state criminal history background search and state sex offender registration check shall also be conducted where available:

(A) Hawaii

(B) Kansas;

(C) Kentucky;

(D) Louisiana;

(E) Maine;

(F) Massachusetts;

(G) New Hampshire;

(H) Rhode Island;

(I) Tennessee;

(J) Vermont; and

(K) the District of Columbia;

(3) An Internet based criminal background search shall not be used to conduct the background searches required under paragraph (1) or (2) of this section.

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

Filed with the Office of the Secretary of State on July 3, 2001.

TRD-200103824
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2001
Proposal publication date: May 11, 2001
For further information, please call: (512) 424-6710

♦ ♦ ♦

SUBCHAPTER F. CERTIFICATION OF JUVENILE PROBATION OFFICERS

37 TAC §§341.48 - 341.53

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

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

Filed with the Office of the Secretary of State on July 3, 2001.

TRD-200103825
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2001
Proposal publication date: May 11, 2001
For further information, please call: (512) 424-6710

♦ ♦ ♦

SUBCHAPTER G. TRAINING OF JUVENILE PROBATION OFFICERS

37 TAC §§341.58 - 341.62

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

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

Filed with the Office of the Secretary of State on July 3, 2001.

TRD-200103826
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2001
Proposal publication date: May 11, 2001
For further information, please call: (512) 424-6710

♦ ♦ ♦

SUBCHAPTER H. DUTIES OF CERTIFIED JUVENILE PROBATION OFFICERS

37 TAC §341.68

This standard is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

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

Filed with the Office of the Secretary of State on July 3, 2001.

TRD-200103827
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2001
Proposal publication date: May 11, 2001
For further information, please call: (512) 424-6710

♦ ♦ ♦

SUBCHAPTER I. JUVENILE PROBATION OFFICER CODE OF ETHICS

37 TAC §341.75

This standard is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

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

Filed with the Office of the Secretary of State on July 3, 2001.

TRD-200103828
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2001
Proposal publication date: May 11, 2001
For further information, please call: (512) 424-6710

♦ ♦ ♦

SUBCHAPTER J. ENFORCEMENT PROCEDURES--CODE OF ETHICS

37 TAC §§341.82 - 341.92

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

§341.84. Effect of Request for Disciplinary Hearing.

When the Commission receives a request for disciplinary hearing under §341.82 of this title, the Commission shall give the officer alleged to have committed an ethics violation written notice and an opportunity for a hearing conducted by the Commission in accordance with sections 341.85 through 341.92 of this subchapter.

§341.88. Disciplinary Hearing.

(a) The juvenile probation officer, chief administrative officer or his/her representative, shall be given the opportunity to show compliance with the code of ethics and all requirements of the law, including Commission standards.

(b) The hearing shall be conducted in executive session with only the members of the Commission, Commission staff, the officer, the chief administrative officer, their representatives and such witnesses as may be called in attendance, unless the officer requests that it be open. Witnesses may be excluded from the hearing until is it their turn to present evidence.

(c) The conduct of the hearing shall be under the Commission chairman's control, and in general, shall be conducted in accordance with the following steps:

(1) The hearing shall begin with the presentation of investigatory findings by the designated Commission staff, supported by such proof as is deemed necessary.

(2) The officer may cross-examine any witnesses for the Commission;

(3) The officer may then present such testimonial or documentary proof as desired in rebuttal or in support of the contention that the code of ethics has not been violated;

(4) The designated Commission staff may cross-examine any witnesses for the officer and offer rebuttal testimony of the officer's witnesses;

(5) Each party may make closing arguments;

(6) The hearing shall be recorded and transcribed by means including but not limited to a stenographic record of the proceedings.

(d) Ruling by the Commission. The Commission may consider only such evidence as is presented at the hearing, if the Commission determines that the evidence presented is insufficient, the Commission may ask for additional information from the officer or chief administrative officer, or Commission staff and may ask questions on their own motion. After all the evidence has been presented, the Commission must determine whether the allegation against the officer is supported by substantial evidence. Based on the Commission's ruling the Commission may assign one of the following dispositions:

(1) Reprimand. The Commission may issue a written reprimand of the juvenile probation officer, supervisor of juvenile probation officers, or chief administrative officer.

(2) Suspension. The Commission may suspend the certification of a juvenile probation officer, supervisor of juvenile probation officers, or chief administrative officer for a specified period not to exceed 24 months.

(3) Revocation. The Commission may permanently revoke the certification of the juvenile probation officer, supervisor of juvenile probation officers, or chief administrative officer.

(e) Notice of Disposition. The Commission shall notify an individual whose conduct was the subject of a disciplinary hearing. The Commission may notify the individual either in person or in by certified mail return receipt requested. The notice of disposition shall include:

(1) which acts or omissions by the officer, if any violated the code of ethics;

(2) a statement of the evidence relied upon;

(3) a statement of which section or sections of the code of ethics, if any, were violated by the acts or omissions of the officer;

(4) the commission's dispositional ruling concerning the officer's certification; and

(5) the officer's right to rehearing and appeal.

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 3, 2001.

TRD-200103829
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2001
Proposal publication date: May 11, 2001
For further information, please call: (512) 424-6710

♦ ♦ ♦

SUBCHAPTER K. MANDATORY CERTIFICATION REVOCATION AND MANDATORY CERTIFICATION SUSPENSION

37 TAC §§341.98 - 341.109

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

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

Filed with the Office of the Secretary of State on July 3, 2001.

TRD-200103830
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2001
Proposal publication date: May 11, 2001
For further information, please call: (512) 424-6710

♦ ♦ ♦

SUBCHAPTER L. COMPLAINTS AGAINST JUVENILE BOARDS

37 TAC §341.113, §341.114

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

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

Filed with the Office of the Secretary of State on July 3, 2001.

TRD-200103831
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2001
Proposal publication date: May 11, 2001
For further information, please call: (512) 424-6710

♦ ♦ ♦

SUBCHAPTER M. CASE MANAGEMENT STANDARDS

37 TAC §§341.121 - 341.125

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

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

Filed with the Office of the Secretary of State on July 3, 2001.

TRD-200103832
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2001
Proposal publication date: May 11, 2001
For further information, please call: (512) 424-6710

♦ ♦ ♦

SUBCHAPTER N. DATA COLLECTION STANDARDS

DIVISION 1. CASEWORKER SYSTEMS

37 TAC §§341.132 - 341.137

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards. Division I. CASEWORKER Systems

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 3, 2001.

TRD-200103833
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2001
Proposal publication date: May 11, 2001
For further information, please call: (512) 424-6710

♦ ♦ ♦

DIVISION 2. NON-CASEWORKER SYSTEMS

37 TAC §§341.138 - 341.143

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

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

Filed with the Office of the Secretary of State on July 3, 2001.

TRD-200103834
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2001
Proposal publication date: May 11, 2001
For further information, please call: (512) 424-6710

♦ ♦ ♦

SUBCHAPTER O. ELECTRONIC DATA INTERCHANGE SPECIFICATIONS

37 TAC §341.150

This standard is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

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

Filed with the Office of the Secretary of State on July 3, 2001.

TRD-200103835
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2001
Proposal publication date: May 11, 2001
For further information, please call: (512) 424-6710

♦ ♦ ♦

SUBCHAPTER P. TEXAS JUVENILE PROBATION COMMISSION

37 TAC §341.157, §341.158

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

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

Filed with the Office of the Secretary of State on July 3, 2001.

TRD-200103836
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2001
Proposal publication date: May 11, 2001
For further information, please call: (512) 424-6710

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 18. NURSING FACILITY ADMINISTRATORS

40 TAC §§18.1, 18.8, 18.9

The Texas Department of Human Services (DHS) adopts amendments to §18.1, concerning introduction, §18.8, concerning provisional licensure, and §18.9, concerning licensure renewal and inactive status, in its Nursing Facility Administrators chapter. The amendments are adopted without changes to the proposed text in the May 25, 2001, issue of the *Texas Register* (26 TexReg 3697) and will not be republished.

Justification for the amendments is to ensure that nursing facility administrators licensed in the State of Texas have the necessary licensure qualifications to provide greater protection of the health and safety of residents and consumers of nursing facilities DHS regulates.

The department received no comments regarding adoption of the amendments.

The amendments are adopted under the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities.

The amendment implements the Health and Safety Code, §§242.001-242.268.

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 9, 2001.

TRD-200103885
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: August 1, 2001
Proposal publication date: May 25, 2001
For further information, please call: (512) 438-3108

♦ ♦ ♦

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 362. DEFINITIONS

40 TAC §362.1

The Texas Board of Occupational Therapy Examiners adopts amendments to §362.1 concerning Definitions, without change to the proposed text as published in the May 25, 2001 issue of *Texas Register* (26 TexReg 3717) and will not be republished.

The section was amended to remove supervision definitions which have been added to the Supervision Chapter, and to add definitions for non-licensed personnel, and Occupational Therapy Practitioners. It also deletes a definition for Temporary License which was not in agreement with the Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this amended section.

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

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

TRD-200103801
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: July 22, 2001
Proposal publication date: May 25, 2001
For further information, please call: (512) 305-6900

♦ ♦ ♦

CHAPTER 364. REQUIREMENT FOR LICENSURE

40 TAC §§364.1 - 364.4

The Texas Board of Occupational Therapy Examiners adopts amendments to §§364.1 - 364.4 concerning Requirements for Licensure. Section 364.1 is being adopted with changes to the proposed text as published in the May 25, 2001 issue of *Texas Register*(26 TexReg 3720). Sections 364.2 - 364.4 are being adopted without change and will not be republished.

The sections are amended to add the re-exam form and procedure. It also adds a time frame for license application after passing the certification exam.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by these sections.

§364.1. Requirements for Licensure.

(a) All applicants shall:

(1) submit a complete, notarized application form with a recent passport-type color photograph of the applicant;

(2) submit a non-refundable application fee as set by the Executive Council;

(3) submit a successfully completed board jurisprudence examination on the Texas Occupational Therapy Practice Act and board rules;

(4) Have completed an accredited OT/OTA program;

(5) Have completed supervised fieldwork experience, a minimum of 6 months for OT and 2 months for OTA.

(b) If the applicant has not passed the national licensure examination, the applicant must also meet the requirement in §364..2 of this title (relating to License by Examination).

(c) If the applicant is licensed as an OTR or COTA in another state or jurisdiction of the U.S., the applicant must also meet the requirements as stated in §364.4 of this title (relating to Licensure by Endorsement).

(d) An application for license is valid for one year after the date it is received by the board.

(e) An applicant who submits an application containing false information may be denied a license by the board.

(f) Should the board reject an application for license, the reasons for the rejection will be communicated in writing to the applicant. The applicant may submit additional information and request reconsideration by the Board. If the applicant remains dissatisfied, a hearing may be requested as specified in the Act.

(g) Applicants and licensees must notify the board in writing of changes in name, residential address, and work address within 30 days of the change.

(h) The Board will issue a replacement copy of a license to replace one lost or destroyed upon receipt of a written request and the appropriate fee from the licensee. For a name change, the appropriate fee and a copy of the legal document (marriage certificate, divorce decree) enacting the name change must accompany the request.

(i) The first regular license is valid from the date of issuance until the last day of the applicant's next birth month. If the applicant's birth month is within 90 days after the license is issued, the license will be valid until the last day of the birth month in the following year. An initial regular license will be valid no less than 3 months, no longer than 15 months.

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-200103802
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: July 22, 2001
Proposal publication date: May 25, 2001
For further information, please call: (512) 305-6900

♦ ♦ ♦

CHAPTER 367. CONTINUING EDUCATION

40 TAC §§367.1 - 367.3

The Texas Board of Occupational Therapy Examiners adopts amendments to §367.1 and new §367.2, §367.3 concerning Continuing Education. Section 367.1 is be adopted with changes to the proposed text as published in the May 25, 2001 issue of *Texas Register*(26 TexReg 3721). Section 367.2 and §367.3 are being adopted without change and will not be republished.

Section 367.1 was amended to reorganize the chapter and clarify its intent.

Comments were received regarding these sections from AOTA and Tana Hadlock, licensee.

The amendment and new sections are being adopted under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by these sections.

§367.1. Continuing Education.

(a) The Act mandates licensee participation in a continuing education program for license renewal. All continuing education must be directly relevant to the profession of occupational therapy. The licensee is solely responsible for keeping accurate documentation of all continuing education requirements.

(b) Continuing education documentation includes, but is not limited to, a final official transcript, AOTA self-study completion certificates, copies of official sign-in or attendance sheets, course certificates of attendance, certificates of completion, and official correspondence from the board approving requesting credits.

(c) The first regular license, which has a duration of less than 2 years, does not have a continuing education requirement.

(d) All licensees, except those addressed in (subsection c of this section must complete 30 hours of continuing education every two years during the period of time the license is current in order to renew the license. Those renewing a license more than 90 days late must submit proof of continuing education for the renewal.

(1) General information hereafter referred to as Type 1 continuing education is relevant to the profession of occupational therapy.

Examples include by are not limited to: supervision, education, documentation, quality improvement, administration, reimbursement and other occupational therapy related subjects.

(2) A minimum of 15 hours of continuing education must be in skills relevant to occupational therapy practice with patients or clients hereafter referred to as Type 2.

(A) Type 2 courses teach occupational therapy treatment and intervention with patients or clients.

(B) All continuing education hours may be in Type 2.

(e) Any continuing education submissions may be counted only one time.

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-200103803
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: July 22, 2001
Proposal publication date: May 25, 2001
For further information, please call: (512) 305-6900

♦ ♦ ♦

CHAPTER 370. LICENSE RENEWAL

40 TAC §370.1

The Texas Board of Occupational Therapy Examiners adopts amendments to §370.1 concerning License Renewal, without change to the proposed text as published in the May 25, 2001 issue of *Texas Register* (26 TexReg 3723) and will not be republished.

The section was amended to added the a requirement to submit continuing education material if submitting for renewal more than 90 days late.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this amended section.

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

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

TRD-200103804
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: July 22, 2001
Proposal publication date: May 25, 2001
For further information, please call: (512) 305-6900

♦ ♦ ♦

CHAPTER 372. PROVISION OF SERVICES

40 TAC §372.1

The Texas Board of Occupational Therapy Examiners adopts amendments to §372.1 concerning Provision of Services, with changes to the proposed text as published in the May 25, 2001 issue of *Texas Register* (26 TexReg 3723). No language was changed, but an item was moved from (e)(6) to (d)(4).

The section was amended to clarify the chapter. The reorganization separates medical and non-medical care, differentiates between screening, evaluation and plan of care, and more clearly defines the responsibilities of the licensees.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this amended section.

§372.1. Provision of Services.

(a) Medical Conditions

(1) Treatment for a medical condition by an occupational therapy practitioner requires a referral from a licensed referral source.

(2) The referral may be an oral or singed written order. If oral, it must be followed by a signed written order.

(3) If a written referral signed by the referral source is not received by the third treatment or within two weeks from the receipt of the oral referral, whichever is later, the therapist must have documented evidence of attempt(s) to contact the referral source for the written referral (e.g., registered letter, fax, certified letter, email, return receipt, etc.). The therapist must exercise professional judgement to determine cessation or continuation of treatment with a receipt of the written referral.

(b) Non-Medical Conditions

(1) Consultation, monitored services, and evaluation for need of services may be provided without a referral.

(2) Non-medical conditions do not require a referral. However, a referral must be requested at any time during the evaluation or treatment process when necessary to insure the safety and welfare of the consumer.

(c) Screening. A screening may be performed by an occupational therapist or an occupational therapy assistant.

(d) Evaluation.

(1) Only an occupational therapist may perform the evaluation.

(2) An occupational therapy plan of care must be based on an occupational therapy evaluation.

(3) The occupational therapist must have face-to-face, real time interaction with the patient or client during the evaluation process.

(4) The occupational therapist may delegate to an occupational therapy assistant the collection of data for the assessment. The

occupational therapist is responsible for the accuracy of the data collected by the assistant.

(e) Plan of Care

(1) Only an occupational therapist may initiate, develop, modify or complete an occupational therapy plan of care.

(2) The occupational therapist and occupational therapy assistant may work jointly to revise the short-term goals, but the final determination resides with the occupational therapist.

(3) An occupational therapy plan of care may be integrated into an interdisciplinary plan of care, but the occupational therapy goals or objectives must be easily identifiable in the plan of care.

(4) Only occupational therapy practitioners licensed by the Texas Board of Occupational Therapy Examiners (TBOTE) may implement the plan of care.

(5) Only the occupational therapist or occupational therapist assistant may train non-licensed personnel or family members to carry out specific tasks that support the occupational therapy plan of care.

(6) The occupational therapist is responsible for determining whether intervention is needed and if a referral is required for occupational therapy intervention.

(7) The occupational therapist or the occupational therapy assistant must have face-to-face, real time interaction with the patient or client during the intervention process.

(8) It is the occupational therapist's responsibility to ensure that all documentation which becomes part of the patient's/client's permanent record is approved and co-signed by the occupational therapist and signed on the bottom of each page.

(f) Discharge.

(1) Only an occupational therapist has the authority to discharge patients from occupational therapy services. The discharge is based on whether the patient or client has achieved predetermined goals, has achieved maximum benefit from occupational therapy services; or when other circumstances warrant discontinuation of occupational therapy services.

(2) The occupational therapist is responsible for the content and validity of the discharge summary and must sign the discharge summary.

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-200103806
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: July 22, 2001
Proposal publication date: May 25, 2001
For further information, please call: (512) 305-6900

♦ ♦ ♦

CHAPTER 373. SUPERVISION

40 TAC §§373.1 - 373.3

The Texas Board of Occupational Therapy Examiners adopts an amendment to §373.1 and new §373.2 and §373.3 concerning Supervision, with changes to the proposed text as published in the May 25, 2001, issue of *Texas Register* (26 TexReg 3725)

The amendment and new sections will differentiate the supervision of non-licensed personnel, temporary licensees and occupational therapy assistants.

No comments were received regarding adoption of the amendment and new sections.

The amendment and new sections are adopted under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by these sections.

§373.1. Supervision of Non-Licensed Personnel.

(a) Licensed occupational therapists are fully responsible for the planning and delivery of occupational therapy services. They may use non-licensed personnel to extend their services; however, the non-licensed personnel must be under the supervision of the licensed occupational therapist or licensed occupational therapy assistant.

(b) Close Personnel Supervision implies direct, on-site contact whereby the supervising occupational therapy licensee is able to respond immediately to the needs of the patient. This type of supervision is required for non-licensed personnel providing support services to the occupational therapist and occupational therapy assistant.

(c) When occupational therapy licensees delegate occupational therapy tasks to non-licensed personnel, the licensee is responsible for ensuring that this person is adequately trained in the tasks delegated.

(d) The licensee providing the treatment must interact with the patient regarding the patient's condition, progress, and/or achievement of goals during each treatment session.

(e) Delegation of tasks to non-licensed personnel includes but is not limited to:

(1) routine department maintenance;

(2) transportation of patients/clients;

(3) preparation or set up of treatment equipment and work area;

(4) assisting patients/clients with their personal needs during treatment;

(5) assisting in the construction of adaptive/assistive equipment and splints. The licensee must be on-site and attending for any initial applications to the patient;

(6) carrying out a predetermined segment or task in the patient's care for which the patient has demonstrated some previous performance ability in executing the task;

(f) The non-licensed personnel may not:

(1) perform occupational therapy evaluative procedures

(2) initiate, plan, adjust, or modify occupational therapy procedures.

(3) act on behalf of the occupational therapist in any matter relating to occupational therapy which requires decision making or professional judgements.

§373.2. Supervision of a Temporary Licensee.

(a) Supervision of an occupational therapist with a temporary license includes:

(1) frequent communication between the supervising occupational therapist and the temporary licensee by telephone, written report or conference, including the review of progress of patients/clients assigned, plus

(2) encounters twice a month where the occupational therapist directly observes the temporary licensee providing services to one or more patients/clients with face-to-face, real time interaction.

(b) Supervision of an occupational therapy assistant with a temporary license includes;

(1) sixteen hours of supervision a month of which at least twelve hours are through telephone, written report or conference, including the review of progress of patients/clients assigned; plus

(2) four or more hours of supervision a month which are face-to-face, real time supervision with the temporary licensee providing services to one or more patients/clients.

(c) Temporary licensees may not supervise anyone.

(d) All documentation completed by an individual holding a temporary license which becomes part of the patient's/client's permanent file, must be approved and co-signed by the supervising occupational therapist.

(e) A temporary licensee works under the supervision of a regular licensed occupational therapist, whose name and license number are on file on the board's "Supervision of a Temporary Licensee" form.

(f) A temporary licensee does not become a regular licensee with those privileges until the regular license is in hand.

§373.3. Supervision of a Licensed Occupational Therapy Assistant.

(a) Supervision per month of eight hours includes:

(1) A minimum of six hours a month of frequent communication with the supervising occupational therapist(s) and the occupational therapy assistant by telephone, written report, email, conference etc., including review of progress of patient's/client's assigned.

(2) A minimum of two hours of supervision a month of face-to-face, real time interaction observing the occupational therapy assistant providing services with patients/clients.

(b) Part-time licensees may pro-rate these hours, but shall document no less than four hours of supervision per month, one hour of which includes face-to-face, real time interaction observing the occupational therapy assistant providing services with patients/clients.

(c) Occupational Therapy Assistants with more than one employer must have a supervisor at each job.

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-200103807

John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: July 22, 2001
Proposal publication date: May 25, 2001
For further information, please call: (512) 305-6900

♦ ♦ ♦

CHAPTER 374. DISCIPLINARY ACTIONS/DETRIMENTAL PRACTICE/COMPLAINT PROCESS/CODE OF ETHICS

40 TAC §§374.1 - 374.3

The Texas Board of Occupational Therapy Examiners adopts amendments to §§374.1 - 374.3- DISCIPLINARY ACTIONS/DETRIMENTAL PRACTICE/COMPLAINT PROCESS/CODE OF ETHICS. Section 374.1 is being adopted with changes to the proposed text as published in the May 25, 2001 issue of the *Texas Register* (26 TexReg 3728). Sections 374.2 and 374.3 are adopted without change and will not be republished. The amendments will reorganize the chapter and make current reference to the OT Practice Act.

No comments were received regarding these amendments.

The rules are adopted under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupational Code are affected by these amended sections.

§374.1. Disciplinary Actions.

(a) The Board, in accordance with the Administrative Procedure Act, may deny, revoke, suspend, or refuse to renew or issue a license, or may reprimand or impose probationary conditions, if the licensee or applicant for licensure has been found in violation of the rules or the Act. The board will adhere to procedures for such action as stated in the Act, 454.301, 454.302, 454.303, and 454.304.

(b) The board recognizes four levels of disciplinary action for its licensees.

(1) Level I: Order and/or Letter of Reprimand or Other Appropriate *Disciplinary Action (including but not limited to community service hours)*

(2) Level II: Probation--The licensee may continue to practice while on probation. The board orders the probationary status which may include but is not limited to restrictions on practice and continued monitoring by the board during the specified time period.

(3) Level III: Suspension--A specified period of time that the licensee may not practice as an occupational therapist or occupational therapy assistant. Upon the successful completion of the suspension period, the license will be reinstated upon the licensee successfully meeting all requirements.

(4) Level IV: Revocation-A determination that the licensee may not practice as an occupational therapist or occupational therapy assistant. Upon passage of 180 days, from the date the revocation order becomes final, the former licensee may petition the board for re-issuance of a license. The former licensee may be required to re-take the Examination.

(c) Licensees and facilities which provide occupational therapy services are responsible for understanding and complying with Chapter 454 of the Occupational Code (the Occupational Therapy Practice Act), and the Texas Board of Occupational Therapy Examiners' rules.

(d) Final disciplinary actions taken by the board will be routinely published as to the names and offenses of the licensees or facilities.

(e) A licensee who is ordered by the board to perform certain act(s) will be monitored by the board to ensure that the required act(s) are completed per the order of the board.

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

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

TRD-200103808
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: July 22, 2001
Proposal publication date: May 25, 2001
For further information, please call: (512) 305-6900

♦ ♦ ♦

TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action on Rules

The Commissioner of Insurance, at a public hearing under Docket No. 2489 on August 22, 2001, at 9:30 a.m., in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks adoption of amendments to the Fire Suppression Rating Schedule (FSRS) which would establish a new public protection classification, Class 8B, and adoption of conforming amendments to the Texas Personal Lines Manual and the Texas Statistical Plan for Residential Risks, and further seeks to delete outdated rate capping and previous key rate references in the Texas Personal Lines Manual, and to make a typographical correction to the Texas Addendum to the Fire Suppression Rating Schedule (Texas Addendum). Staff's petition (Ref. No. P-0701-07-I), was filed on July 9, 2001.

Staff's proposed adoption of amendments to the FSRS, the Texas Personal Lines Manual, the Texas Statistical Plan for Residential Risks, and the Texas Addendum will (1) revise the FSRS to establish the Class 8B Protection and set forth the criteria for eligibility for the new classification; (2) update the FSRS in its references to the new classification and re-number the rules referencing the Class 9 Protection; (3) conform various sections of the Texas Personal Lines Manual and the Texas Statistical Plan for Residential Risks consistent with the establishment of the new Class 8B classification; (4) delete outdated rate capping and previous key rate references in the Texas Personal Lines Manual since the public protection classification system has been in effect long enough that the use of rate capping factors are no longer needed in property rating for insurance; and (5) make a typographical correction to the Texas Addendum by adding a percentage symbol (%) to the denominator in the formula for the calculation of the Texas Addendum Credit.

A copy of the petition, including exhibits with the full text of the proposed amendments to the FSRS, the Texas Personal Lines Manual, the Texas Statistical Plan for Residential Risks, and the Texas Addendum is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6326; refer to (Ref. No. P-0701-07-I).

To be considered, all comments on the proposed changes must be submitted in writing no later than 5 p.m. on August 20, 2001, to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted simultaneously to G. Mike Davis, State Fire Marshal, Mail Code 112-FM, Texas Department of Insurance, P.O. Box 149221, Austin, Texas 78714-9221.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

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

TRD-200103927
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: July 9, 2001

♦ ♦ ♦

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 Department of Health

Title 25, Part 1

The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part 1, Chapter 193, Administrative Services, §193.1 and §193.2.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2003.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200103983
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 11, 2001

♦ ♦ ♦

The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part 1, Chapter 205. Product Safety, Subchapter B. Flammability, §§205.21 - 205.26.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2003.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200103984
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 11, 2001

♦ ♦ ♦

The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part 1, Chapter 289. Radiation Control, Subchapter D, General, §289.203 and §289.204; and Subchapter F, License Regulations, §289.260.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule

reflects current procedures of the department. The review of all rules must be completed by August 31, 2003.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200103985
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 11, 2001

♦ ♦ ♦

Texas Health Care Information Council

Title 25, Part 16

The Texas Health Care Information Council proposes to review Title 25, Part 16, Chapter 1301, Subchapter B (§§1301.31-1301.35), concerning the collection and reporting of health plan employer data and information set (HEDIS) from health maintenance organizations (HMOs), pursuant to the Government Code, §2001.039.

The Texas Health Care Information Council will consider, among other things, whether the reasons for adoption of these rules continue to exist.

Comments on the proposed review may be submitted in writing no later than 5:00 p.m. on August 17, 2001 to Priscilla Boston, Research Specialist, Texas Health Care Information Council Commodore Two Plaza, 206 East 9th St, Ste 19-140, Austin, TX 78701 Comments may be submitted electronically to Ms. Boston at Priscilla.Boston@thcic.state.tx.us.

TRD-200103906
Jim Loyd
Executive Director
Texas Health Care Information Council
Filed: July 9, 2001

♦ ♦ ♦

Adopted Rule Review

Texas Health Care Information Council

Title 25, Part 16

The Texas Health Care Information Council (Council) adopts the review of §§1301.11-1301.19, pursuant to the Government Code, §2001.039. The proposed review was published in the July 9, 1999, issue of the *Texas Register* (24 TexReg 5219) and the text was amended once (Dec 15, 2000, issue of the *Texas Register* (25 TexReg 12430). The Council also adopts amendments to §§1301.11-1301.13 and 1301.16-1301.19 relating to hospital discharge data reporting procedures and new §1301.20 relating to its Scientific Review Panel, elsewhere in this issue of the *Texas Register*.

The Council has reviewed the rules in Subchapter A and determined that the reasons for their adoption continue to exist. The rules relate to the methods hospitals are to utilize in reporting discharge data to the Council, to the data elements to be reported, to the Council's discharge data collection and storage procedures, and to procedures for accessing the data. The Council is required by its enabling legislation to continue collecting discharge data from hospitals that are not exempted from reporting.

Comments received on this subchapter are being published in the adoption section of this issue of the *Texas Register*.

This concludes the review of Subchapter A of Chapter 1301.

TRD-200103905
Jim Loyd
Executive Director
Texas Health Care Information Council
Filed: July 9, 2001

♦ ♦ ♦

TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 4 TAC §17.51(6)[(5)]

Figure: 4 TAC §17.51(11)[~~(10)~~]

Figure: 4 TAC §17.51(18)[(17)]

Figure: 4 TAC §17.51(19)[~~(18)~~]

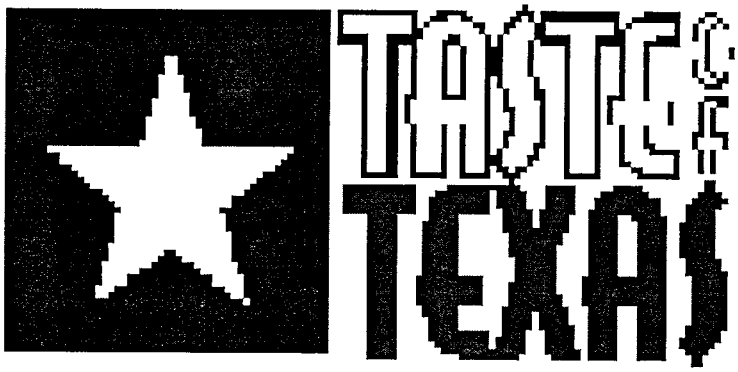


Figure: 4 TAC §17.51(21)[(~~20~~)]

Figure: 4 TAC §17.51(22)[(~~21~~)]

Figure: 25 TAC §409.531(a)

Mental Retardation Local Authority (MRLA) Program Principles for Program Providers

PURPOSE

The Mental Retardation Local Authority (MRLA) Program Principles for Program Providers will be utilized in the survey and certification of program providers of MRLA Program services. It is expected that MRLA program providers will meet all elements of the MRLA Program Medicaid provider agreement and provider enrollment requirements. MRLA program providers are expected to be comprehensive service providers, provide those services contained in the individual plan of care (IPC) and hours of service that are authorized by the Texas Department of Mental Health and Mental Retardation (TDMHMR), and maintain necessary communication with the mental retardation authority (MRA) in order to provide continuity in services, notify the individual and/or the individual's legally authorized representative (LAR) and the MRA of needed changes to IPCs, and ensure service delivery to the individual.

The MRLA program provider must be able to demonstrate compliance with all of the following principles:

GENERAL NETWORK PROGRAM PROVIDER PRINCIPLES

P1. The MRLA program provider shall provide to the MRA the data elements to complete the provider profiling for the MRA provider network management process.

P2. The MRLA program provider shall maintain a separate record for each individual enrolled with the provider, which shall include a current copy of:
- P2.1. the individual plan of care (IPC);
- P2.2. the person-directed plan (PDP).

P3. The MRLA program provider shall ensure that service delivery information is correct and clearly communicates to the MRA and the individual and/or the LAR changes to services specified in the individual's IPC and PDP.

P4. At the request of the individual and/or the LAR, the MRLA program provider shall be involved in the person-directed planning process.

P5. The MRLA program provider shall be involved in completion of the PDP and negotiation of the IPC with the individual and/or the LAR and the MRA.

SERVICE DEFINITIONS/DELIVERY

Each service provided under the MRLA Program must be delivered in accordance with the approved IPC and the MRLA Program service definitions set forth in the MRLA program provider agreement.

P6. The MRLA program provider shall ensure that services and supports delivered assist individuals in achieving outcomes as identified in the PDP.

P6.1 The program provider shall implement and maintain a plan for initial and periodic training of personnel that assures personnel are qualified to deliver services as required by the current needs and characteristics of the individuals to whom they deliver services.

P7. The MRLA program provider shall deliver adaptive aids as authorized in the IPC in accordance with the MRLA Program service definition set forth in the MRLA program provider agreement. Adaptive aids consist of the following services, including repair and maintenance not covered by the warranty: the full range of lifts, mobility aids, control switches/pneumatic switches and devices, environmental control units, medically necessary supplies, and communication aids.

Counseling and Therapies

P8. The MRLA program provider shall deliver counseling and therapeutic activities as authorized in the IPC in accordance with the MRLA Program service definition set forth in the MRLA program provider agreement. Components of counseling and therapies include:

P8.1. audiology;
P8.2. speech/language pathology;
P8.3. occupational therapy;
P8.4. physical therapy;
P8.5. dietary;
P8.6. social work; and
P8.7. psychology.

Day Habilitation

P9. The MRLA program provider shall deliver day habilitation as authorized in the IPC in accordance with the MRLA Program service definition set forth in the MRLA program provider agreement. Day habilitation includes:

P9.1. assisting individuals in acquiring, retaining, and/or improving self-help, socialization, and adaptive skills necessary to reside successfully in the community;

P9.2. providing individuals with relevant activities that enhance self-esteem and maximize functional level;
P9.3. complementing any counseling and therapies listed in the IPC;
P9.4. reinforcing skills or lessons taught in school, therapy, or other settings;
P9.5. providing training and support activities which promote the individual's integration and participation in the community;
P9.6. providing assistance for individuals who cannot manage their personal care needs during day habilitation activities;
P9.7. providing transportation necessary for the individual's participation in day habilitation activities; and
P9.8. providing services which are not being provided under Section 110 of the Rehabilitation Act of 1973 or Section 602(16) and (17) of the Individuals with Disabilities Education Act.

Dental Treatment

P10. The MRLA program provider shall deliver dental treatment as authorized in the IPC in accordance with the MRLA Program service definitions as set forth in the MRLA program provider agreement, to include:
P10.1. emergency dental treatment;
P10.2. preventive dental treatment;
P10.3. therapeutic dental treatment; and
P10.4. orthodontic dental treatment, excluding cosmetic orthodontia.

Minor Home Modifications

P11. The MRLA program provider shall deliver minor home modifications as authorized in the IPC in accordance with the MRLA Program service definition set forth in the MRLA program provider agreement, to include:
P11.1. purchase and repair of wheelchair ramps;
P11.2. modifications to bathroom facilities;
P11.3. modifications to kitchen facilities; and
P11.4. specialized accessibility and safety adaptations, including repair and maintenance.

Nursing

P12. The MRLA program provider shall deliver nursing as authorized in the IPC, in accordance with the MRLA Program service definition as set forth in the MRLA program provider agreement. Nursing includes:
P12.1. administering medication;
P12.2. monitoring the individual's use of medications;
P12.3. monitoring health data and information;
P12.4. assisting the individual and/or the LAR to secure emergency medical services for the individual;

P12.5. making referrals for appropriate medical services;
P12.6. performing health care procedures ordered or prescribed by a physician/medical practitioner and required by standards of professional practice or law to be performed by licensed nursing personnel; and
P12.7. delegating and monitoring tasks assigned to other service providers by a registered nurse (RN) in accordance with state law.

Residential Assistance

P13. The MRLA program provider shall deliver residential assistance as authorized in the IPC in accordance with the MRLA Program service definitions as set forth in the MRLA program provider agreement. The four types of residential assistance provided are:
(a) Supported Home Living – provided to individuals residing in their own residence or the residence of their natural or adoptive family or to individuals receiving foster care services from the Texas Department of Protective and Regulatory Services (TDPRS). The residential assistance provider does not live in the individual's residence;
(b) MRLA Foster/Companion Care – provided in a residence in which either the residential assistance provider or the individual holds a

st. MRLA Foster/Companion Care is provided by a
stance provider who lives in the residence. MRLA
on care may not be provided to an individual who
:are services through TDPRS;
ing – is provided in a residence in which the MRLA
der holds a property interest. Supervised Living is
sidential assistance providers who provide services and
ded by individuals and who are present in the residence
leeping hours; and
port – is provided in a residence in which the MRLA
der holds a property interest. Residential Support is
dividuals by residential assistance providers who are
sidence and awake whenever an individual is present in
nd who are assigned on a daily shift schedule that
one complete change of provider staff each day.

ncludes:

t personal assistance with activities of daily living
ng, bathing, dressing, and personal hygiene);
eal planning and preparation;
oviding transportation;
ousekeeping;
mbulation and mobility;
nseling and therapy activities;

property intere
residential assi
Foster/Compan
receives foster
(c) Supervised Liv
program provi
provided by re
supports as nee
during normal s
(d) Residential Su
Program provi
provided to in
present in the r
the residence
includes at leas

Residential assistance i

P13.1. providing dire
(grooming, eati
P13.2. assisting with n
P13.3. securing and pr
P13.4. assisting with h
P13.5. assisting with a
P13.6. reinforcing cou

P13.7. assisting with medications and the performance of tasks delegated by a Registered Nurse;
P13.8. supervising individuals' safety and security;
P13.9. facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities and development of socially valued behaviors; and
P13.10. providing habilitation, exclusive of Day Habilitation.

P14. The MRLA program provider shall ensure that the residence of an individual receiving MRLA Foster/Companion Care, Supervised Living, or Residential Support is designed for family-style living. The term individual, as used in this principle shall mean a person enrolled in the MRLA Program.
14.1. An individual receiving MRLA Foster/Companion Care may live with no more than two other individuals receiving MRLA program or other persons receiving similar services at any one time.
14.2. An individual receiving Supervised Living or Residential Support may live in a residence in which no more than two other individuals receiving MRLA program services or other persons receiving similar services live at any one time unless TDMHMR or its designee has, in accordance with §409.542 of this title (relating to TDMHMR Approval of Residences), approved the residence in which four individuals or other persons receiving similar services live at any one time.

P15. Providers of supported home living, supervised living, and residential support are employed by the MRLA program provider.

Respite

P16. The MRLA program provider shall deliver respite services as authorized in the IPC in accordance with the MRLA program service definition set forth in the MRLA program provider agreement, including:
(a) assistance with training in self-help and independent living skills;
(b) provision of room and board when provided overnight in a setting other than the individual's normal residence;
(c) support of individuals in the MRLA program who are eligible for respite and in need of emergency or planned short-term care;
(d) provision of services on a 24-hour increment or any part of that increment;
(e) assistance with receiving other needed services; and
(f) assistance with securing and providing transportation.

16.1. Respite services shall be are provided in the residence of the individual receiving MRLA program services or in other locations that meet MRLA programmatic requirements and that provide an environment that assures the health, safety, comfort, and welfare of the individual.

16.2. Respite services may be provided to an individual in a location other than the individual's residence, including the residence of another individual receiving MRLA program services. If respite services are provided in the residence of another individual receiving MRLA program services, no more than three individuals receiving MRLA program services or other persons receiving similar services may receive services in the residence at any one time unless the conditions of principle 14.2 have been met by the MRLA Program provider.

16.3. If respite services are provided in the residence of another individual receiving MRLA program services, the provider must obtain permission from that individual or the individual's legally authorized representative. In addition, the program provider in conjunction with the service coordinator for each individual must make a determination that the respite visit will cause no threat to the health, safety, welfare, rights, or needs of that individual.

16.4. Respite services may be provided in a respite facility that is not a residence. Respite services may not be provided in such a facility to more than six persons at any one time. For a respite facility that serves more than three individuals at any one time, the MRLA Program provider must obtain written approval from the fire safety authority having jurisdiction stating that the facility and its operations meet the local fire ordinances.

16.5. Respite services may not be provided in an institution.

Supported Employment

P17. The MRLA program provider shall deliver supported employment as authorized in the IPC in accordance with the MRLA Program service definition set forth in the MRLA program provider agreement.

P17.1. Supported employment is provided in an integrated work setting away from the individual's place of residence (generally no more than one employee or 3% of the work force members have disabilities);

P17.2. Supported employment includes provision of ongoing individualized support services needed to sustain paid work by the individual, including supervision and training;

P17.3. The individuals receiving supported employment are compensated by the employer in accordance with the Fair Labor Standards Act; and,

P17.4. Supported employment is provided when these services are not available or funded through the state education agency or the state rehabilitation agency.

QUALIFIED STAFF

P18. The MRLA program provider will utilize service providers of the individual's and/or the LAR's choice if the service provider meets the minimum qualifications

necessary to provide the service, will deliver the service within the direct services portion of the modeled MRLA rates, and will contract with or be employed by the MRLA program provider.

P19. The MRLA program provider shall ensure that its employees or contractors possess legally necessary licenses, certifications, registration, or other credentials and are in good standing with the appropriate professional agency in performing any function or delivering services.

P20. The MRLA program provider shall ensure that in instances where a high school education or "equivalent" is a requirement, when "equivalent" is applied, the personnel or service provider involved shall possess a graduate equivalency diploma (GED) or documentation of being at least 18 years old and a proficiency evaluation of experience and competence to perform the job tasks. The evaluation of experience and competency shall include:

P20.1. written competency-based assessment of the ability to document service delivery and observations of the individuals to be served; and

P20.2. at least three personal references from persons not related by blood which indicate the ability to provide a safe, healthy environment for the individuals being served.

Counseling and Therapies

P21. The MRLA program provider shall ensure that each provider of counseling and therapies is currently qualified by being licensed and/or certified by the State of Texas in the specific area for which services are delivered and by providing services in accordance with state law. Psychologists employed by state operated community services or community mental health and mental retardation centers are required to be licensed in accordance with state law or certified by TDMHMR.

Day Habilitation and Supported Employment

P22. The MRLA program provider shall ensure that the provider of day habilitation and/or supported employment is currently qualified by having a high school diploma or its equivalent and a valid driver's license if providing transportation. Assistance with tasks delegated by an RN must be in accordance with state law.

Dental Treatment

P23. The MRLA program provider shall ensure that the provider of dental treatment is currently qualified by being licensed in the State of Texas by the Texas State Board of Dental Examiners in accordance with Texas Revised Civil Statutes Article 4543.

Nursing

P24. The MRLA program provider shall ensure that the provider of nursing services is qualified by:

P24.1. being currently licensed as a registered nurse in Texas by the Board of Nurse Examiners for the State of Texas; or

P24.2. being currently licensed as a licensed vocational nurse in Texas by the Board of Vocational Nurse Examiners for the State of Texas.

Residential Assistance and Respite

P25. The MRLA program provider shall ensure that the provider of residential assistance and/or respite is currently qualified by having a high school diploma or its equivalent and a valid driver's license if providing transportation. Assistance with tasks delegated by an RN must be in accordance with state law.

ADAPTIVE AIDS

P26. The MRLA program provider shall ensure that adaptive aids are provided through contractors and suppliers capable of providing aids meeting applicable standards of manufacture, design, and installation.

MINOR HOME MODIFICATIONS

P27. The MRLA program provider shall ensure that minor home modifications are provided through contractors qualified to provide the service in accordance with state and local building codes and other applicable regulations.

HEALTH, SAFETY, AND RIGHTS

P28. The MRLA program provider shall implement a process for review of its decisions to limit individual rights and other restrictions by a person not involved in the original decision and to report any individual's dissatisfaction with decisions regarding restricted rights to the MRA and the individual's LAR.

P29. The MRLA program provider shall implement processes to ensure that individuals receiving services are free from abuse, neglect, or exploitation and that program provider personnel are provided initial and periodic training that ensures personnel are knowledgeable of:

(a) acts that constitute abuse, neglect, or exploitation of an individual, as defined in 40 TAC Chapter 711, Subchapter A;

(b) the requirement to report acts of abuse, neglect, or exploitation, or suspicion of such acts, to the Texas Department of Protective and

Regulatory Services (TDPRS) in accordance with Program Provider Principle 32.2; and

(c) methods to prevent the occurrence of abuse, neglect, and exploitation.

P30. The MRLA program provider shall ensure that individuals receiving services have health care services.

P31. The MRLA program provider shall protect the rights of the individuals receiving services, including maintaining a process for eliciting complaints and maintaining verifiable evidence of complaint resolution.

P32. The MRLA program provider shall implement procedures for reporting to the individual's LAR, TDPRS, and the MRA all alleged instances of abuse, neglect, or exploitation.

P32.1. The program provider must ensure that the individual and the LAR are informed of how to report allegations of abuse, neglect, or exploitation to TDPRS and are provided with the TDPRS toll-free telephone number (1-800-647-7418) in writing.

P32.2. The program provider must ensure that all program provider personnel:

(a) are instructed to report to TDPRS immediately, but not later than one hour after having knowledge or suspicion, that an individual has been or is being abused, neglected, or exploited;

(b) are provided with the TDPRS toll-free telephone number (1-800-647-7418) in writing, and

(c) report knowledge or suspicion of abuse, neglect, or exploitation as instructed.

P32.3. Upon suspicion that an individual has been or is being abused, neglected, or exploited or notification of an allegation of abuse,—neglect or exploitation, the program provider shall take necessary actions to secure the safety of the alleged victims, including but not limited to:

(a) obtaining immediate and on-going medical or psychological services for the alleged victims as necessary;

(b) if necessary, restricting access by the alleged perpetrator of the abuse, neglect, or exploitation to the alleged victim or other individuals pending investigation of the allegation; and

(c) notifying, as soon as possible but no later than 24 hours after the program provider reports or is notified of an allegation, the alleged victim and the alleged victim's LAR of the allegation report and the actions that have been or will be taken.

P32.4. The program provider personnel shall cooperate with the TDPRS investigation of an allegation of abuse, neglect, or exploitation, including but not limited to providing complete access to all MRLA Program service sites owned, operated, or controlled by the program provider; providing complete access to individuals and program provider personnel, providing access to all records pertinent to the investigation of the allegation; and

preserving and protecting any evidence related to the allegation in accordance with TDPRS instructions.

P32.5. In all respite facilities and all residences in which the program provider or the residential assistance provider hold a property interest, the program provider must post the following in a conspicuous location:

(a) the name, address and telephone number of the program provider;

(b) the effective date of the TDMHMR Waiver Program Provider Agreement; and

(c) the name of the legal entity named on the Waiver Program Provider Agreement.

P32.6. The program provider must:

(a) report the finding of and program provider's response to all TDPRS investigations of abuse, neglect, or exploitation to TDMHMR in accordance with department procedures within 14 calendar days of the program provider's receipt of the investigative report and finding; and

(b) promptly, but not later than five calendar days from the program provider's receipt of the TDPRS investigative report and finding, notify the alleged victim or LAR of:

- the investigation finding;
- the corrective action taken by the program provider if TDPRS confirms that abuse, neglect, or exploitation occurred;
- the process to appeal the investigation finding as described in 40 TAC Chapter 711, Subchapter M (relating to Requesting an Appeal if You are the Reporter, Alleged Victim, Legal Guardian or with Advocacy, Incorporated); and
- the process for requesting a copy of the investigative report from the program provider; and

(c) upon request of the alleged victim or LAR, provide to the alleged victim or LAR a copy of the TDPRS investigative report after concealing any information that would reveal the identity of the reporter or of any individual who is not the alleged victim.

P32.7. If abuse, neglect, or exploitation is confirmed by the TDPRS investigation, the program provider shall take appropriate action to prevent the reoccurrence of abuse, neglect or exploitation including, when warranted, disciplinary action against or termination of the employment of program provider personnel confirmed by the TDPRS investigation to have committed abuse, neglect, and exploitation.

P33. The MRLA program provider shall ensure that its program owns, operates, or leases buildings that comply with all applicable fire, health, and sanitation codes.

33.1. The MRLA program provider must ensure that a residence in which four individuals receiving MRLA program services or other individuals

receiving similar services live is in continuous compliance with applicable provisions concerning Residential Board and Care Occupancies – Small Facilities of the edition of the *NFPA 101 Life Safety Code*, published by the National Fire Protection Association and most recently adopted by the Texas State Fire Marshal's Office, as certified by the fire safety authority having jurisdiction for the location of the residence (e.g., the local fire marshal or building official) at the time the residence is approved by the department and at least annually thereafter.

33.2. The MRLA program provider must ensure that a residence in which four individuals receiving MRLA program services or other individuals receiving similar services live is approved by TDMHMR or its designee in accordance with §409.542 of this title relating to TDMHMR approval of residences.

P34. The MRLA program provider shall implement procedures for meeting all emergencies such as fire, severe weather, and health risks.

P35. The MRLA program provider shall ensure compliance with all applicable state, and federal rules, regulations, and laws.

P36. The MRLA program provider must provide services to any eligible indi who selects that provider, unless that provider is serving at the capacity sta its MRLA program provider agreement.

P37. The MRLA program provider shall ensure that charges assessed by the pr provider against an individual's personal funds for items and services, incl but not limited to, room and board, are at a reasonable cost to the individual a cost comparable to the costs of similar items and services generally availa the community.

P38. The MRLA program provider shall ensure costs for items and services reimb through the MRLA Program are not charged to the individual.

P39. The MRLA program provider shall ensure that the individual or his/her l authorized representative is informed of and agrees in writing to any c assessed by the program provider against the individual's personal funds, purpose of those charges, and to the effect of those charges in relation individual's financial status.

P40. The MRLA program provider shall ensure that the utilization of restr procedures, including the restriction of individual rights and the use of restr behavior management procedures, are not utilized without the written inf consent of the individual and/or the LAR.

P41. The MRLA program provider must take the following actions regarding applicants for employment, contractors, and employees of the program provider whose duties involve or would involve direct contact with an individual:

(1) in accordance with Texas Health and Safety Code, Chapter 250, Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities, obtain criminal history record information that relates to the applicant, contractor, or employee and refrain from employing or contracting with persons convicted of an offense listed under §250.006 of the Texas Health and Safety Code; and

(2) search the Employee Misconduct Registry and the Nurse Aid Registry maintained by the Texas Department of Human Services to determine whether the applicant, contractor, or employee is designated in either registry as having abused, neglected, or exploited a resident or consumer of a facility or misappropriated a resident's or consumer's property, and refrain from employing or contracting with persons who are designated in either registry.

P42. No later than September 1, 2000, the MRLA program provider must ensure that it employs or contracts with a person who has a minimum of three years work experience in planning and providing direct services to people with mental retardation or other developmental disabilities as verified by written professional references to oversee the provision of all direct services to individuals receiving MRLA program services from the provider.

Figure: 30 TAC §101.27(c)(1)

Fiscal Year	Rate Per Ton	Minimum Fee
1992	$3	
1993	$5	$25
1994	$25	$25
1995 - 2002	$26	$26

The rate of $26 per ton will remain effective for future fiscal years until amended. If the fee is applicable, the company responsible for the account shall pay the calculated emissions fee or the minimum fee, whichever is greater.

Figure: 30 TAC Chapter 114 - Preamble

Category	Project	Equipment	Baseline Cost	Reduced Emission Cost	Grant per Unit	Number of Units	Total Awarded Grants
On-road	Re-power	Waste Collection Truck	$6,000	$101,573	$49,000	1	$49,000
On-road	Re-power	Front Loader	$6,000	$92,363	$49,000	1	$49,000
On-road	Re-power	Roll-off refuse truck	$6,000	$106,581	$75,221	2	$150,442
On-road	Re-power	Tour Bus	$3,000	$58,000	$55,000	1	$55,000
On-road	Re-power	Transit Bus	$6,000	$106,581	$100,581	3	$301,743
On-road	Retrofit	Roll-off refuse truck	$6,500	$56,350	$11,182	1	$11,182
On-road	New	Campus Shuttle Bus	$212,000	$240,000	$28,000	3	$84,000
On-road	New	Delivery Truck	$34,000	$41,500	$7,500	12	$90,000
On-road	New	Electric Shuttle Bus	$135,000	$210,000	$46,600	10	$466,000
On-road	New	Resort Bus	$135,000	$191,000	$50,100	10	$501,000
On-road	New	Transit Bus	$241,843	$276,843	$35,000	14	$490,000
Marine Vessel	Re-power	Fishing Vessel	$12,000	$118,388	$106,388	1	$106,388
Marine Vessel	Re-power	Auxillary	$6,900	$16,900	$10,000	1	$10,000
Marine Vessel	Re-power	Marine Vessel	$4,000	$30,000	$15,000	1	$15,000

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 on Aging

Public Policy Roundtables

Purpose. Through a series of roundtable discussions, the Texas Department on Aging seeks to gather and provide accurate and objective information that will enable to legislators, policy makers, community leaders and professionals in the private sector to set clear and effective aging policies for our state.

Premise. The Texas population is becoming older and more diverse, which has important implications for the future of Texas in areas such as housing, public health, the economy, and the labor market.

Partners. Texas Health and Human Services Commission, Texas Workforce Commission, Texas Department of Health, Texas Department of Housing and Community Affairs, Texas Silver Haired Legislature, and the Texas Senior Advocacy Coalition.

Desired Outcome. To create a policy agenda in the areas of workforce, healthy aging, and housing that addresses the:

* aging of the Texas population

* health, security and productivity of all Texas citizens

* ethnic and geographic diversity of Texas

* the impact on family caregivers

* What must be done now, by whom, and how, in order to have sound policies in place over the next three decades. Will it require:

* New or changed legislation?

* Administrative policy change or reform?

* Education?

* Outreach?

* Research?

* Resources (including people and time, as well as money)?

Event Format. The roundtable discussion is designed to obtain specific feedback regarding the issues of workforce, healthy aging, and housing that emerged from the state level forum in Austin earlier this year. A panel consisting of experts and leaders in these areas will be on hand to facilitate the dialogue. A summary of the issues and recommendations discussed at the February forum can be found at http://www.tdoa.state.tx.us/4rumDocs.htm.

A series of four regional roundtable discussions are being held around the state (North, West, East, South) using a similar format to obtain different geographic and ethnic perspectives. The regional schedule is as follows:

July 27, 9:00a.m.- 12:00p.m., Texas Tech Auditorium, 800 W. 4th Street Odessa, Texas

August 3, 1:00p.m.- 4:00p.m., First Baptist Church, 300 S. Center Street Arlington, Texas

August 20, 9:30a.m.- 12:30p.m., First Baptist Church, 501 E Van Buren Harlingen, Texas

August 27, 1:00p.m.- 4:00p.m., Open Gates at UTMB, 2419 Broadway Galveston, Texas

Next Steps. On November, 5 2001, a second state level policy forum will be held featuring key legislators and CEOs from state government and the private sector in the areas of workforce, health and housing. They will be asked to comment on and react to the Agenda as it has developed throughout the state.

Please note, persons with disabilities who wish to attend the roundtable and require auxiliary aids or services should contact Holly Riley at (512) 424-6879 or by e-mail: holly.riley@tdoa.state.tx.us, a week prior to the event so that appropriate arrangements can be made.

TRD-200103954
Gary Jessee
Aging Network Policy Coordinator
Texas Department on Aging
Filed: July 10, 2001

♦ ♦ ♦

Office of the Attorney General

Texas Water Code Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under Texas Water Code §7.110. Before the State may settle a judicial enforcement action under Chapter 26 of the Texas Water Code, the State shall permit

the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: Fort Bend County, Texas & State of Texas v. Niranjan S. "Nick" Patel, and John D. Gray, and Wife Jan Gray, Cause no. 111298, in the 268th Judicial District Court of Fort Bend County, Texas

Nature of Defendant's Operations: Defendants are owners of the land and two mobile home parks located at 3411 5th Street, Stafford, Fort Bend County, Texas. Plaintiff Fort Bend County's petition alleges that sewage has been discharged from the mobile home parks into the surrounding environment resulting in a public health nuisance and violation of state water quality laws.

Proposed Agreed Judgment: The Agreed Final Judgment calls for Defendants to pay a civil penalty of $15,000, to be divided evenly between Fort Bend County and the State of Texas, and attorneys fees of $8,000 to Fort Bend County and $2,000 to the State. The Judgment also enters a Permanent Injunction which requires Defendants to maintain a temporary sewer hookup during completion of a wastewater plant to serve the mobile home parks. The injunction requires that Defendants complete construction of a permanent wastewater treatment facility within 180 days after project approval by Fort Bend County.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Burgess Jackson, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-200103979
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: July 11, 2001

♦ ♦ ♦

Texas Bond Review Board

Biweekly Report of the 2001 Private Activity Bond Allocation Program

The information that follows is a report of the 2001 Private Activity Bond Allocation Program for the period of June 23, 2001 through July 6, 2001.

Total amount of state ceiling remaining unreserved for the $325,809,688 subceiling for qualified mortgage bonds under the Act as of July 6, 2001: $134,920,444.50

Total amount of state ceiling remaining unreserved for the $143,356,262 subceiling for state-voted issue bonds under the Act as of July 6, 2001: $143,356,262

Total amount of state ceiling remaining unreserved for the $97,742,906 subceiling for qualified small issue bonds under the Act as of July 6, 2001: $88,242,906

Total amount of state ceiling remaining unreserved for the $215,034,394 subceiling for residential rental project bonds under the Act as of July 6, 2001: $1,050,394

Total amount of state ceiling remaining unreserved for the $136,840,069 subceiling for student loans bonds under the Act as of July 6, 2001: $69

Total amount of state ceiling remaining unreserved for the $384,455,431 subceiling for all other issue bonds under the Act as of July 6, 2001: $250,431

Total amount of the $1,303,238,750 state ceiling remaining unreserved under the Act as of July 6, 2001: $368,220,506.50

Following is a comprehensive listing of applications, which have received a Certificate of Reservation pursuant to the Act from June 23, 2001 through July 6, 2001: None.

Following is a comprehensive listing of applications, which have issued and delivered the bonds and received a Certificate of Allocation pursuant to the Act from June 23, 2001 through July 6, 2001:

Issuer: Middle Rio Grande HFC

User: Eligible Borrowers

Description: Single Family Mortgage Revenue Bonds

Amount: $10,454,000

For a more comprehensive and up-to-date summary of the 2001 Private Activity Bond Allocation Program, please visit the website (www.brb.state.tx.us). If you have any questions or comments, please contact Steve Alvarez, Program Administrator, at (512) 475-4803 or via email at alvarez@brb.state.tx.us.

TRD-200103870
Steve Alvarez
Program Administrator
Texas Bond Review Board
Filed: July 6, 2001

♦ ♦ ♦

Coastal Coordination Council

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

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were received for the following project(s) during the period of June 29, 2001, through July 5, 2001. The public comment period for these projects will close at 5:00 p.m. on August 6, 2001.

FEDERAL AGENCY ACTIONS:

Applicant: City of Port Lavaca; Location: The project is located on Lavaca Bay in the Harbor of Refuge, Port Lavaca, Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Port Lavaca East, Texas. Approximate UTM Coordinates: Zone 14; Easting: 732900; Northing: 3165300. CCC Project No.: 01-0243-F1; Description of Proposed Action: The applicant's proposed work includes construction of approximately 5,565 feet of steel bulkhead, hydraulic dredging of approximately 50,500 cubic yards of

material, and placement of the dredged material within a proposed upland, confined, 1000-foot long by 600-foot wide placement area. Six 13-pile mooring clusters, which were previously authorized but not constructed, are not needed and would be removed from the permit. The applicant proposes to create wetlands within the revised, proposed 5-acre compensatory mitigation site on a 1:1 ratio in a phased manner as each portion of the funded work is undertaken. The purpose of the proposed work is to provide a commercial docking facility and a safe harbor for vessels during inclement weather. Type of Application: U.S.A.C.E. permit application #13821(06)-Revised is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and section 404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Western Towing Company; Location: The project is located on the Neches River, east of Port Arthur, approximately 2 miles upstream from the Texas State Highway 87 bridge over the river in Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Port Arthur, Texas. CCC Project No.: 01-0245-F1; Description of Proposed Action: The applicant proposes to modify the authorized project to construct a barge mooring facility with buoys located approximately 20 feet from the shoreline. The proposed modification is to relocate the mooring facility northwest into the natural bend of the Neches River. The southern portion of the project area will be located north of the sunken barge located within the river. The number of mooring buoys and the project dimensions will remain the same. The mooring facility will be manned and possible oil spills will be handled in accordance with the company approved Oil Spill Prevention and Response Plan already on file with the Texas General Land Office. Type of Application: U.S.A.C.E. permit application #22212(01) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Port of Galveston; Location: The project is located at the Texas Cruise Ship Terminal on the Galveston Ship Channel in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Galveston, Texas. Approximate UTM Coordinates: Zone 15; Easting: 326497; Northing: 3241385. CCC Project No.: 01-0246-F1; Description of Proposed Action: The applicant proposes to amend Department of the Army Permit 09703(10) to construct a 10-foot-long by 10-foot-wide mooring platform and a 35-foot long by 9-foot wide service platform. Type of Application: U.S.A.C.E. permit application #09703(11) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

FEDERAL AGENCY ACTIVITIES:

Applicant: U.S. Dept. of Transportation, U.S. Coast Guard; Locations: Morgans Point Approach Inner Range Front Light: The new structure will be located in 8 feet of water approximately 800 yards north-northwest of the northernmost point of Atkinson Island in Galveston Bay. Morgans Point Approach Inner Range Rear Light: The new structure will be located on land, on the north side of the westbound lanes of state highway 99 just west of Goose Creek in the town of Baytown. Morgans Point Approach Outer Range Front Light: The new structure will be located in 12.5 feet of water approximately 2000 yards east-southeast of Red Bluff in Galveston Bay. Morgans Point Approach Outer Range Rear Light; The new structure will be located in 9 feet of water approximately 1300 yards southeast of Red Bluff in Galveston Bay. CCC Project No.: 01-0241-F2; Description of Proposed Activity: Construction of navigational aid structures. Morgans Point Approach Inner Range Front Light: The proposed project calls for the construction of a single caisson pile. It will be outfitted with a small boat landing. The caisson will have a deck mounted on the top to house the lighting and power equipment. The battery bank and miscellaneous electrical panels will be contained within an equipment shelter located on the deck. Construction barges will be required. The caisson pile will be driven into the sea floor with a power hammer. Field welding and some field painting of the structure will be required during the installation process. Morgans Point Approach Inner Range Rear Light: The proposed project calls for the construction of a monopole with a platform deck bolted on a reinforced concrete foundation. The main deck will house the dual directional range lanterns. Electrical service will be run from a city power line. A crane will be required. Field welding and some field painting of the structure will be required during the installation process. Morgans Point Approach Outer Range Front Light: The proposed project calls for the construction of a single caisson pile. It will be outfitted with a small boat landing. The caisson will have a deck mounted on the top to house the lighting and power equipment. The battery bank and miscellaneous electrical panels will be contained within an equipment shelter located on the deck. Construction barges will be required. The caisson pile will be driven into the sea floor with a power hammer. Field welding and some field painting of the structure will be required during the installation process. Morgans Point Approach Outer Range Rear Light: The proposed project calls for the construction of a four-pile jacket structure with platform deck and tower. The structure will have a deck mounted to house the power system and will serve as the foundation for a steel skeleton tower. The battery bank and miscellaneous electrical panels will be contained within an equipment shelter located on the main deck. Construction barges will be required. Field welding and some field painting of the structure will be required during the installation process. Once the new Morgans Point Approach Inner and Outer Range Front and Rear Lights are installed and operating, the existing Morgans Point Approach Inner and Outer Range Front and Rear structures will be removed, with the supporting piles either completely removed or cut to 3 feet below the mud line. Type of Application: In accordance with the requirements of Executive Order 12372, Notification of Intent is made for a proposed Coast Guard project to construct aids to navigation structures.

Applicant: U.S. Department of Justice, Immigration and Naturalization Service; Location: This project addresses the potential impacts of ongoing and proposed INS/Joint Task Force-Six (JTF-6) activities throughout the U.S., but focuses on a 50-mile corridor along the U.S.-Mexico border from Brownsville, TX to San Diego, CA. CCC Project No.: 01-0247-F2; Description of Proposed Activity: The proposed activity detailed in this Final Supplemental Programmatic Environmental Impact Statement (SPEIS) is to provide full support from the U.S. Department of Defense Joint Task Force-Six (JTF-6) to the Immigration and Naturalization Service (INS) strategy for enforcement activities. The enforcement activities would allow INS to gain and maintain control of the southwest border area for the purpose of enhancing the prevention, deterrence and detection of illegal activities. JTF-6's support would fall within three major categories: operational, engineering, and general. The proposal also includes the implementation of an INS' Integrated Surveillance Intelligence System (ISIS) which includes the installation and monitoring of remote sensing systems. These activities will allow more efficient and effective investigation, patrolling, and apprehension, thus reducing the flow of illegal drugs into the U.S. The Final SPEIS and supporting baseline documents have been distributed to local and regional libraries and are available for review and downloading from the USACE, Fort Worth District's Internet web page. Type of Application: The Department of the Defense participation in counter-drug operations has been directed by the National Drug Control Strategy and authorized by the U.S. Congress under the National Defense Authorization Act of 1991.

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-200103977
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: July 11, 2001

♦ ♦ ♦

Comptroller of Public Accounts

Notice Of Request For Proposals

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, and Sections 403.011 and 403.020, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP #122a) from qualified, independent firms to provide consulting services to Comptroller. The successful respondent will assist Comptroller in conducting a management and performance review of the Wilmer-Hutchins Independent School District (Wilmer-Hutchins ISD). Comptroller reserves the discretion to award one or more contracts for a review of the Wilmer-Hutchins ISD under this RFP. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about September 7, 2001.

Contact: Parties interested in submitting a proposal should contact Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, July 20, 2001, between 2 p.m. and 5 p.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller also made the complete RFP available electronically on the Texas Marketplace at: http://www.marketplace.state.tx.us after 2 p.m. (CZT) on Friday, July 20, 2001.

Mandatory Letters of Intent and Questions: All Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Harris at: (512) 475-0973, not later than 2:00 p.m. (CZT), on Friday, August 3, 2001. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace no later than August 8, 2001, or as soon thereafter as practical. Mandatory Letters of Intent received after the 2:00 p.m., August 3rd deadline will not be considered.

Closing Date: Proposals must be received in Assistant General Counsel's Office at the address specified above (ROOM G-24) no later than 2 p.m. (CZT), on Wednesday, August 15, 2001. Proposals received after this time and date will not be considered. Proposals will not be accepted from respondents who do not submit mandatory letters of intent by the August 3rd deadline.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision regarding the award of a contract. Comptroller reserves the right to award one or more contracts under this RFP.

Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - July 20, 2001, 2 p.m. CZT; All Mandatory Letters of Intent and Questions Due - August 3, 2001, 2 p.m. CZT; Official Responses to Questions Posted - August 8, 2001, or as soon thereafter as practical; Proposals Due - August 15, 2001, 2 p.m. CZT; Contract Execution - August 31, 2001, or as soon thereafter as practical; Commencement of Project Activities - September 7, 2001.

TRD-200103980
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: July 11, 2001

♦ ♦ ♦

Office of Consumer Credit Commissioner

Interpretations

Under provisions of Texas Finance Code §14.108, the consumer credit commissioner may issue interpretations of Subtitle A or B, Title 4, after approval of the interpretation by the finance commission. The provisions of Chapter 2001, Government Code, that relate to the adoption of an administrative rule do not apply to the issuance of an interpretation under this section.

The consumer credit commissioner has received the following request for an interpretation:

Request Number 2001-01. Request from Karen M. Neeley, of Long, Burner, Parks, McClellan & DeLargy regarding whether a loan transaction under Chapter 342 of the Finance Code may include the costs of a service contract. The critical inquiry is whether the charge for the service contract violates §342.502 relating to amounts authorized in a Chapter 342 loan transaction or whether a service contract is merely an additional good and service being acquired.

Interested parties may submit briefs and proposals pertaining to the issue under consideration to Leslie L. Pettijohn, Commissioner, Office of Consumer Credit Commissioner, 2601 North Lamar, Austin, Texas 78705, until August 20 , 2001.

TRD-200103845
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 5, 2001

♦ ♦ ♦

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 07/16/01 - 07/22/01 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 07/16/01 - 07/22/01 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-200103939
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 10, 2001

♦ ♦ ♦

Texas Department of Criminal Justice

Notice of Award

The Texas Department of Criminal Justice hereby gives notice of a Contract Award for the Corsicana Paving/Drainage Project, Requisition Number: 696-TY-1-B026.

The Contract was awarded to Onycha Industries, Contract Number: 696-TY-1-1-C0153, as a full award for a dollar amount of $261,545.

TRD-200103955
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: July 11, 2001

♦ ♦ ♦

Notice of Award

The Texas Department of Criminal Justice hereby gives notice of a Contract Award for the Crockett Road/Drainage Project, Requisition Number: 696-TY-1-B028.

The Contract was awarded to A.L. Helmcamp, Inc., Contract Number: 696-TY-1-1-C0154, as a full award for a dollar amount of $252,966.

TRD-200103956
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: July 11, 2001

♦ ♦ ♦

Notice of Bid Cancellation

The Texas Department of Criminal Justice hereby gives notice of a bid cancellation for the Sheffield Boot Camp Expansion, Requisition Number: 696-TY-1-B038.

TRD-200103958
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: July 11, 2001

♦ ♦ ♦

Notice of Contract Award

The Texas Department of Criminal Justice hereby gives notice of a Contract Award for the Corsicana Roof Repair, Requisition Number: 696-TY-1-B027.

The Contract was awarded to McKinney & Moore, Contract Number: 696-TY-1-1-C0155, as a full award for a dollar amount of $131,900.

TRD-200103957
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: July 11, 2001

♦ ♦ ♦

Texas Commission for the Deaf and Hard of Hearing

Notice of Request for Proposals

The Texas Commission for the Deaf and Hard of Hearing announces a Request for Proposals (RFP) for services to eliminate communication barriers and to facilitate communication access for individuals who are deaf or hard of hearing. Funding is available for provision of the following services to the target populations: (1) Regional Specialist services to facilitate and coordinate the provision of accessible state and local services to persons who are deaf or hard of hearing of all ages in Health and Human Services Regions 1, 3 and 5; (2) Mentoring of interpreter interns to enable them to upgrade their level of skill and; (3) Training and outreach services to demonstrate equipment for the Specialized Telecommunications Assistance Program in Heath and Human Services Region 8; (4) Communication Access Services for Health and Human Services Region 2; and (5) Hard of Hearing services to expand or improve the quality of life of persons who are hard of hearing, late-deafened or oral deaf.

Note to Applicants: The estimated funding levels in the RFP does not bind TCDHH to make awards in any of these categories, or to any specific number of awards or funding levels.

Contact: Parties interested in submitting a proposal for any of the funding categories should contact the Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas 78711, (512) 407-3250 (Voice) or (512) 407-3251 (TTY), to obtain a complete copy of the RFP. The RFP is also available for pick-up at 4800 North Lamar, Suite 310, Austin, Texas 78756 on and after Friday, July 20, 2001, during normal business hours. The RFP is not available through fax. The RFP will also be available on the agency website at www.tcdhh.state.tx.us.

Closing Date: Proposals must be received in the Texas Commission for the Deaf and Hard of Hearing Office, 4800 North Lamar, Suite 310, Austin, Texas 78756 no later than 5 p.m. (CDT), on Friday, August 31, 2001. Proposals received after this time and date will not be considered.

Award Procedure: All proposals will be subject to evaluation by a review team using a scoring method based on the evaluation criteria set forth in the RFP. The review team will determine which proposals best meet the established criteria and will make selection recommendations for each category to the Executive Director, who will then make recommendations to the Commission. The Commission will make the final decision. Any applicant may be asked to clarify any information in their proposal and which may involve either written or oral presentations of requested information. The initial contract awards could start as early as October 1, 2001 with a renewal option of one additional 12 month award, for a potential 2 year project period. (The renewal option on Regional Specialist projects is for three 12 month awards, for a potential 4 year project period).

The Commission reserves the right to accept or reject any or all proposals submitted. The Texas Commission for the Deaf and Hard of Hearing is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits the Commission to pay for any costs incurred prior to the award of a contract. The anticipated schedule of events is as follows:

Issuance of RFP--July 20, 2001;

Proposals Due--August 31, 2001, 5 p.m. (CDT);

Maximum award amount per contract period and estimated number of awards

(1) Regional Specialist--$45,000--1 per region listed

(2) Mentoring--$10,000--up to 2

(3) Training and Outreach Services--$12,000--up to 2 for the region listed

(4) Communication Access Services--$4,500--up to 2 for the region listed

(5) Hard of Hearing Services--$12,000--1

TRD-200103950
David W. Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Filed: July 10, 2001

♦ ♦ ♦

Texas Education Agency

Correction of Error

The Texas Education Agency proposed new 19 TAC Chapter 61, concerning School Districts, Subchapter FF, Commissioner's Rules Concerning High School Diplomas for Certain Veterans. The proposed new section was published in the June 22, 2001, issue of the *Texas Register* (26 TexReg 4580). A corresponding graphic was also published in the Tables and Graphics section (26 TexReg 4752-4753). The agency's submission of the graphic contained the following error.

In §61.1061 on page 4753 of the graphic, question marks were used instead of bullets. Bullets should have been shown instead of question marks.

TRD-200103996

♦ ♦ ♦

Request for Applications Concerning Activities under IDEA-B, 2001-2003

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-01- 025 from school districts, public charter schools, or shared services arrangements of school districts or charter schools to carry out activities under the Individuals with Disabilities Education Act (IDEA), Part B, (20 U.S.C. 1411, et seq.). Education Service Centers in Texas are eligible to apply on behalf of one or more schools districts or charter schools.

Description. Under Public Law 106-554, School Repair and Renovation; Activities under IDEA-B; and Technology, §321(b)(3)(B), applicants requesting funds for Activities under IDEA, Part B, should focus on the needs of the local education agency for additional funds for a student whose individually allocable cost for expenses related to the IDEA substantially exceeds the state's average per-pupil expenditure of $7,769. The state average per-pupil expenditure is based on the 1998-1999 school year as prescribed in the Elementary and Secondary Education Act (ESEA) of 1965, §14101(2), [20 U.S.C. 8801(2)]. The term "substantially exceeds" is defined as twice the state average per-pupil expenditure (greater than $15,538).

Quarterly written progress and expenditure reports are required. This grant is reimbursed only at the end of the grant period or upon project completion. The reimbursable amount is the difference between the need and special education funds generated by the targeted student(s).

Dates of Project. Activities under IDEA-B will be implemented during the 2001-2002 and 2002-2003 school years. Applicants should plan for a starting date of no earlier than November 1, 2001, and an ending date of no later than June 30, 2003.

Project Amount. Funding for the Activities under IDEA-B grants will be provided for an undetermined number of projects. It is anticipated funding will be appropriated by the U.S. Congress on a one-time only basis. It is likely that continuation funding will not be provided. This project is funded 100% from School Repair and Renovation; Activities under IDEA-B; and Technology federal funds.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objective(s) and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-01-025 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and telephone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://www.tea.state.tx.us/grant/announcements/grants2.cgi for viewing and downloading.

Further Information. For clarifying information about the RFA, contact Carolyn Dietrich, Division of Special Education, TEA, (512) 463-9362.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA by 5:00 p.m. Central Time, Thursday, October 11, 2001, to be considered for funding.

TRD-200103987
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Filed: July 11, 2001

♦ ♦ ♦

Request for Applications Concerning Technology Activities in Connection with School Repair and Renovation, 2001-2003

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-01- 033 from school districts, public charter schools, or shared services arrangements of school districts or charter schools for technology activities that are carried out in connection with school repair and renovation. Education Service Centers in Texas are eligible to apply on behalf of one or more schools districts or charter schools.

Description. Under Public Law 106-554, School Repair and Renovation; Activities under IDEA-B; and Technology, §321(b)(3)(B), applicants requesting funds for Technology in Connection with School Repair and Renovation should focus on the needs of the local education agency for additional funds for: (i) wiring; (ii) acquiring hardware and software; (iii) acquiring connectivity linkages and resources; and (iv) acquiring microwave, fiber optics, cable, and satellite transmission

equipment in connection with school repair and renovation. Quarterly written progress and expenditure reports are required. These grants will be reimbursable through the web expenditure reporting system.

Dates of Project. Technology Activities in Connection with School Repair and Renovation will be implemented during the 2001-2002 and 2002-2003 school years. Applicants should plan for a starting date of no earlier than November 1, 2001, and an ending date of no later than June 30, 2003.

Project Amount. Funding for the technology grants will be provided for an undetermined number of projects. It is anticipated funding will be appropriated by the U.S. Congress on a one-time only basis. It is likely that continuation funding will not be provided. This project is funded 100% from School Repair and Renovation; Activities under IDEA-B; and Technology federal funds.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objective(s) and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-01-033 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and telephone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://www.tea.state.tx.us/grant/announcements/grants2.cgi for viewing and downloading.

Further Information. For clarifying information about the RFA or for information related to Technology Activities in Connection with School Repair and Renovation, contact Nancy Little, Division of Educational Technology, TEA, (512) 936-2264.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA by 5:00 p.m. Central Time, Tuesday, October 9, 2001, to be considered for funding.

TRD-200103986
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Filed: July 11,2001

♦ ♦ ♦

Texas Department of Health

Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Bedford	Dallas Cardiology Associates PA	L05448	Bedford	00	6/18/01
Lubbock	Radiation Oncology of the South Plains PA	L05418	Lubbock	00	6/20/01
Mt Pleasant	DX Imaging LTD	L05445	Mt Pleasant	00	6/26/01

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Abilene	Abilene Diagnostic Clinic PLLC	L05101	Abilene	07	6/28/01
Abilene	Hendrick Medical Center	L02433	Abilene	71	6/26/01
Amarillo	Baptist St Anthony's Health System	L01259	Amarillo	63	6/20/01
Amarillo	Northwest Texas Healthcare System Inc	L02054	Amarillo	62	6/20/01
Amarillo	Northwest Texas Healthcare System Inc.	L02054	Amarillo	63	6/29/01
Austin	Heart Hospital IV LP	L05428	Austin	02	6/25/01
Austin	Heart Hospital IV LP	L05428	Austin	01	6/18/01
Baytown	Baytown Cardiology Associates	L05040	Baytown	03	6/21/01
Bonham	Northeast Medical Center LP	L03331	Bonham	20	6/20/01
Corpus Christi	Coastal Cardiology Association	L04754	Corpus Christi	16	6/22/01
Dallas	Texas Cardiology Consultants	L04997	Dallas	21	6/21/01
Euless	Cor Specialty Associates of North Texas	L05062	Euless	12	6/22/01
Flower Mound	Imaging Specialist Group LTD	L05407	Flower Mound	02	6/28/01
Garland	Baylor Medical Center at Garland	L01565	Garland	29	6/28/01
Houston	Valentina Ugolini MD	L05093	Houston	05	6/28/01
Houston	Valentina Ugolini MD	L05093	Houston	03	6/22/01
Houston	CHCA West Houston LP	L02224	Houston	54	6/25/01
Houston	Valentina Ugolini MD	L05093	Houston	04	6/26/01
Midland	West Texas Medical Center	L04729	Midland	10	6/29/01
N Richland Hills	Cor Specialty Associates of North Texas PA	L05399	N Richland Hills	01	6/22/01
Pasadena	Ethyl Corporation	L05094	Pasadena	02	6/26/01
Port Arthur	Gulf Coast Cardiology Group PA	L05393	Port Arthur	04	6/18/01
Richardson	Richardson Hospital Authority	L02336	Richardson	35	6/18/01
Richardson	Raytheon Company	L04096	Richardson	20	6/26/01
S Padre Island	Medical Health Physics	L04092	S Padre Island	14	6/26/01
San Antonio	Methodist Healthcare System of San Antonio	L00594	San Antonio	157	6/28/01
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	110	6/29/01
San Antonio	South Texas Radiology Imaging Centers	L03518	San Antonio	27	6/29/01
Stafford	Ramco Laboratories	L02172	Stafford	15	6/28/01
Temple	Scott & White Memorial Hosp & Scott Sherwood & Brindley Foundation	L00331	Temple	62	6/21/01
Texas City	Union Carbide Corporation	L00495	Texas City	50	6/29/01
The Woodlands	Aronex Pharmaceuticals Inc	L04754	The Woodlands	07	6/27/01
Throughout Tx	City of Amarillo Department of Engineering	L02320	Amarillo	16	6/20/01
Throughout Tx	Xcel Energy Southwestern Public Service	L05238	Amarillo	02	6/25/01

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Throughout Tx	X-Ray Inspection Inc.	L05275	Beaumont	12	6/20/01
Throughout Tx	X-Ray Inspection Inc.	L05275	Beaumont	13	6/29/01
Throughout Tx	HP Consulting	L05035	Bellville	04	6/29/01
Throughout Tx	Panhandle N D T & Inspection Inc.	L02627	Borger	45	6/28/01
Throughout Tx	Century Inspection Inc.	L00062	Dallas	93	6/21/01
Throughout Tx	Professional Service Industries Inc.	L04944	Harlingen	06	6/28/01
Throughout Tx	Cooperheat-MQS Inc.	L00087	Houston	88	6/20/01
Throughout Tx	ICO Worldwide Inc.	L01884	Houston	33	6/20/01
Throughout Tx	Longview Inspection Inc.	L01774	Houston	166	6/20/01
Throughout Tx	D-Arrow Inspection Inc	L03816	Houston	66	6/25/01
Throughout Tx	Professional Service Industries Inc	L04942	Houston	11	6/26/01
Throughout Tx	Stork Southwestern Laboratories Inc.	L00299	Houston	111	6/26/01
Throughout Tx	Petroleum Industry Inspectors	L04081	Houston	74	6/29/01
Throughout Tx	Southern Services Inc.	L05270	Lake Jackson	14	6/29/01
Throughout Tx	High Tech Testing Service Inc.	L05021	Longview	33	6/29/01
Throughout Tx	Granite Construction Co Lubbock Branch Area	L04836	Lubbock	04	6/29/01
Throughout Tx	Black Warrior Wireline Corp	L04473	Odessa	15	6/26/01
Throughout Tx	Desert Industrial X-Ray LP	L04590	Odessa	30	6/28/01
Throughout Tx	Gulf Coast Weld Spec	L05426	Orange	04	6/28/01
Throughout Tx	Conam Inspection	L05010	Pasadena	37	6/26/01
Throughout Tx	Reece Albert Inc.	L02296	San Angelo	13	6/28/01
Throughout Tx	Arias & Kezar Inc.	L04964	San Antonio	15	6/21/01
Throughout Tx	Alpha Process Sales Inc	L03305	Sugar Land	10	6/26/01
Victoria	Citizens Medical Center	L01544	Victoria	19	6/20/01
Victoria	Victoria of Texas LP	L01630	Victoria	35	6/25/01

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Houston	Tenet Healthcare LTD	L02432	Houston	29	6/25/01
Houston	Richmond Imaging Affiliates LTD	L04342	Houston	40	6/26/01
Mineral Wells	M W Inspection	L04494	Mineral Wells	06	6/27/01
Mineral Wells	Palo Pinto General Hospital	L01732	Mineral Wells	26	6/28/01
Throughout Tx	Houston City of Dept of Health & Human Services	L00149	Houston	66	6/28/01
Throughout Tx	Metco	L03018	Houston	113	6/20/01

LICENSE EXEMPTION ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Jewett	Nucor Steel Texas Division	L02504	Jewett		6/21/01

In issuing new licenses, amending and renewing existing licenses, or approving exemptions to Title 25 Texas Administrative Code (TAC) Chapter 289, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with 25 TAC Chapter 289 in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the new, amended, or renewed license (s) or the issuance of the exemption (s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A licensee, applicant, or person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200103846
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 5, 2001

♦ ♦ ♦

Notice of Request for Proposals for Human Immunodeficiency Virus (HIV) Administrative Agencies in Three Texas HIV Planning Areas

PURPOSE

Texas Department of Health (department) is requesting proposals for Ryan White Title II grant funding for HIV administration, planning and evaluation (APE) services within three HIV Planning Areas. The department hopes to select three administrative agencies (AA) to assist the department in providing administration, planning and evaluation of the following department grant programs:

(1) Title II of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 2000, as amended;

(2) HIV State Health and Social Services (State Services); and

(3) Housing Opportunities for Persons with AIDS (HOPWA).

The primary role of an administrative agency is to apply for and manage department funds and programs for the provision of HIV services within the planning area. An administrative agency is authorized to receive funds from the department and distribute them according to the service priorities established by the area planning body in its HIV care plan.

The entity selected to serve as an administrative agency in each planning area will also be required to coordinate the activities and functions of the area planning body and will receive additional department funding for those coordination activities. All applicants must be willing to coordinate the area planning body.

SERVICE AREAS

The service areas for this RFP are the HIV Service Delivery Areas (HSDA) included in the HIV Planning Areas below.

(1) PanWest Planning Area: includes Amarillo HSDA, Lubbock HSDA, and Permian Basin HSDA.

(2) Central Texas Planning Area: includes Temple-Killeen HSDA, Waco HSDA, Bryan-College Station HSDA, Austin HSDA and San Angelo HSDA; and the

(3) South Texas Planning Area: includes only the Laredo and Brownsville HSDAs.

ELIGIBLE APPLICANTS

Eligible applicants are public or private nonprofit organizations within the affected planning area. Agencies that have had state or federal contracts terminated within the last 24 months for deficiencies in fiscal or programmatic performance are not eligible to apply. An administrative agency may be a local or county health department, a community foundation, a public trust, a community-based organization, an AIDS services organization, or an incorporated nonprofit agency. To be eligible to receive funding, entities must demonstrate core administrative agency competencies as prescribed in the Request for Proposals (RFP).

AVAILABILITY OF FUNDS

It is expected that the initial contract will begin on or about April 1, 2002, and will be made for a twelve-month budget period. Continuation funding will be based on contractor performance and availability of federal funding. The specific dollar amount to be awarded to each applicant will depend upon the merit and scope of the proposed project. The funds to be provided through this RFP are not for direct

services, but are to assist the department in administering, planning for, and evaluating the services in the planning area. The department will subsequently allocate funds to the selected AA funds for health and social services through the State Health and Social Services grant, the HIV CARE Title II grant, and the HOPWA grant.

TO APPLY

After reviewing the RFP, entities that intend to apply under this RFP must submit a Letter of Intent as prescribed in the RFP. Proposals must be received by the department by 5:00 p.m., Central Daylight Saving Time, October 5, 2001. Interested parties may obtain a copy of the RFP by contacting Ms. Laura Ramos at 512/490-2525, by e-mail at laura.ramos@tdh.state.tx.us, or at the following website address: http://www.tdh.state.tx.us/hivstd/grants/default.htm. No copies of the RFP will be released prior to August 1, 2001. Please refer to requisition number #0024.

TRD-200103959
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 11, 2001

♦ ♦ ♦

Texas Health and Human Services Commission

Community Planning Forum and Public Hearing

The Health and Human Services Commission (HHSC), in collaboration with the Health and Human Services agencies and the South Plains Association of Governments, will conduct one of a series of statewide public hearings to receive public comment on the development of the *Health and Human Services Coordinated Strategic Plan* and to fulfill statutory local planning requirements. The public hearing is required under §531.022(d)(4), Government Code, and §531.036, Government Code, and is intended to produce the following outcomes: (1) Increase local involvement and participation in the planning process, (2) Provide feedback to local communities on statewide and regional progress made on health and human services goals and strategic priorities since the community forums in 1999, (3) Solicit input from the communities on the effectiveness of current health and human services efforts, (4) Update regional demographic information and needs profiles, (5) Assess local capacity to address the strategic priorities, and (6) Foster grass roots support for/build community coalitions to improve health and human service delivery in the area.

A community planning forum and public hearing will be conducted in Lubbock, Texas on July 31, 2001 at the UMC McInturff Conference Center, 602 Indiana Avenue, Lubbock, Texas. The planning forum is intended to provide the opportunity for public input and participation. Agency clients and consumers of health and human services, advocates, consumer advisors, local state agency representatives, local governmental and non-governmental representatives, service providers and other interested parties are encouraged to participate.

The planning forum will be held on July 31 from 9:00 a.m. to 3:00 p.m., Central Time. The morning session will provide state and regional progress reports, needs assessments and demographic information. Breakout group activities will be conducted for members of the community to discuss specific strategic priorities that significantly impact the Lubbock area. Discussion will focus on children's health insurance needs, access to long-term care for persons who are aging and persons with disabilities, prevention of delinquency and conduct disorders in children and adolescents, diabetes and health care issues in rural areas.

A public hearing to receive comment will begin at 1:30 p.m. Testimony and comments should focus on regional needs and suggestions for the most effective ways to deliver and coordinate services funded by the state. Written comments may be submitted to the Health and Human Services Commission until 5:00 p.m., Central Time, on August 7, 2001. Please address written comments to the attention of Colleen Edwards at HHSC, 4900 North Lamar Boulevard, 4th Floor, Austin, Texas 78751, fax (512) 424-6590 or e-mail: colleen.edwards@hhsc.state.tx.us.

Agenda

Morning Session

9:00--Welcome

9:15--Statewide Progress Report

9:45--Regional Presentations:

Access to Rural Health Care in West Texas

United Way Community Planning Model 2001

West Texas CHIP

Caring for the Aging in West Texas

11:00--Breakout Groups

12:15--Lunch

Afternoon Session

1:00--Breakout Groups Report Back

1:30--PUBLIC COMMENT SESSION

3:00--Final Thoughts and Acknowledgements

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Pete Lara at 1-806-762-8721 or e-mail: spagage@hub.ofthe.net by July 24, 2001 so that appropriate arrangements can be made.

TRD-200103843
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: July 5, 2001

♦ ♦ ♦

Community Planning Forum and Public Hearing

The Health and Human Services Commission (HHSC), in collaboration with the Health and Human Services agencies and United Way of San Antonio and Bexar County, will conduct one of a series of statewide public hearings to receive public comment on the development of the *Health and Human Services Coordinated Strategic Plan* and to fulfill statutory local planning requirements. The public hearing is required under §531.022(d)(4), Government Code, and §531.036, Government Code, and is intended to produce the following outcomes: (1) Increase local involvement and participation in the planning process, (2) Provide feedback to local communities on statewide and regional progress made on health and human services goals and strategic priorities since the community forums in 1999, (3) Solicit input from the communities on the effectiveness of current health and human services efforts, (4) Update regional demographic information and needs profiles, (5) Assess local capacity to address the strategic priorities, and (6) Foster grass roots support for/build community coalitions to improve health and human service delivery in the area.

A community planning forum and public hearing will be conducted in San Antonio, Texas on July 27, 2001 at the UTSA Downtown Campus, Buena Vista Theater, 501 West Durango, San Antonio, Texas. The planning forum is intended to provide the opportunity for public input and participation. Agency clients and consumers of health and human services, advocates, consumer advisors, local state agency representatives, local governmental and non-governmental representatives, service providers and other interested parties are encouraged to participate.

The planning forum will be held on July 27 from 9:00 a.m. to 4:30 p.m., Central Time. The morning session will provide state and regional progress reports, needs assessments, demographic information and an opportunity for public comment.

The public hearing to receive comment will begin at 11:15 a.m. Testimony and comments should focus on regional needs and suggestions for the most effective ways to deliver and coordinate services funded by the state. Written comments may be submitted to the Health and Human Services Commission until 5:00 p.m., Central Time, on August 3, 2001. Please address written comments to the attention of Colleen Edwards at HHSC, 4900 North Lamar Boulevard, 4th Floor, Austin, Texas 78751, fax (512) 424-6590 or e-mail: colleen.edwards@hhsc.state.tx.us.

The afternoon session will provide breakout group activities for members of the community to discuss specific strategic priorities that significantly impact the San Antonio area. Discussion will focus on children's health insurance needs, access to long-term care for persons who are aging and persons with disabilities, transportation, Texas 211 and information and referral, diabetes and another emerging health and human services issue to be identified during the forum.

Agenda

Morning Session

8:30--Registration

9:00--Welcome and purpose

9:05--Report back from previous forum

9:20--Statewide progress report on strategic priorities

9:45--Regional progress report on issues of regional interest

11:15--Public Comment Period

12:00--Lunch Break

Afternoon Session

12:45--Breakout group discussion

2:45--Breakout groups report back

3:45--Identify regional priorities and next steps

4:30--Adjourn

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Toni-Marie VanBuren of the Regional Planning Team, phone: (210) 352-7034 by July 24, so that appropriate arrangements can be made.

TRD-200103844
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: July 5, 2001

♦ ♦ ♦

Public Hearing on Proposed Nursing Facility Payment Rates for State Veterans Homes

The Texas Health and Human Services Commission (HHSC) and the Texas Department of Human Services (DHS) will conduct a joint public hearing to receive public comments on proposed nursing facility payment rates for state veterans homes operated by the Veterans Land Board of the State of Texas. These payment rates are proposed to be effective from July 28, 2001. The joint hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires public hearings on proposed payment rates. The public hearing will be held on August 7, 2001, at 8:30 a.m. in conference room 1430 of the Brown-Heatly Building at 4900 North Lamar, Austin, Texas. Written comments regarding payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Tony Arreola, DHS, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030. Express mail can be sent to Mr. Arreola at DHS, MC W-425, 701 West 51st Street, Austin, Texas 78751- 2312. Hand-delivered written comments addressed to Mr. Arreola will be accepted by the receptionist in the lobby of the John H. Winters Human Services Building at 701 West 51st Street, Austin, Texas. Alternatively, written comments may be sent via facsimile to Mr. Arreola at (512) 438-2165. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Tony Arreola, DHS, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, telephone number (512) 438-4817.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Tony Arreola, DHS, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, telephone number (512) 438-4817, by July 30, 2001, so that appropriate arrangements can be made.

TRD-200103962
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: July 11, 2001

♦ ♦ ♦

Public Hearing on Proposed Payment Rates for Nursing Facilities, Swing Beds, and Hospice-Nursing Facilities

The Texas Health and Human Services Commission (HHSC) and the Texas Department of Human Services (DHS) will conduct a joint public hearing to receive public comments on proposed payment rates for nursing facilities, swing beds, and hospice-nursing facilities operated by DHS. These payment rates are proposed to be effective September 1, 2001. The joint hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires public hearings on proposed payment rates. The public hearing will be held on August 7, 2001, at 9:30 a.m. in conference room 1430 of the Brown- Heatly Building at 4900 North Lamar, Austin, Texas. Written comments regarding payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Tony Arreola, DHS, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030. Express mail can be sent to Mr. Arreola at DHS, MC W-425, 701 West 51st Street, Austin, Texas 78751-2312. Hand- delivered written comments addressed to Mr. Arreola will be accepted by the receptionist in the lobby of the John H. Winters Human Services Building at 701 West 51st Street, Austin, Texas. Alternatively, written comments may be sent via facsimile to Mr. Arreola at (512) 438-2165. Interested parties may request to have

mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Tony Arreola, DHS, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, telephone number (512) 438-4817.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Tony Arreola, DHS, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, telephone number (512) 438-4817, by July 30, 2001, so that appropriate arrangements can be made.

TRD-200103961
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: July 11, 2001

♦ ♦ ♦

Texas Department of Human Services

Request for Proposal for Community Living Assistance and Support Services (CLASS) Case Management Services Statewide

Request for Proposal (RFP): The Texas Department of Human Services (DHS) is requesting proposals from providers for the delivery of case management services provided through the Community Living Assistance and Support Services (CLASS) program. To be eligible to contract with the department effective October 1, 2001, a case management agency must be selected in the RFP process, enrolled as a CLASS provider, and attend and complete mandatory CLASS provider agency training October 1-4, 2001.

Purpose: The purpose of this RFP is to meet the department's requirements for periodic reprocurement of CLASS providers and to offer participants a choice of providers.

Description of Services: A case management agency enrolls participants in the CLASS program and is the focal point for developing service plans, coordinating services, and tracking participants' progress. The case manager convenes the interdisciplinary team (IDT) that is responsible for developing the plan of care and assures that services are consistent with the needs and preferences of the individual participant. Case managers further assist in the identification and development of appropriate community resources, crisis intervention, advocacy, and safeguarding individual rights. The case manager works in a cooperative relationship with the direct services agency that delivers home and community-based services.

Geographic Area: The CLASS program provides services to approximately 1,458 individuals in the current 14 catchment areas, which comprise a total of 86 counties. It is anticipated that at least 1,800 individuals will be enrolled by August 31, 2002.

The current CLASS catchment areas are:

1. Bexar, Bandera, Comal, Guadalupe, Kendall, and Kerr.

2. Dallas, Denton, Kaufman, Collins, Rockwall, and Ellis.

3. El Paso.

4. Harris, Brazoria, Fort Bend, Galveston, and Montgomery.

5. Jefferson, Orange, Chambers, Hardin, and Liberty.

6. Lubbock, Crosby, Floyd, Hale, Hockley, Lamb, Terry, Lynn, and Garza.

7. Nueces, Jim Wells, Kleberg, San Patricio, Aransas, Bee, Live Oak, and Refugio.

8. Smith, Gregg, Rusk, Upshur, Wood, Van Zandt, Henderson, Harrison, and Anderson.

9. Tarrant, Hood, Johnson, Parker, and Wise.

10. Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Kenedy, Starr, Webb, Willacy, and Zapata.

11. Travis, Hays, Bastrop, Williamson, Blanco, and Caldwell.

12. Armstrong, Carson, Potter, and Randall.

13. Coke, Nolan, Taylor, Tom Green, Runnels, Mitchell, Scurry, and Sterling.

14. Ector, Midland, Martin, and Andrews.

Closing Date and Time: Proposals must be received by the department by 5:00 p.m. on Friday, August 31, 2001.

Contact Person for RFP: To obtain a Request for Proposal packet, please write Pat Beard, Program Consultant, CLASS Program, Texas Department of Human Services, 701 West 51st Street, Mail Code W-521, Austin, Texas 78751 or P.O. Box 149030, Mail Code W-521, Austin, Texas 78714-9030. Or you may fax a request to Pat Beard at (512) 438- 5135. Should you require additional information, please contact Ms. Beard at (512) 438-3680. The RFP packet will be available, Friday, July 20, 2001.

Bidder's Questions/Inquiries: Bidders must submit questions pertaining to the RFP and/or the CLASS program, in writing, to DHS to the attention of Pat Beard at the address or fax number above. All questions must be received by DHS by 5:00 p.m. on Friday, August 3, 2001.

Historically underutilized businesses, public or private, for profit or non-profit, with demonstrated knowledge, competence and qualifications in performing these services are encouraged to apply.

TRD-200103952
Paul Leche
General Counsel
Texas Department of Human Services
Filed: July 10, 2001

♦ ♦ ♦

Request for Proposal for Community Living Assistance and Support Services (CLASS) Direct Services Statewide

Request for Proposal (RFP): The Texas Department of Human Services (DHS) is requesting proposals from providers for the delivery of Medicaid home and community-based services provided through the Community Living Assistance and Support Services (CLASS) program. To be eligible to contract with the department effective October 1, 2001, a direct services agency must be licensed by the Texas Department of Human Services as a home and community support services agency (HCSSA) under the categories of licensed home health services and personal assistance services, selected in the RFP process, enrolled as a CLASS provider, and attend and complete mandatory CLASS provider agency training October 1-4, 2001.

Purpose: The purpose of this RFP is to meet the department's requirements for periodic reprocurement of CLASS providers and to offer participants a choice of providers.

Description of Services: A direct services agency is responsible for delivering the following services in accordance with the individual service plan: personal assistance services (PAS) and skills development training, supported employment, nursing services, physical therapy, occupational therapy, speech therapy, respite, psychology services, specialized therapies, adaptive aids, and minor home modifications. CLASS participants are also eligible for the full range of Medicaid

benefits. Direct services agency representatives participate in the assessment and care planning activities of the interdisciplinary team and work in a cooperative relationship with the case management agencies.

Bidders who are awarded a contract as a direct services agency will receive a one-time contract amendment offering to provide Vendor Fiscal Intermediary (VFI) Agency services. A VFI Agency provides fiscal intermediary services for program participants choosing to be the employer of their own employees for personal assistance services and respite service within the CLASS program and other DHS home and community-based programs as applicable.

Geographic Area: The CLASS program provides services to approximately 1,458 individuals in the current 14 CLASS catchment areas, which comprise a total of 86 counties. It is anticipated that at least 1,800 individuals will be enrolled by August 31, 2002.

The current CLASS catchment areas are:

1. Bexar, Bandera, Comal, Guadalupe, Kendall, and Kerr.

2. Dallas, Denton, Kaufman, Collins, Rockwall, and Ellis.

3. El Paso.

4. Harris, Brazoria, Fort Bend, Galveston, and, Montgomery.

5. Jefferson, Orange, Chambers, Hardin, and Liberty.

6. Lubbock, Crosby, Floyd, Hale, Hockley, Lamb, Terry, Lynn, and Garza.

7. Nueces, Jim Wells, Kleberg, San Patricio, Aransas, Bee, Live Oak, and Refugio.

8. Smith, Gregg, Rusk, Upshur, Wood, Van Zandt, Henderson, Harrison, and Anderson.

9. Tarrant, Hood, Johnson, Parker, and Wise.

10. Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Kenedy, Starr, Webb, Willacy, and Zapata.

11. Travis, Hays, Bastrop, Williamson, Blanco, and Caldwell.

12. Armstrong, Carson, Potter, and Randall.

13. Coke, Nolan, Taylor, Tom Green, Runnels, Mitchell, Scurry, and Sterling.

14. Ector, Midland, Martin, and Andrews.

Closing Date and Time: Proposals must be received by the department by 5:00 p.m. on Friday, August 31, 2001.

Contact Person for RFP: To obtain a Request for Proposal packet, please write Pat Beard, Program Consultant, CLASS Program, Texas Department of Human Services, 701 West 51st Street, Mail Code W-521, Austin, Texas 78751 or P.O. Box 149030, Mail Code W-521, Austin, Texas 78714-9030. Or you may fax your request to Pat Beard at (512) 438-5135. The RFP packet will be available, Friday, July 20, 2001. Should you require additional information, please contact Ms. Beard at (512) 438-3680.

Bidder's Questions/Inquiries: Bidders must submit questions pertaining to the RFP and/or the CLASS program, in writing, to DHS to the attention of Pat Beard, CLASS Program Consultant at the address or fax number above. All questions must be received by DHS by 5:00 p.m. on Friday, August 3, 2001.

Historically underutilized business, public or private, for profit or nonprofit, with demonstrated knowledge, competence and qualifications in performing these services are encouraged to apply.

TRD-200103951
Paul Leche
General Counsel
Texas Department of Human Services
Filed: July 10, 2001

♦ ♦ ♦

Texas Department of Insurance

Insurer Services

Application to change the name of THE YASUDA FIRE & MARINE INSURANCE COMPANY OF AMERICA to SOMPO JAPAN INSURANCE COMPANY OF AMERICA, a foreign fire and casualty company. The home office is in New York, New York.

Application to change the name of THE OHIO LIFE INSURANCE COMPANY to CHASE LIFE AND ANNUITY COMPANY, a foreign fire and casualty company. The home office is in Columbus, Ohio.

Application to change the name of MEMORIAL HERMANN AFFILIATED SERVICES, INC. to UNIVERSITY PLACE, a Continuing Care Retirement Community. The home office is in Houston, Texas.

Application for incorporation to the State of Texas by PACIFIC SPECIALTY LLOYD'S, a Lloyds/Reciprocal company. The home office is in Austin, Texas.

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-200103981
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: July 11, 2001

♦ ♦ ♦

Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by American International Insurance Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting for all classes, various flex %'s by coverage and territory: Bodily Injury (+40% to +84%), Property Damage (+44% to +90%), Medical Payments (+29% to +47%), Personal Injury Protection (+97% to +141%), UMBI/PD (+56%), Comprehensive (+81% to 121%), and Collision (+115% to +163%). This overall rate change is 24.8%.

Copies of the filing may be obtained by contacting George Russell, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 305-7468.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by August 6, 2001.

TRD-200103897

Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: July 9, 2001

♦ ♦ ♦

Notice of Hearing

The Commissioner of Insurance, at a public hearing under Docket No. 2489 on August 22, 2001, at 9:30 a.m., in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks adoption of amendments to the Fire Suppression Rating Schedule (FSRS) which would establish a new public protection classification, Class 8B, and adoption of conforming amendments to the Texas Personal Lines Manual and the Texas Statistical Plan for Residential Risks, and further seeks to delete outdated rate capping and previous key rate references in the Texas Personal Lines Manual, and to make a typographical correction to the Texas Addendum to the Fire Suppression Rating Schedule (Texas Addendum). Staff's petition (Ref. No. P-0701-07-I), was filed on July 9, 2001.

Staff's proposed adoption of amendments to the FSRS, the Texas Personal Lines Manual, the Texas Statistical Plan for Residential Risks, and the Texas Addendum will (1) revise the FSRS to establish the Class 8B Protection and set forth the criteria for eligibility for the new classification; (2) update the FSRS in its references to the new classification and re-number the rules referencing the Class 9 Protection; (3) conform various sections of the Texas Personal Lines Manual and the Texas Statistical Plan for Residential Risks consistent with the establishment of the new Class 8B classification; (4) delete outdated rate capping and previous key rate references in the Texas Personal Lines Manual since the public protection classification system has been in effect long enough that the use of rate capping factors are no longer needed in property rating for insurance; and (5) make a typographical correction to the Texas Addendum by adding a percentage symbol (%) to the denominator in the formula for the calculation of the Texas Addendum Credit.

A copy of the petition, including exhibits with the full text of the proposed amendments to the FSRS, the Texas Personal Lines Manual, the Texas Statistical Plan for Residential Risks, and the Texas Addendum is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6326; refer to (Ref. No. P-0701-07-I).

To be considered, all comments on the proposed changes must be submitted in writing no later than 5 p.m. on August 20, 2001, to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted simultaneously to G. Mike Davis, State Fire Marshal, Mail Code 112-FM, Texas Department of Insurance, P.O. Box 149221, Austin, Texas 78714-9221.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

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

TRD-200103928
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: July 9, 2001

♦ ♦ ♦

Third Party Administrator

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application for incorporation in Texas of Allied Claims Solutions, LLC, a domestic third party administrator. The home office is Dallas, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-200103841
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: July 3, 2001

♦ ♦ ♦

Third Party Administrator Applications

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application for admission to Texas of Spectera, Inc., a foreign third party administrator. The home office is Baltimore, Maryland.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-200103949
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: July 10, 2001

♦ ♦ ♦

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of Southwestern Administrative Planners, L.L.C., a domestic third party administrator. The home office is San Antonio, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-200103982
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: July 11, 2001

♦ ♦ ♦

Texas Lottery Commission

Instant Game No. 208 "BINGO"

1.0 Name and Style of Game.

A. The name of Instant Game No. 208 is "BINGO". The play style is "bingo".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 208 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 208.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, and FREE.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows: Table 1 of this section.

Table 1
Figure 1:16 TAC GAME NO. 208 – 1.2D

PLAY SYMBOL	CAPTION
B01	
B02	
B03	
B04	
B05	
B06	
B07	
B08	
B09	
B10	
B11	
B12	
B13	
B14	
B15	
I16	
I17	
I18	
I19	
I20	
I21	
I22	
I23	
I24	
I25	
I26	
I27	
I28	
I29	
I30	
N31	
N32	
N33	

N34	
N35	
N36	
N37	
N38	
N39	
N40	
N41	
N42	
N43	
N44	
N45	
G46	
G47	
G48	
G49	
G50	
G51	
G52	
G53	
G54	
G55	
G56	
G57	
G58	
G59	
G60	
O61	
O62	
O63	
O64	
O65	
O66	
O67	

O68	
O69	
O70	
O71	
O72	
O73	
O74	
O75	
01	
02	
03	
04	
05	
06	
07	
08	
09	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	

27	
28	
29	
30	
31	
32	
33	
34	
35	
36	
37	
38	
39	
40	
41	
42	
43	
44	
45	
46	
47	
48	
49	
50	
51	
52	
53	
54	
55	
56	
57	
58	
59	
60	

61	
62	
63	
64	
65	
66	
67	
68	
69	
70	
71	
72	
73	
74	
75	
FREE	

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are: Table 2 of this section.

Table 2
Figure 2:16 TAC GAME NO. 208 – 1.2E

CODE	PRIZE
TWO	$2.00
THR	$3.00
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $3.00, $5.00, $10.00, $15.00, or $20.00.

H. Mid-Tier Prize - A prize of $30.00, $50.00, $100, or $500.

I. High-Tier Prize - A prize of $1,000, $25,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A twenty-two (22) digit number consisting of the three (3) digit game number (208), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 124 within each pack. The format will be: 208-0000001-000.

L. Pack - A pack of "BINGO" Instant Game tickets contain 125 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 000 will be shown on the front of the pack; the back of ticket 124 will be revealed on the back of the pack. Every other book will reverse i.e., the back of ticket 000 will be shown on the front of the pack and the front of ticket 124 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BINGO" Instant Game No. 208 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BINGO" Instant Game is determined once the latex on the ticket is scratched off to expose 130 (one hundred thirty) play symbols. The player must scratch off the "CALLER'S CARD" area to reveal (twenty-five) 25 Bingo Numbers and five (5) Bonus Numbers. The player must then mark all the Bingo Numbers on Cards 1 through 4 that match the Caller's Card. Each card has a corresponding prize box. If the player matches all bingo numbers in a complete horizontal, vertical, or diagonal line in a single card the player will win $2 in Card 1, $3 in Card 2, $5 in Card 3, or $10 in Card 4. If the player matches all bingo numbers in all four (4) corners in a single card the player will win $10 in Card 1, $20 in Card 2, $50 in Card 3, or $100 in Card 4. If the player matches all bingo numbers to make a complete "X" in a single card the player will win $100 in Card 1, $500 in Card 2, $1,000 in Card 3 or $25,000 in Card 4.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 130 (one hundred thirty) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 130 (one hundred thirty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 130 (one hundred thirty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 130 (one hundred thirty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A ticket can win up to four (4) times.

B. Adjacent ticket in a pack will not have identical patterns.

C. There will never be more than one (1) win on a single Bingo Card.

D. No duplicate numbers will appear on the Caller's Card.

E. No duplicate numbers will appear on each individual Player's Card.

F. Each Player's Card on the same ticket must be unique.

2.3 Procedure for Claiming Prizes.

A. To claim a "BINGO" Instant Game prize of $2.00, $3.00, $5.00, $10.00, $15.00, $20.00, $30.00, $50.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $30.00, $50.00, $100, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "BINGO" Instant Game prize of $1,000 or $25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BINGO" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "BINGO" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "BINGO" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 30,149,250 tickets in the Instant Game No. 208. The approximate number and value of prizes in the game are as follows: Table 3 of this section.

Table 3

Figure 3:16 TAC GAME NO. 208 – 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2.00	3,195,702	9.43
$3.00	2,532,306	11.91
$5.00	904,404	33.34
$10.00	361,900	83.31
$15.00	180,854	166.70
$20.00	301,534	99.99
$30.00	64,173	469.81
$50.00	43,888	686.96
$100	27,612	1,091.89
$500	1,883	16,011.29
$1,000	78	386,528.85
$25,000	14	2,153,517.86

*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.96. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 208 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 208, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200103883
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 6, 2001

♦ ♦ ♦

Instant Game No. 209 "Cash Explosion"

1.0 Name and Style of Game.

A. The name of Instant Game No. 209 is "CASH EXPLOSION". The play style is a "match three (3) of nine (9) with a doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 209 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 209.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: $1.00, $2.00, $4.00, $8.00, $10.00, $20.00, $40.00, $50.00, $80.00, $100, $200, $1,000, and FIRECRACKER.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows: Table 1 of this section.

Table 1
Figure 1:16 TAC GAME NO. 209 – 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$8.00	EIGHT$
$10.00	TEN$
$20.00	TWENTY
$40.00	FORTY
$50.00	FIFTY
$80.00	EIGHTY
$100	ONE HUND
$200	TWO HUND
$1,000	ONE THOU
FIRECRACKER SYMBOL	FIRECRACKER

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are: Table 2 of this section.

Table 2
Figure 2:16 TAC GAME NO. 209 – 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
EGT	$8.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $8.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $40.00, $50.00, $80.00, $100, or $200.

I. High-Tier Prize - A prize of $1,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A twenty-two (22) digit number consisting of the three (3) digit game number (209), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 209-0000001-000.

L. Pack - A pack of "CASH EXPLOSION" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 000-004 will be on the top page. Tickets 005-009 will be on the next page and so forth and ticket 245-249 will be on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number through the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CASH EXPLOSION" Instant Game No. 209 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "CASH EXPLOSION" Instant Game is determined once the latex on the ticket is scratched off to expose nine (9) play symbols. If the player finds three (3) like amounts, the player will win that amount. If the player finds two (2) like amounts and a FIRECRACKER symbol, the player doubles that amount. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly nine (9) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly nine (9) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the nine (9) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the nine (9) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. No ticket will have four (4) or more like play symbols on a ticket.

C. The Doubler Symbol will never appear on a ticket which contains three (3) like play symbols.

D. There will be no more than one (1) Doubler Symbol on a ticket .

E. No more than one (1) pair of like play symbols will appear on a ticket containing a Doubler Symbol.

F. No more than two (2) pairs of like play symbols will appear on a ticket which does not contain a Doubler Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "CASH EXPLOSION" Instant Game prize of $1.00, $2.00, $4.00, $8.00, $10.00, $20.00, $40.00, $50.00, $80.00, $100, or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $40.00, $50.00, $80.00, $100, or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "CASH EXPLOSION" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASH EXPLOSION" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "CASH EXPLOSION" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "CASH EXPLOSION" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,322,750 tickets in the Instant Game No. 209. The approximate number and value of prizes in the game are as follows: Table 3 of this section.

Table 3
Figure 3:16 TAC GAME NO. 209 – 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1.00	1,654,870	9.26
$2.00	1,225,811	12.50
$4.00	367,751	41.67
$8.00	122,577	125.01
$10.00	30,643	500.04
$20.00	30,648	499.96
$40.00	22,307	686.90
$50.00	6,388	2,398.68
$80.00	2,790	5,492.03
$100	1,172	13,074.02
$200	643	23,830.09
$1,000	28	547,241.07

*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.42. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

♦ ♦ ♦

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 209 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 209, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200103881
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 6, 2001

Instant Game No. 241 "Texas BBQ Bucks"

1.0 Name and Style of Game.

A. The name of Instant Game No. 241 is "TEXAS BBQ BUCKS". The play style is a "match three (3) of nine (9) with a doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 241 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 241.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols

are: $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $500, $1,000, and DOUBLE DOLLAR SIGNS.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows: Table 1 of this section.

Table 1
Figure 1:16 TAC GAME NO. 241 – 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
DOUBLE DOLLAR SIGN	DOUBLE

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are: Table 2 of this section.

Table 2
Figure 2:16 TAC GAME NO. 241 – 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $5.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $40.00, $50.00, $100, or $500.

I. High-Tier Prize - A prize of $1,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A twenty-two (22) digit number consisting of the three (3) digit game number (241), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 241-0000001-000.

L. Pack - A pack of "TEXAS BBQ BUCKS" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 000-004 will be on the top page. Tickets 005-009 will be on the next page and so forth and ticket 245-249 will be on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number through the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TEXAS BBQ BUCKS" Instant Game No. 241 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "TEXAS BBQ BUCKS" Instant Game is determined once the latex on the ticket is scratched off to expose nine (9) play symbols. If the player finds three (3) like amounts, the player will win that amount. If the player finds two (2) like amounts and a DOUBLE DOLLAR SIGN symbol, the player doubles that amount. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly nine (9) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly nine (9) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the nine (9) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the nine (9) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. The Doubler Symbol will never appear on a ticket which contains three (3) like play symbols.

C. No more than one (1) Doubler Symbol on a ticket .

D. No more than one (1) pair of like play symbols will appear on a ticket containing a Doubler Symbol.

E. No more than two (2) pairs of like play symbols will appear on a ticket which does not contain Doubler Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS BBQ BUCKS" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $50.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $40.00, $50.00, $100, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "TEXAS BBQ BUCKS" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TEXAS BBQ BUCKS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "TEXAS BBQ BUCKS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "TEXAS BBQ BUCKS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,205,250 tickets in the Instant Game No. 241. The approximate number and value of prizes in the game are as follows: Table 3 of this section.

Table 3
Figure 3:16 TAC GAME NO. 241 – 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1.00	2,020,371	10.00
$2.00	1,293,326	15.62
$4.00	404,026	50.01
$5.00	161,732	124.93
$10.00	161,581	125.05
$20.00	40,423	499.85
$40.00	25,308	798.37
$50.00	9,923	2,036.20
$100	5,039	4,009.77
$500	839	24,082.54
$1,000	122	165,616.80

*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.90. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 241 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 241, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200103884
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 6, 2001

♦ ♦ ♦

Instant Game No. 242 "7-11-21"

1.0 Name and Style of Game.

A. The name of Instant Game No. 242 is "7-11-21". The play style is "add up".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 242 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 242.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, $1.00, $2.00, $5.00, $10.00, $20.00, $50.00, $100, and $5,000.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows: Table 1 of this section.

Table 1
Figure 1:16 TAC GAME NO. 242 – 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
$1.00	ONE$
$2.00	TWO$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$5,000	FIV THOU

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are: Table 2 of this section.

Table 2
Figure 2:16 TAC GAME NO. 242 – 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
SIX	$6.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $6.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100, or $300.

I. High-Tier Prize - A prize of $5,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A twenty-two (22) digit number consisting of the three (3) digit game number (242), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 242-0000001-000.

L. Pack - A pack of "7-11-21" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 000-004 will be on the top page. Tickets 005-009 will be on the next page and so forth and ticket 245-249 will be on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number through the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "7-11-21" Instant Game No. 242 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "7-11-21" Instant Game is determined once the latex on the ticket is scratched off to expose 12 (twelve) play symbols. The player must add all three (3) numbers for each game. If the total is seven (7), 11 (eleven), or 21 (twenty one) in a single game, the player will win the prize shown for that game. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 12 (twelve) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 12 (twelve) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 12 (twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 12 (twelve) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the

Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning prize symbols will appear on a ticket.

C. No duplicate non-winning games (in any order) will appear on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "7-11-21" Instant Game prize of $1.00, $2.00, $4.00, $6.00, $10.00, $20.00, $50.00, $100, or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100, or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "7-11-21" Instant Game prize of $5,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "7-11-21" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "7-11-21" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "7-11-21" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than

one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,757,750 tickets in the Instant Game No. 242. The approximate number and value of prizes in the game are as follows: Table 3 of this section.

Table 3
Figure 3:16 TAC GAME NO. 242 – 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1.00	2,490,990	8.33
$2.00	1,245,627	16.66
$4.00	248,876	83.41
$6.00	83,130	249.70
$10.00	165,793	125.20
$20.00	83,160	249.61
$50.00	20,765	999.65
$100	8,853	2,344.71
$300	1,736	11,957.23
$5,000	43	482,738.37

*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.77. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 242 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 242, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200103882
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 6, 2001

♦ ♦ ♦

Texas Natural Resource Conservation Commission

Enforcement Orders

An order was entered regarding BIOTEX ENVIRONMENTAL CORPORATION AND TERI HADA MATHIS, Docket No. 1999-0061-MLM-E on June 26, 2001 assessing $6,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting BOOKER HARRISON, Staff Attorney at (512)239-4113, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding CLAUDE BROWN DBA OUTLAW SERVICES, Docket No. 1999-1088-AIR-E on June 25, 2001 assessing $3,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting VICTOR SIMONDS, Staff Attorney at (512)239-6201, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BASELL USA, INC., Docket No. 2000-1214- PWS-E on June 25, 2001 assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting SHAWN STEWART, Enforcement Coordinator at (512)239-6684, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GEORGE COULAM DBA RENFAIRE WATER, Docket No. 2000-1348-PWS-E on June 25, 2001 assessing $438 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SHAWN STEWART, Enforcement Coordinator at (512)239-6684, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AQUASOURCE UTILITY, INC. BUFFALO CREEK STP FACILITY, Docket No. 2000-1173-MWD-E on June 25, 2001 assessing $4,800 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 AQUASOURCE, INC. CREEKSIDE UTILITIES FACILITY, Docket No. 2000-1330-MWD-E on June 25, 2001 assessing $6,000 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 CIRCLE BAR TRUCK CORRAL, INCORPORATED, Docket No. 2000-1155-IWD-E on June 25, 2001 assessing $7,000 in administrative penalties with $1,400 deferred.

Information concerning any aspect of this order may be obtained by contacting MARK NEWMAN, Enforcement Coordinator at (915)655-9479, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CYNDIE PARK II WATER SUPPLY CORPORATION, Docket No. 2000-1077-PWS-E on June 25, 2001 assessing $1,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting AUDRA BAUMGARTNER, Enforcement Coordinator at (361)825-3312, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FLORIDA GAS TRANSMISSION COMPANY, Docket No. 2000-0428-AIR-E on June 25, 2001 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting TRINA LEWISON, Enforcement Coordinator at (713)767-3607, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CECIL GREENE DBA CECIL GREENE PLUMBING, Docket No. 2000-1119-SLG-E on June 25, 2001 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting ELNORA MOSES, Enforcement Coordinator at (903)535-5129, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 127, Docket No. 2000-0898-MWD-E on June 25, 2001 assessing $22,500 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 HOG CREEK WATER SUPPLY CORPORATION, Docket No. 2000-1194-PWS-E on June 25, 2001 assessing $1,488 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JAMES JACKSON, Enforcement Coordinator at (254)751-0335, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LONE STAR BEEF PROCESSORS, L.P., Docket No. 2000-1156-IWD-E on June 25, 2001 assessing $5,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting MARK NEWMAN, Enforcement Coordinator at (915)655-9479, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MOUNTAIN BREEZE, L.L.C. DBA MOUNTAIN BREEZE CAMPGROUND, Docket No. 2000-1215-PWS-E on June 25, 2001 assessing $625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting ELVIA MASKE, Enforcement Coordinator at (512)239-0789, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RANDY FOSTER DBA PALEX, Docket No. 2000-1328-AIR-E on June 25, 2001 assessing $4,375 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 THOMAS INVESTMENTS, INC. DBA RICHMOND CLEANERS, Docket No. 2000-0619-IHW-E on June 25, 2001 assessing $6,000 in administrative penalties with $5,400 deferred.

Information concerning any aspect of this order may be obtained by contacting STEVEN LOPEZ, Enforcement Coordinator at (512)239-1896, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding YOUNG KIM DBA S & K FOOD MART, Docket No. 2000-0802-PST-E on June 25, 2001 assessing $3,600 in administrative penalties with $720 deferred.

Information concerning any aspect of this order may be obtained by contacting JORGE IBARRA, Enforcement Coordinator at (817)469-6750, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SOUTHWEST POWDER COATINGS, INC., Docket No. 2000-0980-IHW-E on June 25, 2001 assessing $7,500 in administrative penalties with $6,900 deferred.

Information concerning any aspect of this order may be obtained by contacting MICHAEL DE LA CRUZ, Enforcement Coordinator at (512)239-0259, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JAMES KIM DBA TIMES MARKET # 9, Docket No. 2000-1131-PST-E on June 25, 2001 assessing $9,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting AUDRA BAUMGARTNER, Enforcement Coordinator at (361)825-3312, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WILLIAMS TERMINALS HOLDINGS LP & AMERADA HESS CORPORATION, Docket No. 2000-1116-AIR-E on June 25, 2001 assessing $103,125 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 AA FOUNDRIES INC, Docket No. 2000-1050- IHW-E on June 25, 2001 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting MALCOLM FERRIS, Enforcement Coordinator at (210)403-4061, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF AUSTIN, Docket No. 2000-0761- EAQ-E on June 25, 2001 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting LAWRENCE KING, Enforcement Coordinator at (512)339-2929, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DEWALCH TECHNOLOGIES, INC., Docket No. 2000-0824-MLM-E on June 25, 2001 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting JOSEPH DALEY, Enforcement Coordinator at (512)239-3308, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding F & W FORESTRY SERVICES INC, AND NEW FORESTRY, LLC, Docket No. 2000-0096-AIR-E on June 25, 2001 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting FAYE LIU, Enforcement Coordinator at (713)767-3726, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GOLDENGATE INVESTMENT COMPANY, INC. AND IMTIAZ AHMAD MIAN DBA NORTHGATE TEXACO MART, Docket No. 2000-0833-PST-E on June 27, 2001 assessing $6,250 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 CITY OF GOREE, Docket No. 2000-1331- MWD-E on June 25, 2001 assessing $2,000 in administrative penalties with $400 deferred.

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 ORVAL HALL EXCAVATING COMPANY, Docket No. 2000-1301-AIR-E on June 25, 2001 assessing $1,800 in administrative penalties with $360 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 POLK COUNTY, Docket No. 2000-0918-MSW- E on June 25, 2001 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512)239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UNITED STATES DEPARTMENT OF ENERGY, Docket No. 2000-0710-IHW-E on June 25, 2001 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JOHN SUMNER, Staff Attorney at (915)620-6118, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding RUBEN ESCOBEDO DBA R & R WELDING, Docket No. 2000-0510-AIR-E on June 25, 2001 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JAMES BIGGINS, Staff Attorney at (210)403-4017, Enforcement Coordinator at , Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding ROGER CHAMBERS DBA ROGER'S AUTO SALVAGE YARD, Docket No. 2000-0517-MSW-E on June 25, 2001 assessing $7,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting ELISA ROBERTS, Staff Attorney at (817)588-5877, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding DOUGLAS BOWSER DBA BOWSER'S AUTO BODY SALES, Docket No. 2000-0110-AIR-E on June 25, 2001 assessing $6,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JAMES BIGGINS, Staff Attorney at (210)403-4017, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding BOBBY ARMSTRONG, Docket No. 1999-1339- OSI-E on June 25, 2001 assessing $1,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting ELISA ROBERTS, Staff Attorney at (817)588-5877, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KNOB HILL WATER SUPPLY CORPORATION, Docket No. 2000-0527-PWS-E on June 25, 2001 assessing $2,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting ELISA ROBERTS, Staff Attorney at (817)588-5877, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DEGUSSA CORPORATION, Docket No. 2000- 1002-AIR-E on June 25, 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 BP AMOCO CHEMICAL COMPANY, Docket No. 2000-1174-AIR-E on June 25, 2001 assessing $22,100 in administrative penalties with $4,420 deferred.

Information concerning any aspect of this order may be obtained by contacting MIRIAM HALL, Enforcement Coordinator at (512)239-1044, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF CENTERVILLE, Docket No. 2000- 1001-MWD-E on June 25, 2001 assessing $4,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JOHN MEAD, Enforcement Coordinator at (512)239-6010, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF FLORENCE, Docket No. 2000-0964- MWD-E on June 25, 2001 assessing $4,000 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 JOE HAMILTON DBA KEG KORNER, Docket No. 1999-0443-PST-E on June 25, 2001 assessing $13,500 in administrative penalties with $12,900 deferred.

Information concerning any aspect of this order may be obtained by contacting ELISA ROBERTS, Staff Attorney at (817)588-5877, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding ALYNA, INC., Docket No. 1999-1221-PST-E on June 25, 2001 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JIM BIGGINS, Staff Attorney at (210)403-4017, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF CANTON, Docket No. 2000-0875- PWS-E on June 25, 2001 assessing $2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512)239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHEVRON MART, INC., Docket No. 2000- 1228-PWS-E on June 25, 2001 assessing $1,250 in administrative penalties with $250 deferred.

Information concerning any aspect of this order may be obtained by contacting KIMBERLY MCGUIRE, Enforcement Coordinator at (512)239-4761, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200103838
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: July 3, 2001

♦ ♦ ♦

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

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 20, 2001**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 20, 2001**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: Claudio Barrera dba Barrera Backhoe Service; DOCKET NUMBER: 2001- 0179-OSI-E; IDENTIFIER: Enforcement Identification Number 15703; LOCATION: Ben Bolt, Jim Wells County, Texas; TYPE OF FACILITY: on-site sewage; RULE VIOLATED: 30 TAC §285.50(b) and (c) and the Code, §366.071, by failing to have a valid registration; the Code, §366.051(c), by beginning the installation without the property owner providing proof of a permit and approved plan; and 30 TAC §§285.3(a)(1)(2), 285.30, 285.91, and 366.004, by failing to design and install the on-site sewage facility with the standards and regulations; PENALTY: $700; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(2) COMPANY: Baylor Water Supply Corporation; DOCKET NUMBER: 2001-0158-WTR-E; IDENTIFIER: Public Water Supply (PWS) Number 0120004; LOCATION: Seymour, Baylor County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(r), by failing to provide 35 pounds per square inch (psi) water line pressure in the distribution system; 30 TAC §290.45(b)(1)(D)(iv), by failing to provide pressure maintenance facilities of 20 gallons per connection pressure tank capacity or 100 gallons per connection elevated storage capacity; and 30 TAC §290.43(c)(3), by failing to provide a overflow discharge pipe on the water storage facilities; PENALTY: $500; ENFORCEMENT COORDINATOR: George Ortiz, (915) 698-9674; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(3) COMPANY: Jorge Bayona dba C & J Auto Wholesale; DOCKET NUMBER: 2001-0243- AIR-E; IDENTIFIER: Air Account Number EE-1726-G; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: used car dealership; RULE VIOLATED: 30 TAC §114.20(c)(1) and the Code, §382.085(b), by offering for sale a vehicle with a missing catalytic converter; PENALTY: $300; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(4) COMPANY: CMS Taurus Field Services, L.P.; DOCKET NUMBER: 2000-1040-AIR-E; IDENTIFIER: Air Account Number FD-0003-I; LOCATION: Hamlin, Fisher County, Texas; TYPE OF FACILITY: natural gas processing; RULE VIOLATED: 30 TAC §122.146(1) and the Code, §382.085(b), by failing to certify compliance with the Title V Permit O-00958; PENALTY: $5,000; ENFORCEMENT COORDINATOR: George Ortiz, (915) 698-9674; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(5) COMPANY: Gores Inc. dba Gore Brothers Dairy #2 and #3; DOCKET NUMBER: 2000- 1247-MWD-E; IDENTIFIER: Enforcement Identification Number 10455; LOCATION: Comanche, Comanche County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.33 and the Code, §26.121, by failing to obtain a Texas Pollutant Discharge Elimination System (TPDES) permit and continuing to operate; PENALTY: $4,800; ENFORCEMENT COORDINATOR: Michelle Harris, (512) 239-0492; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(6) COMPANY: Gymnastics USA, Inc.; DOCKET NUMBER: 2001-0333-PWS-E; IDENTIFIER: PWS Number 1012358; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public drinking water; RULE VIOLATED: 30 TAC §290.120(b) and (c) (now 30 TAC §290.117(b) and (c)(5)), by failing to complete and submit a sample site selection form and collect and submit two rounds of initial lead and copper tap samples; PENALTY: $625; ENFORCEMENT COORDINATOR: Michelle Harris, (512) 239-0492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Mr. Mohammed N. Qureshi dba HAH Gas Mart; DOCKET NUMBER: 2001- 00004-PST-E; IDENTIFIER: Petroleum Storage Tank Facility (PST) Identification Number 0040144; LOCATION: League City, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(5) and (6) and the Code, §382.085(b), by failing to maintain a record of the results of testing and daily inspections performed on the Stage II vapor recovery system (VRS); PENALTY: $900; ENFORCEMENT COORDINATOR: Alita Champagne, (512) 239-0784; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Hanover Compression, Inc.; DOCKET NUMBER: 2000-1208-AIR-E; IDENTIFIER: Air Account Number JF-0012-W; LOCATION: Hebbronville, Jim Hogg County, Texas; TYPE OF FACILITY: natural gas transmission; RULE VIOLATED: 30 TAC §122.146(D) and the Code, §382.085(b), by failing to submit annual Title V compliance certifications and identify in the annual Title V certifications all terms and conditions of the permit; and 30 TAC §122.145(2), by failing to report all instances of deviations; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(9) COMPANY: Hondo Chemical, Inc.; DOCKET NUMBER: 2001-0032-AIR-E; IDENTIFIER: Air Account Numbers GA-0338-N and HP-0549-F; LOCATION: Seagraves and Ropesville, Gaines and Hockley Counties, Texas; TYPE OF FACILITY: bulk sulfur loading terminals; RULE VIOLATED: 30 TAC §101.4 and the Code, §382.085(a) and (b), by failing to control nuisance odors; and 30 TAC §106.261, §116.110(a), and the Code, §382.085(b), by failing to obtain a permit or satisfy the conditions of a standard exemption; PENALTY: $14,125; ENFORCEMENT COORDINATOR: Dan Landenberger, (915) 570-1359; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(10) COMPANY: IESI TX Landfill, L.P.; DOCKET NUMBER: 2000-0724-MSW-E; IDENTIFIER: Municipal Solid Waste Permit Number 1571A and Air Account Number WH-0181-V; LOCATION: Iowa Park, Wichita County, Texas; TYPE OF FACILITY: landfill; RULE VIOLATED: 30 TAC §330.114, by failing to follow the approved site operation plan; 30 TAC §330.114, §330.115, and Permit Number 1571A Section 7.1, by failing to provide fire protection; 30 TAC §330.114, §330.117(c), and Permit Number 1571A Section 6.2, by failing to prevent the unloading of prohibited wastes; 30 TAC §330.114, §330.120, and Permit Number 1571A Section 4.5, by failing to collect and return to the active working face windblown materials and litter; 30 TAC §330.114, §330.126, and Permit Number 1571A Section 4.11, by failing to prevent and control on-site populations of disease vectors; 30 TAC §330.114, §330.132, and Permit Number 1571A Section 4.17, by failing to spread and compact solid waste; 30 TAC §330.114, §330.133(a) and (g), and Permit Number 1571A Section 4.18.2 and 4.18.5, by failing to correctly complete the cover log and provide six inches of well-compacted earthen material not previously mixed with garbage, rubbish, or other solid waste; and 30 TAC §113.2061(a), §122.121, 40 Code of Federal Regulations (CFR) §60.32c(c) and §§60.751 - 60.759, and the Code, §382.054 and §382.085(b), by failing to submit a Title V federal operating permit application and submit an annual report of non-methane organic compound emissions; PENALTY: $30,750; ENFORCEMENT COORDINATOR: George Ortiz, (915) 698-9674; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(11) COMPANY: Industrial Apparatus Service, Inc.; DOCKET NUMBER: 2001-0304-AIR-E; IDENTIFIER: Air Account Number JE-0124-V; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: electric motors rebuilding; RULE VIOLATED: 30 TAC §101.4 and the Code, §382.085(a) and (b), by failing to prevent the discharge of smoke and combustion odors; 30 TAC §116.115(c), Permit Number 7038A, Special Condition 11A, and the Code, §382.085(b), by failing to post the manufacturer's recommended operating instructions at the burn-off oven and operate the oven in accordance with the instructions by not adjusting the afterburner gas adjusting valve to eliminate stack emissions; PENALTY: $4,320; ENFORCEMENT COORDINATOR: Susan Kelly, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(12) COMPANY: William D. Kelley Charitable Trust; DOCKET NUMBER: 2001-0516-EAQ- E; IDENTIFIER: Edwards Aquifer Protection Program Number 00010301A; LOCATION: Georgetown, Williamson County, Texas; TYPE OF FACILITY: land-clearing operation; RULE VIOLATED: 30 TAC §213.4(a), by allegedly having commenced land-clearing operations on property located within the Edwards Aquifer recharge zone before obtaining approval of a modification to its Edwards Aquifer Water Pollution Abatement Plan; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Larry King, (512) 339-2929; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-6336, (512) 339-2929.

(13) COMPANY: Lyondell Chemical Company; DOCKET NUMBER: 2001-0165-IWD-E; IDENTIFIER: National Pollutant Discharge Elimination System (NPDES) Permit Number TX0069493; LOCATION: Channelview, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), NPDES Permit Number TX0069493, and the Code, §26.121, by failing to meet the permit effluent limits for total copper, total suspended solids (TSS), benzene, ethylbenzene, pH, and dissolved oxygen; PENALTY: $22,500; ENFORCEMENT COORDINATOR: Sushil Modak, (512) 239-2142; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Lyondell-Citgo Refining LP; DOCKET NUMBER: 2001-0294-ISW-E; IDENTIFIER: Industrial Solid Waste Management Site Identification Permit Number HW-50106-000; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: hazardous waste processing and disposal; RULE VIOLATED: 30 TAC §§37.161, 37.201, 305.125(1), 40 CFR §264.143(d), and Permit Number HW-50106-000, by failing to submit an originally signed duplicate of a standby trust agreement; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239- 1896; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Men Water Supply Corporation; DOCKET NUMBER: 2000-1346-PWS-E; IDENTIFIER: PWS Number 1750015; LOCATION: Corsicana, Navarro County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(ii), (iii), and (iv), and (f)(4), by failing to provide a total storage capacity of 200 gallons per connection, provide two or more pumps that have a total storage capacity of two gallons per minute (gpm) per connection, provide an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection, and a minimum contract purchase rate of 0.6 gpm per connection; PENALTY: $875; ENFORCEMENT COORDINATOR: Wendy Cooper, (817) 588-5800; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(16) COMPANY: Ohmstede, Inc.; DOCKET NUMBER: 2000-1044-IWD-E; IDENTIFIER: TPDES Permit Number 01318-000; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Water Quality Permit Number 01318, NPDES Permit Number TX00008184, TPDES Permit Number 01318-000, and the Code, §26.121, by failing to meet permitted limits for copper, TSS, oil and grease, and/or total organic carbon, notify the executive director of effluent violations of over 40% permitted values; and 30 TAC §§220.21, 290.51(a)(3), and 320.2, by failing to pay water quality assessment, public health service, and wastewater treatment inspection fees; PENALTY: $11,500; ENFORCEMENT COORDINATOR: Sherry Smith, (512) 239-0572; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Racetrac Petroleum Inc.; DOCKET NUMBER: 2001-0151-PST-E; IDENTIFIER: PST Facility Identification Number 0069059; LOCATION: League City, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3)(B) and the Code, §382.085(b), by failing to maintain the VRS in proper operating condition; and 30 TAC §290.51(a)(3) and §334.22(a), by failing to pay outstanding annual public health service and underground storage tank registration fees; PENALTY: $6,250; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Rainbow Collision Centers, Inc. dba Rainbow Auto Painting and Collision; DOCKET NUMBER: 2001-0113-AIR-E; IDENTIFIER: Air Account Number DB-5201-A; LOCATION: Garland, Dallas County, Texas; TYPE OF FACILITY: automotive body repair and refinishing; RULE VIOLATED: 30 TAC §§106.436, 106.452, 116.110(a), and the Code, §382.0518(a) and §382.085(b), by failing to obtain a permit or satisfy the conditions for facilities permitted by rule; 30 TAC §115,422(1) and the Code, §382.085(b), by failing to minimize the volatile organic compound emissions during equipment cleanup; and 30 TAC §115.426(1) and the Code, §382.085(b), by failing to maintain the material data sheets for each coating and solvent available; PENALTY: $4,800; ENFORCEMENT COORDINATOR: Michael De La Cruz, (512) 239-0259; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(19) COMPANY: Sammy's Groceries Inc. dba Walker Food Store; DOCKET NUMBER: 2001- 0207-PST-E; IDENTIFIER: PST Facility Identification Number 0021258; LOCATION: Bacliff, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and the Code, §382.085(b), by failing to successfully perform annual pressure decay testing; and 30 TAC §334.22(a), by failing to pay outstanding annual underground store tank registration fees; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Merrilee Gerberding, (512) 239-4490; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Mr. Dennis Schkade and Schkade Mines, Inc.; DOCKET NUMBER: 2001- 0159-WR-E; IDENTIFIER: Water Rights Permit Number 12-4169; LOCATION: Lueders, Jones County, Texas; TYPE OF FACILITY: commercial limestone mining; RULE VIOLATED: 30 TAC §297.11 and the Code, §11.121, by failing to obtain authorization prior to diverting state water for commercial purposes; PENALTY: $2,000; ENFORCEMENT COORDINATOR: George Ortiz, (915) 698-9674; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(21) COMPANY: Sophia Enterprises, L.P. dba HTC Industries, Inc.; DOCKET NUMBER: 2001-0114-AIR-E; IDENTIFIER: Air Account Number TG-0053-B; LOCATION: San Angelo, Tom Green County, Texas; TYPE OF FACILITY: rendering plant; RULE VIOLATED: 30

TAC §116.115(c), Permit Number 8710, and the Code, §382.085(b), by failing to process material within the specified time frames; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Mark Newman, (915) 655-9479; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(22) COMPANY: David H. Jones dba South Texas Tire Disposal; DOCKET NUMBER: 2001- 0249-MSW-E; IDENTIFIER: Tire Transporter Number 25666; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: scrap or used tire storage; RULE VIOLATED: 30 TAC §328.60(a), by failing to obtain approval for a scrap tire storage site or other registration; and 30 TAC §328.54(d), by failing to identify vehicles or trailers used to transport used or scrap tires; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Malcolm Ferris, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(23) COMPANY: City of Springtown; DOCKET NUMBER: 2000-1401-MWD-E; IDENTIFIER: TPDES Permit Number 10649-001; LOCATION: Springtown, Parker County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10649-001, and the Code, §26.121, by failing to comply with permit limits for ammonia-nitrogen and TSS; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Subhash Jain, (512) 239-5867; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(24) COMPANY: J. Cleo Thompson Company; DOCKET NUMBER: 2001-0341-AIR-E; IDENTIFIER: Air Account Number CZ-0035-V; LOCATION: Ozona, Crockett County, Texas; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §122.146(2) and the Code, §382.085(b), by failing to submit a Title V compliance certification; PENALTY: $3,125; ENFORCEMENT COORDINATOR: Mark Newman, (915) 655-9479; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(25) COMPANY: City of Tomball; DOCKET NUMBER: 2000-0348-MWD-E; IDENTIFIER: TPDES and Water Quality Permit Number 10616-001; LOCATION: Tomball, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES and Water Quality Permit Number 10616-001, and the Code, §26.121, by failing to meet the permitted effluent limits for copper concentration and loading and submit noncompliance notification reports; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Sherry Smith, (512) 239-0572; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Town of Van Horn; DOCKET NUMBER: 2000-1428-MWD-E; IDENTIFIER: TPDES Permit Number 10721-001 (Expired); LOCATION: Van Horn, Culberson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(2), TPDES Permit Number 10721-001, and the Code, §26.121, by failing to submit an application for permit renewal and continuing to operate; PENALTY: $3,200; ENFORCEMENT COORDINATOR: Terry McMillan, (915) 834-4949; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(27) COMPANY: WB IND HP, Ltd.; DOCKET NUMBER: 2001-0248-EAQ-E; IDENTIFIER: Edwards Aquifer File Number 00071401; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: technology park; RULE VIOLATED: 30 TAC §213.4(a), by failing to obtain approval of an Edwards Aquifer protection plan prior to initiating construction; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(28) COMPANY: Jennifer Jamison dba West Lea Water Company; DOCKET NUMBER: 2000- 1400-PWS-E; IDENTIFIER: PWS Number 0200066 and Certificate of Convenience and Necessity Number 11845; LOCATION: Pearland, Brazoria County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(i), §291.93, and the Code, §13.250, by failing to meet the minimum water system capacity requirement of 96 gpm and prevent water outages; 30 TAC §290.44(c) and (h)(1), by failing to provide the minimum water line size for domestic flows and implement a backflow and anti-siphonage program; 30 TAC §290.41(c)(1)(F), by failing to provide proper ground water source development by not providing a sanitary control easement; and 30 TAC §290.46(j), by failing to implement a customer service inspection program; PENALTY: $950; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: Whiterock Water Supply Corporation; DOCKET NUMBER: 2000-1060-PWS- E; IDENTIFIER: PWS Number 1470014; LOCATION: Mexia, Limestone County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(iii) and (iv) (now 30 TAC §290.45(b)(1)(B)(iv) and (C)(ii)), by failing to meet the agency's minimum water system capacity requirements of a pressure tank capacity of 20 gallons per connection and total storage capacity of 200 gallons per connection; and 30 TAC §290.46(u) (now 30 TAC §290.46(r)), by failing to provide at all times a minimum pressure of 35 psi throughout the distribution system; PENALTY: $438; ENFORCEMENT COORDINATOR: James Jackson, (254) 751-0335; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(30) COMPANY: Wise County Detailing, Incorporated; DOCKET NUMBER: 2000-1289-AIR- E; IDENTIFIER: Air Account Number WN-0203-V; LOCATION: Boyd, Wise County, Texas; TYPE OF FACILITY: paint and autobody shop; RULE VIOLATED: 30 TAC §§106.433(2)(C), 106.436(3)(11), 106.452(2)(D), and 116.110(a), and the Code, §382.0518(a) and §382.085(b), by failing to obtain a permit or meet the requirements of a permit by rule; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

TRD-200103940
Paul Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: July 10, 2001

♦ ♦ ♦

Notice of Opportunity to Participate in Permitting Matters

A person may request to be added to a mailing list for public notices processed through the Office of the Chief Clerk for air, water, and waste permitting activities at the TNRCC. You may request to be added to: (1) a permanent mailing list for a specific applicant name and permit number; and/or (2) a permanent mailing list for a specific county or counties.

Note that a request to be added to a mailing list for a specific county will result in notification of all permitting matters affecting that particular county.

To be added to a mailing list, send us your name and address, clearly specifying which mailing list(s) to which you wish to be added. Your written request should be sent to the TNRCC, Office of the Chief Clerk, Mail Code 105, P. O. Box 13087, Austin, Texas 78711-3087.

Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

TRD-200103946
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: July 10, 2001

♦ ♦ ♦

Notice of Public Hearing (Chapter 101)

The Texas Natural Resource Conservation Commission (commission) will conduct a public hearing to receive testimony concerning revisions to 30 TAC Chapter 101, Subchapter A, §101.27 and to the state implementation plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102 of the United States Environmental Protection Agency regulations concerning SIPs. The amendments to Chapter 101 are proposed as a revision to the SIP.

Senate Bill 1, Article VI, Rider 30, as passed by the 77th Texas Legislature, 2001, requires that these upset and maintenance emissions be included in the calculation of emissions for each account. The commission collects operating permit fees (emissions fees) as required by Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.0621, Operating Permit Fee. The current rule language in §101.27 only includes emissions during normal operations in the calculation of the total emissions from an account upon which the fee is based. Upset and maintenance emissions are not currently included in the basis for calculating the fee due.

A public hearing on this proposal will be held in Austin on August 13, 2001 at 2:00 p.m. at the Texas Natural Resource Conservation Commission, Building F, Room 2210, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

Comments may be submitted to Lola Brown, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-4808. All comments should reference Rule Log Number 2001-030-101-AI, and must be received by 5:00 p.m., August 13, 2001. This proposal is available on the commission's web site at *http://www.tnrcc.state.tx.us/oprd/rules/propadopt.html*. For further information, please contact Alan Henderson, Policy and Regulations Division, (512) 239-1510.

TRD-200103971
Ramon Dasch
Acting Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: July 11, 2001

♦ ♦ ♦

Notice of Public Hearing (Chapter 114 and State Implementation Plan)

The Texas Natural Resource Conservation Commission (commission) will conduct public hearings to receive testimony regarding revisions to 30 TAC Chapter 114 and to the state implementation plan (SIP) under the requirements of the Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102, of the United States Environmental Protection Agency (EPA) regulations concerning SIPs. The revisions concern the Dallas/Fort Worth (DFW) Attainment Demonstration SIP.

The 77th Legislature adopted Senate Bill (SB) 5 establishing the Texas Emission Reduction Plan (TERP) which provides financial incentives for reducing emissions of on-road and non-road motor vehicles and equipment, grants for the development of new emission control technology, new building energy efficiency standards, and research and development programs. The program is funded through surcharges and fees established in the bill. Senate Bill 5 also required that the commission delete the operating restriction on construction equipment rules and the Tier 2/Tier 3 accelerated purchase rules on construction equipment from the DFW and Houston/Galveston (HGA) SIPs and replace them with programs from SB 5. The SB 5 programs are estimated to achieve reductions in excess of the reductions expected from the rules that are being repealed. In accordance with SB 5, the SIP will be revised to replace these rules with TERP. The proposed SIP revision reflects the repeal of the rules regarding heavy diesel equipment fleet composition and the rules regarding diesel construction equipment operating restrictions as part of the implementation of SB 5. The proposed SIP revision also provides a description of the incentive programs which will replace these strategies. The proposed changes to Chapter 114 repeal the rules regarding heavy diesel equipment fleet composition and the rules regarding diesel construction equipment operating restrictions which were adopted on April 19, 2000 for the DFW ozone nonattainment area and on December 6, 2000 for the HGA ozone nonattainment area; and establish motor vehicle and non-road equipment incentive programs authorized by SB 5.

Public hearings on these proposed revisions will be held at the following times and locations: August 13, 2001, 2:00 p.m., Houston City Hall Council Chambers, 2nd Floor, 901 Bagby, Houston; August 14, 2001, 9:00 a.m., Texas Natural Resource Conservation Commission, Building E, Room 201S, 12100 North I-35, Austin; and August 14, 2001, 2:00 p.m., North Central Texas Council of Governments, Transportation Board Room, 3rd Floor, 616 Six Flags Drive, Arlington.

The hearings are structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to each hearing. Individuals may present oral statements when called upon in order of registration. A four-minute time limit may be established at each hearing to assure that enough time is allowed for every interested person to speak. Open discussion will not occur during the hearings; however, agency staff members will be available to discuss the proposal 30 minutes before the hearings, and will answer questions before and after the hearings.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Written comments may be submitted to Ms. Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; faxed to (512) 239- 4808; or emailed to *terp@tnrcc.state.tx.us*. Comments must be received by 5:00 p.m., August 14, 2001. The latest version of these proposed rules in Chapter 114 and the SIP revision are available on the commission's web site at *http://www.tnrcc.state.tx.us/oprd/sips/terp.html*. For further information, please contact Bill Jordan, Strategic Assessment Division, (512) 239-2583.

TRD-200103970
Ramon Dasch
Acting Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: July 11, 2001

♦ ♦ ♦

Notice of Water Quality Applications

The following notices were issued during the period of May 29, 2001 through June 27, 2001.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

A & D CORLEY ENTERPRISES, LTD. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of Permit No. 13401-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day via surface irrigation of 3.5 acres of non-public access land. This permit will not authorize a discharge of pollutants into waters in the State. This application was submitted to the TNRCC on March 5, 2001. The facility and disposal site are located at 294 Country Club Road, approximately 1.25 miles northeast of the intersection of U.S. Highway 377 and Country Club Road in Denton County, Texas.

ANTHONY FOREST PRODUCTS COMPANY has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 03811 which authorizes the discharge of wet decking wastewater, boiler blowdown, truck washwater, storm water runoff and/or storm water runoff that has come into contact with industrial waste or industrial products on an intermittent and flow variable basis via Outfall 001 and storm water runoff and/or storm water runoff that has come into contact with industrial waste or industrial products on an intermittent and flow variable basis via Outfalls 002 and 003. The plant site is located east of the intersection of State Highways 77 and 43, adjacent to the Texas and Pacific Railroad track in the city of Atlanta in Cass County, Texas.

CITY OF CADDO MILLS has applied for a renewal of TPDES Permit No. 10425-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 0.7 mile south of the intersection of State Highway 66 and Farm-to-Market Road 36 in Hunt County, Texas.

COLUMBIA-BRAZORIA INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TNRCC Permit No. 12103-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is located approximately one mile south of State Highway 36 from a point approximately 4.5 miles southeast of the City of West Columbia in Brazoria County, Texas.

CITY OF COMMERCE has applied for a renewal of TPDES Permit No. 10555-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located approximately 0.5 mile south of the intersection of Charity Road and Farm-to-Market Road 3218, on the east side of Farm-to-Market Road 3218 in Hunt County, Texas.

FAULKEY GULLY MUNICIPAL UTILITY DISTRICT has applied for a major amendment to TPDES Permit No. 11832-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 950,000 gallons per day to an annual average flow not to exceed 1,420,000 gallons per day. The proposed amendment requests to lower the existing permitted flow from 950,000 gallons per day to 900,000 gallons per day. The application also includes a request for a temporary variance to the existing water quality standards to allow time for the TNRCC to adopt a site specific standard for Faulkey Gully in Segment No. 1009 for incorporation into 30 TAC §§307.10 Appendix D. The variance would authorize a three-year period in which the Commission will consider a recommended site specific standard for Faulkey Gully and determine whether to adopt the standard or require the existing water quality standards to remain in effect. The facility is located at 15503 Hermitage Oak, north of Malcomson Road and west of Farm-to-Market Road 149 in Harris County, Texas.

CITY OF LONGVIEW has applied for a renewal of TPDES Permit No. 10589-003, which authorizes the discharge of treated backwash filter effluent from at a daily average flow not to exceed 4,200 gallons per day. The facility is located south of Farm-to-Market Road 2206 on the east side of Swinging Bridge Road and 600 feet south of Premier Road in the City of Longview in Gregg County, Texas.

NORTH TEXAS MUNICIPAL WATER DISTRICT has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14245-001, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 10,000,000 gallons per day. The facility is located approximately 1 mile south of U.S. Highway 380 and 10,000 feet west of the Collin-Denton County Line on the south side of Panther Creek in Denton County, Texas.

CITY OF QUITAQUE has applied for a major amendment to Permit No. 10727-001, to authorize a change in treatment process from bar screen, Imhoff tank and sludge drying beds to a pond system. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 90,000 gallons per day via surface irrigation of 80 acres of non public access pasture land. The draft permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day via surface irrigation of 80 acres of non public access pasture land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 4,500 feet east-northeast of the intersection of State Highway 86 and Farm-to-Market Road 1065 and 1,200 feet north of State Highway 86, east of the City of Quitaque in Briscoe County, Texas.

ROLLING CREEK UTILITY DISTRICT has applied for a renewal of TNRCC Permit No. 12841-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The application also includes a request for a temporary variance to the existing water quality standards to allow time for the TNRCC to adopt a site specific standard for Bear Creek (in

Addicks Reservoir) for incorporation into 30 TAC §§307.10 Appendix D. The variance would authorize a three-year period in which the Commission will consider a recommended site specific standard for Bear Creek (in Addicks Reservoir) and determine whether to adopt the standard or require the existing water quality standards to remain in effect. The facility is located approximately 2,200 feet north of Clay Road and 3,500 feet east of Barker-Cypress Road in Harris County, Texas.

SEA LION TECHNOLOGY, INC. has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No.03479. The draft permit authorizes the discharge of previously monitored effluents (domestic wastewater, utility wastewater, and stormwater runoff) on an intermittent and flow variable basis via Outfall 001. The applicant operates an organic chemical manufacturing facility. The plant site is located at 5700 Johnny Palmer Road in the City of Texas City, Galveston County, Texas.

SHELL OIL COMPANY, DEER PARK REFINING LIMITED PARTNERSHIP, AND EQUILON ENTERPRISES, LLC has applied for a renewal of TNRCC Permit No. 00403, which authorizes the discharge of utility wastewaters and storm water at a daily average dry weather flow not to exceed 2,300,000 gallons per day via Outfall 001; the discharge of storm water on an intermittent and flow variable basis via Outfalls 002, 003, 004, 006, 008, and 009; and the discharge of treated process, sanitary, utility wastewaters and storm water at a daily average flow not to exceed 7,920,000 gallons per day via Outfall 007. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit No. TX0004871 issued on September 29, 1995 and TNRCC Permit No. 00403 issued on January 14, 1994. The applicant operates the Shell Deer Park Refining Company, a petroleum refinery. The plant site is located at 5900 State Highway 225, south of the Houston Ship Channel, west of Patrick Bayou, and north of State Highway 225 at Center Street in the City of Deer Park, Harris County, Texas.

CITY OF SHEPHERD has applied for a major amendment to TNRCC Permit No. 11380- 001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 200,000 gallons per day to a daily average flow not to exceed 400,000 gallons per day and to relocate the discharge point. The plant site is located approximately 1,400 feet northeast of the intersection of U.S. Highway 59 and State Highway 150 in San Jacinto County, Texas.

CITY OF WOODVILLE has applied for a renewal of TNRCC Permit No. 10322-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,600,000 gallons per day. The facility is located approximately 1000 feet east of U.S. Highway 69 and 3000 feet south of U.S. Highway 190 in Tyler County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE

TEXAS DEPARTMENT OF CRIMINAL JUSTICE has applied for a renewal of TPDES Permit No. 10878-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 540,000 gallons per day. The facility is located outside the northwest corner of the security compound of the Clemens Unit, approximately 0.5 mile north of the intersection of State Highway 36 and Farm-to-Market Road 2004, and approximately 5.0 miles southeast of the City of Brazoria in Brazoria County, Texas.

Concentrated Animal Feeding Operation

Written comments and requests for a public meeting may be submitted to the Office of the Chief Clerk, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

TIMMY MACK COLLIER AND KEITH THOMAS COLLIER has applied for a major amendment to TPDES Registration No. WQ0003367-000 to authorize the applicant to expand an existing Dairy Operation from an existing capacity of 1,8000 head to a maximum capacity of 5,250 head in Scurry County, Texas. No discharge of pollutants into the waters in the state is authorized by this registration except under chronic catastrophic rainfall conditions. The existing facility is located north of U.S. Highway 84, 3.0 miles southeast of the intersection of U.S. Highway 180 and U.S. Highway 84 in Scurry County, Texas.

LAWRENCE A. HANCOCK has applied for major amendment to TPDES Registration No. WQ0003122-000 to authorize the applicant to expand an exisiting dairy facility from 3600 head to a maximum capacity of 4,200 head in Bailey County, Texas. No discharge of pollutants into the waters in the state is authorized by this registration except under chronic catastrophic rainfall conditions. The proposed facility is located four miles west of the intersection of FM 1760 and U.S. Hwy 84, on the south side of FM 1760, in Bailey County, Texas.

WILLIAM MCKENDRED LASATER has applied for a new TPDES Registration No. 4333 to authorize the applicant to operate an existing dairy operation at a maximum capacity of 999 head in Hamilton County, Texas. No discharge of pollutants into the waters in the state is authorized by this registration except under chronic catastrophic rainfall conditions. The existing facility is located on the west side of County Road 617, approximately 2 miles north of the intersection of County Road 617 and Farm-to-Market Road 218, near Pottsville, Texas.

T.J. DAIRY PARTNERS has applied for an amendment of TPDES Registration No. WQ0003868-000 to authorize the applicant to expand an existing dairy facility from a maximum capacity of 3,250 to 5,500 head in Lamb County, Texas. No discharge of pollutants into the waters in the state is authorized by this registration except under chronic catastrophic rainfall conditions. The proposed facility is located approximately .5 mile south of the intersection of FM 1928 and US Highway 84, on the side of FM 1928 in Lamb County, Texas.

ADOLFO ALCOLA TAPIA has applied to the for an amendment of TPDES Permit No. WQ0003824-000 to authorize the applicant to expand an existing dairy facility from a maximum capacity of 1,000 to 2,000 head in Tom Green County, Texas. No discharge of pollutants into the waters in the state is authorized by this registration except under chronic catastrophic rainfall conditions. The Existing facility is located on the west side of Klattenhoff Road approximately 2 miles north of the intersection of Farm-to-Market Road 1692 and Klattenhoff Road in Tom Green County, Texas.

TRD-200103837
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: July 3, 2001

♦ ♦ ♦

Notice of Water Quality Applications.

The following notices were issued during the period of June 29, 2001 through August 6, 2001.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief

Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

CITY OF ALEDO has applied for a renewal of TPDES Permit No. 10847-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day. The facility is located approximately 0.5 mile west of the intersection of Farm-to-Market Road 5 and Farm-to-Market Road 2376 in the City of Aledo in Parker County, Texas.

AVIATION UTILITIES SERVICES, INC. has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 13920-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 90,000 gallons per day. The plant site is located approximately 4,000 feet south of the intersection of State Highway 1171 and Interstate Highway 35W, 3,000 feet east of Interstate Highway 35W and 2,500 feet west of the North West Regional Airport landing strip in Denton County, Texas.

CITY OF CALLISBURG has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TPDES Permit No. 11840-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility is located adjacent to and west of Farm-to-Market Road 678 approximately 3000 feet southeast of the intersection of Farm-to-Market Roads 678 and 2896 in Cooke County, Texas.

CHAPEL HILL INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. 11857-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day via surface irrigation of 18 acres of grassland. The facility and disposal site are located on the north side of State Highway 64, approximately 1/2 mile north of the school campus and approximately 4.8 miles east of the intersection of Highway 64 and Loop 323 in Smith County, Texas.

COMMUNITY ESTATES, INC. has applied for a renewal of TPDES Permit No. 13903-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 3,925 gallons per day. The facility is located on Farm-to-Market Road 2259, approximately 2.5 miles northwest of the intersection of Farm-to-Market Road 226 and Farm-to-Market Road 2259 and 3.2 miles south-southwest of the intersection of Farm-to- Market Road 226 and State Highway 21 in Nacogdoches County, Texas.

CITY OF CUSHING has applied for a renewal of TNRCC Permit No. 10437-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 81,000 gallons per day. The facility is located approximately 200 feet south of the intersection of Fourth Street and Spruce Avenue in the City of Cushing in Nacogdoches County, Texas.

DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 4 has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14170-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The facility is located approximately 8,000 feet southwest of the intersection of State Highway 423 and State Highway 24 in Denton County, Texas.

529 #35, LTD has applied for a renewal of TNRCC Permit No. 13484-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 125,000 gallons per day. The facility is located 6,800 feet west of U.S. Highway 290, 2,900 feet south of Farm-to-Market Road 529(Spencer Rd.) north of Fisher Road and east of Addicks Fairbanks Road on U.S. 65 in Harris County, Texas.

CITY OF FRANKSTON has applied for a renewal of TPDES Permit No. 10441-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. This application was submitted to the TNRCC on February 15, 2001. The facility is located south of the City of Frankston, immediately north of Caddo Creek, and approximately 1000 feet south and 1500 feet east of the intersection of State Highway 175 in Anderson County, Texas.

GULF COAST WASTE DISPOSAL AUTHORITY which operates the Odessa South Regional Wastewater Treatment Facility, a publicly owned treatment works (POTW) that treats industrial and municipal wastewater, has applied for a major amendment to TNRCC Permit No. 03776 to authorize an increase in the discharge of treated process wastewater, domestic wastewater, utility wastewater and storm water from a daily average flow not to exceed 4,000,000 gallons per day to a daily average flow not to exceed 5,600,000 gallons per day via Outfall 001; to clarify the waste streams discharged via Outfall 001 include municipal wastewater; and to replace the fecal coliform effluent limitation with chlorination/dechlorination requirements at Outfall 001. The current permit authorizes the discharge of treated process wastewater, domestic wastewater, utility wastewater and storm water via Outfall 001 at a daily average flow not to exceed 4,000,000 gallons per day. The plant site is located approximately one mile south of the intersection of Interstate Highway 20 and Grandview Avenue, south of the City of Odessa, Ector County, Texas.

HARDIN COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a renewal of TNRCC Permit No. 10678-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located north of Little Pine Island Bayou, approximately 2 miles north of the intersection of State Highway 105 and Pine Wood Boulevard in Hardin County, Texas.

BETTY JOYCE JOHNSON has applied for a renewal of TPDES Permit No. 12893- 001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 17,500 gallons per day. The facility is located approximately 2 miles east of the intersection of Interstate Highway 20 and State Highway Loop 281 on Whitehurst Drive in Harrison County, Texas.

ORANGE COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. 10875-008, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 630,000 gallons per day. The facility is located 1320 feet east of the intersection of Willow Drive and Dogwood Drive in Vidor and approximately 3960 feet southwest of the intersection of State Highway 105 and the Southern Pacific Railroad in Orange County, Texas.

PINE TREE MOBILE HOME PARK LANDOWNERS ASSOCIATION has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 13036-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 42,000 gallons per day. The plant site is located approximately one mile west of the City of Keller and approximately one mile southwest of the intersection of Keller- Hicks Road and U.S. Highway 377 in Tarrant County, Texas.

CITY OF PORT NECHES has applied for a renewal of TPDES Permit No. 10477-001, which authorizes the discharge of filter backwash water at a daily average flow not to exceed 48,000 gallons per day.

The facility is located approximately 1.25 miles northwest of the intersection of Farm-to-Market Road 366 and State Highway Loop 136 in Jefferson County, Texas.

SILVERLEAF RESORTS, INC. has applied for a major amendment to TNRCC Permit No. 13849-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 56,500 gallons per day to a daily average flow not to exceed 300,000 gallons per day and to authorize a change in the method of effluent disposal for a daily average flow not to exceed 187,000 gallons per day from irrigation to discharge to an unnamed tributary; thence to Rose Branch; thence to Lake Palestine in Segment No. 0605 of the Neches River Basin. The applicant also requests to retain the disposal of treated effluent at a daily average flow not to exceed 113,000 gallons per day via irrigation of 50 acres of pastureland in the final phase. The existing permit authorizes the disposal of treated domestic wastewater via irrigation of 50 acres of pastureland planted with perennial coastal bermuda. The facility is located approximately 1,250 feet north of the intersection of State Highway 155 and Farm-to- Market Road 2661 in Smith County, Texas. The disposal site is located on the same location.

U.S. ARMY CORPS OF ENGINEERS has applied for a renewal of TPDES Permit No. 12054-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 4,000 gallons per day. The facility is located in Caddo Park, on the northeastern side of Lake Lavon, approximately 2.3 miles east of the intersection of U.S. Highway 380 and State Highway 78 in Collin County, Texas.

U.S. ARMY CORPS OF ENGINEERS has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0057886 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 12059-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The plant site is located in Mallard Park on the east side of Lavon Lake northwest of the intersection of State Highway 78 and Farm-to-Market Road 6 in Collin County, Texas

CITY OF VENUS has applied for a renewal of TPDES Permit No. 10883-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 175,000 gallons per day. The facility is located approximately 0.5 mile northwest of the City of Venus at a point approximately 500 feet north of U.S. Highway 67 and approximately 200 feet west of Farm-to-Market Road 157 in Johnson County, Texas.

WILDWOOD PROPERTY OWNERS ASSOCIATION has applied for a renewal of TPDES Permit No. 11184-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 24,000 gallons per day. The facility is located at the corner of Balsawood and Chestnut Streets in the community of Wildwood, approximately 0.25 mile south of Lake Kimble and approximately 2.5 miles west of the intersection of U.S. Highway 69 and 287 and Farm-to-Market Road 3063 in Hardin County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 89 has applied for a major amendment to TNRCC Permit No. 12939-001 to authorize a decrease in the discharge of treated domestic wastewater from a daily average flow not to exceed 500,000 gallons per day to a daily average flow not to exceed 250,000 gallons per day and to authorize to move the wastewater treatment facility approximately 250 feet north of the current site. The plant site is located north of Fellows Road, approximately 3,600 feet west of the intersection of Fellows Road and Farm-to-Market Road 518 (Cullen Boulevard) in Harris County, Texas.

TRD-200103948
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: July 10, 2001

♦ ♦ ♦

Notice of Water Right Application

PROPOSED PERMIT NO. 8210; Centennial Pipeline, L.L.C. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a temporary water use permit to divert and use 90 acre-feet during a three-year period from the Sabine River, Sabine River Basin. The applicant has indicated that a maximum of 30 acre-feet of water will be diverted and used during any one-year period for industrial (hydrostatic testing on new oil-refined product transmission pipeline) purposes. Water will be diverted at a maximum rate of 11.141 cfs (5,000 gpm) from a point located in Newton County adjacent to Circle Lake on the Sabine River, approximately 8 miles east of SR 87 and 22 miles east of Buna, Texas, said point also being Latitude 30.467 degrees N and Longitude 93.707 degrees W. There is one downstream appropriator that may be affected by the granting of the requested permit in Newton County. This water right holder will receive a copy of this notice. The temporary permit, if issued, will be junior in priority to all senior and superior water rights in the Sabine River Basin. The application was received on May 17, 2001 and the Executive Director reviewed the application and determined it to be administratively complete on July 6, 2001. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by July 30, 2001. The TNRCC may grant a contested case hearing on this application if a written hearing request is filed by July 30, 2001. The Executive Director may approve the application unless a written request for a contested case hearing is filed.

APPLICATION NO. 12-2315B; City of Waco, P.O. Box 2570, Waco, Texas 76702, applicants seek to amend a Certificate of Adjudication pursuant to Texas Water Code Chapter 11.122 & 11.042 and Texas Natural Resource Conservation Commission Rules 30 TAC Chapter 295.1, et seq. Notice should be mailed pursuant to 30 TAC Chapter 295.160 to the water right holders between the current diversion point and the proposed new diversion point in the Brazos River Basin. Certificate of Adjudication No. 12-2315, as amended, authorizes the owner to store 104,100 acre-feet of water in an existing dam and reservoir on the Bosque River, known as Lake Waco, which is tributary of the Brazos River in the Brazos River Basin in McLennan County. Certificate also authorizes owner to divert and use not to exceed 58,200 acre-feet of water per annum from a point on the aforesaid reservoir for municipal and industrial purposes and 900 acre-feet of water per annum from a point on the aforesaid reservoir for irrigation purposes at a combined rate of 80.00 cfs (36,000 gpm). The time priority of the owner's right is January 10, 1929 for the diversion and use of 39,100 acre-feet of water for municipal and industrial use, and April 16, 1958 for an additional 19,100 acre-feet of water for municipal and industrial purposes. The time priority of the diversion and use of 900 acre-feet per annum for irrigation is February 21, 1979. Pursuant to Water Option and Supply Contract between the City of Waco and Steag Power, LLC on October 25, 2000, the City of Waco seeks to amend Certificate of Adjudication No. 12-2315, as amended, to authorize the use of the bed and banks of the Bosque River and the Brazos River to convey industrial water from

Survey, Abstract No. 718, Dallas County, also being at Latitude 32.575 degrees N, Longitude 96.622 degrees W; from a point, designated as Diversion Point No. 2, on the south bank of Ten Mile Creek located N 33.7 degrees W, 3,162 feet from the aforesaid Kemp Survey, also being at Latitude 32.565 degrees N, Longitude 96.614 degrees W; and from a point, designated as Diversion Point No. 3, on the south bank of Ten Mile Creek located N 16.3 degrees E, 2,178 feet from the northeast corner of the aforesaid Kemp Survey, also being at Latitude 32.563 degrees N, Longitude 96.556 degrees W. Water will be diverted from the aforesaid three diversion points at a maximum combined rate of not to exceed 4.01 cfs (1,800 gpm). The application was received on February 2, 2001. Additional information was received on March 23, 2001. The Executive Director reviewed the application and determined it to be administratively complete on April 3, 2001. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

APPLICATION NO. 5295A; Jay D. and Deborah Mills, P.O. Box 1669, Stephenville, Texas 76401, applicants, seek to amend a Water Use Permit pursuant to Texas Water Code Chapter 11.122 and Texas Natural Resource Conservation Commission Rules 30 TAC Chapter 295.1, et seq. Published notice of the application is being given pursuant to 30 TAC Chapter 295.152. Notice is being mailed pursuant to 30 TAC Chapter 295.153 (c) to the downstream water right holders in the Brazos River Basin. Applicant owns Water Use Permit No. 5295 which authorizes the owner to divert and use not to exceed 100 acre-feet of water from the perimeter of an exempt on-channel reservoir, known as Reservoir No. 1, on Crockett Creek, tributary of Indian Camp Creek, tributary of Richardson Creek, tributary of the Paluxy River, tributary of the Brazos River in the Brazos River Basin at a maximum diversion rate of 1.1 cfs (500 gpm) for irrigation of 110 acres of land within a 447.8 acre tract in the William Thorpe Survey, Abstract No. 766; the Leonard White Survey, Abstract 824; and the James Walk Survey, Abstract No. 834 in Erath county. Reservoir No. 1 is approximately seven (7) miles northeast of Stephenville, Erath County, Texas in the William Thorpe Survey, Abstract No. 766 and the midpoint of the dam at the stream is 1,800 feet southerly from the north corner of the aforesaid survey. The reservoir has a normal maximum operating capacity of 175 acre-feet and a normal maximum surface area of 17.5 acres. Applicant is also authorized to divert and use not to exceed 100 acre-feet of water from the perimeter of an exempt on-channel reservoir, known as Reservoir No. 2, Richardson Creek, tributary of the Paluxy River, tributary of the Brazos River in the Brazos River Basin at a maximum diversion rate of 1.1 cfs (500 gpm) for irrigation of 120 acres of land within a 270.25 acre-tract in the Leonard White Survey, Abstract 824; the James Walk Survey, Abstract No. 834; and the H. T. Woody Survey, Abstract No. 825 in Erath county. Reservoir No. 2 is approximately eight (8) miles northeast of Stephenville, Erath County, Texas in the aforesaid surveys and the midpoint of the dam on the stream is 200 feet westerly from the east corner of the Leonard White Survey, Abstract 824. The reservoir has a normal maximum operating capacity of 189 acre-feet and a normal maximum surface area of 18.8 acres. The permit contains a special condition 3. (a) that states the permit shall expire on December 31, 2000. Applicant seeks to amend Water Use Permit No. 5295 by extending or deleting the special condition 3. (a). The application was received on December 18, 2000. Additional information was received on June 4, 2001. The application was determined to be administratively complete on June 13, 2001. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

APPLICATION NO. 5724; The San Marcos River Foundation, applicant, P. O. Box 1393, San Marcos, Texas 78667-1393, seeks a Water Use Permit pursuant to Chapter 11.121 of the Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC Chapter 295.1, et seq. Published notice of the application is being given pursuant to 30 TAC Chapter 295.152. Notice is being mailed to all water right holders in the Guadalupe River Basin pursuant to 30 TAC Chapter 295.153. The applicant seeks authorization to appropriate up to approximately 1.3 million acre-feet of state water per annum by maintaining stream flows for beneficial, non-consumptive, in-stream use at two reference points within the Guadalupe River Basin. The first reference point for measurement of these requested stream flows is on the southwest bank of the San Marcos River accessible to the public at Palmetto State Park in Gonzales County, approximately 10 miles northwest of the City of Gonzales, located at 29.586 degrees N Latitude and 97.574 degrees W Longitude. The second reference point is on the west bank of the Guadalupe River in Refugio County, accessible to the public at the State Highway 35 bridge, approximately 2.3 miles northeast of Tivoli, Texas, located at 28.479 degrees N Latitude and 96.863 degrees W Longitude. The applicant indicates that the purpose of this application is for the non-consumptive, beneficial use of instream flows at the reference points requested and to maintain beneficial inflows of freshwater to the Guadalupe Estuary. The applicant indicates its intent to convey an undivided share of the water right sought in this application to the Texas Parks and Wildlife Department (TPWD) and further to place this requested appropriation of state water into the Texas Water Trust. The applicant indicates that they will share the ownership, management, control and costs associated with this water right with TPWD, if it is granted. This application is subject to the Texas Coastal Management Program (CMP) and must be consistent with the CMP goals and policies. Of the total approximately 1.3 million acre-feet requested in this application, the applicant has provided specific flow rates and volumes relative to the two reference points. The applicant is seeking to appropriate 157,469 acre-feet per year of streamflow for in-stream use at the San Marcos River reference point, with the following monthly requested flow volumes: 13,343 acre-feet (ac-ft) for January, 12,832 ac-ft for February, 14,450 ac-ft for March, 15,769 ac-ft for April, 18,016 ac-ft for May, 15,263 ac-ft for June, 12,328 ac-ft for July, 10,453 ac-ft for August, 10,592 ac-ft for September, 10,945 ac-ft for October, 11,306 ac-ft for November, and 12,175 ac-ft for December. The applicant requests that these monthly volumes of water for the San Marcos River reference point also be authorized as corresponding instantaneous minimum flow rates, in cubic feet per second (cfs) at the following rates: 217 cfs for January, 229 cfs for February, 235 cfs for March, 265 cfs for April, 293 cfs for May, 257 cfs for June, 201 cfs for July, 170 cfs for August, 178 cfs for September, 178 cfs for October, 190 cfs for November, and 198 cfs for December. The applicant indicates that the volume and streamflow rates requested were calculated based on average daily stream flow records from U.S. Geological Survey Streamflow Gage No. 0817200 on the San Marcos River at Luling, Texas, from the period of record from May 1, 1939 to September 30, 1999. The applicant also seeks to appropriate 1,147,400 ac-ft per year of streamflow for in-stream use at the Guadalupe River reference point, with the following monthly requested flow volumes: 111,200 ac-ft for January, 124,200 ac-ft for February, 52,400 ac-ft for March, 52,400 ac-ft for April, 222,600 ac-ft for May, 162,700 ac-ft for June, 88,600 ac-ft for July, 88,300 ac-ft for August, 52,400 ac-ft for

September, 52,400 ac-ft for October, 73,800 ac-ft for November, and 66,200 ac- ft for December. The applicant indicates that the requested streamflow volumes for the Guadalupe River reference point were derived from the Coastal Studies Technical Report No. 98-1 by the Texas Parks and Wildlife Department, entitled "Freshwater Inflow Recommendation for the Guadalupe Estuary of Texas". The application was received on July 10, 2000 and declared to be administratively complete on December 21, 2000. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

Information Section

A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in an application.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TNRCC Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-200103947
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: July 10, 2001

♦ ♦ ♦

Private Sector Prison Industries Oversight Authority

Request for Proposals to Receive Crime Victims Compensation Funds

The Private Sector Prison Industries Oversight Authority Board manages a fund established by the law resulting from HB 1617, passed by the legislature this year. The funds in this account are derived from deductions taken from wages paid to inmates employed under the Prison Industries Program and, by federal law, must only be used for Crime Victims Compensation.

We are requesting that non-profit or government agencies operating crime victims services programs and interested in being considered for Crime Victims Compensation funds forward a letter of intent to Bob Carter 8610 Shoal Creek Blvd., Austin, Texas 78757.

The letter must include a brief description of your program and the following statement:

"Any funds provided by the Private Sector Oversight Authority Board will specifically be used for CRIME Victims Compensation."

Letters of intent are due 30 days from the date posted. If you have any questions, please call Bob Carter at (512) 406-5750.

TRD-200103938
Joe Thrash
Attorney
Private Sector Prison Industries Oversight Authority
Filed: July 10, 2001

♦ ♦ ♦

Texas Public Finance Authority

Invitation to Bid for Insurance Policy

(Buildings Covered by Bond Issue)

The Texas Public Finance Authority (the "Authority") is requesting invitations to bid for insurance coverage with no coinsurance penalty, in the amount of 100% of the replacement value of each insurable building project on which bond issues are outstanding and business interruption (loss of rents) insurance as set forth in the Invitation to Bid. The deadline for Bid submission is 12:00 Noon, August 13, 2001.

The Authority's selection will be based upon lowest cost for a two year period provided that all criteria and specifications are met or exceeded. The Authority reserves the right to negotiate individual elements of the bidders' proposal and to reject any and all bid proposals.

Copies of the Invitation to Bid may be obtained by calling or writing Marce Snyder, Texas Public Finance Authority, P.O. Box 12906, Austin, Texas 78711, (512) 305-9471.

TRD-200103941
Kimberly K. Edwards
Executive Director
Texas Public Finance Authority
Filed: July 10, 2001

♦ ♦ ♦

Public Utility Commission of Texas

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

On July 3, 2001, DMJ Communications, Inc. filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60054. Applicant intends to remove the resale-only restriction, and reflect a change in ownership/control.

The Application: Application of DMJ Communications, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 24350.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, at P.O.

Box 13326, Austin, Texas 78711-3326 no later than July 25, 2001. You may contact the PUC Customer Protection Division at (512) 936-7150. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24350.

TRD-200103876
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 6, 2001

♦ ♦ ♦

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

On July 5, 2001, SCC Communications Corporation filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60317. Applicant intends to (1) change its name to Intrado Inc.; (2) reflect an internal corporate restructuring creating a direct wholly-owned subsidiary, ICI; and (3) transfer its SPCOA to the new, wholly-owned subsidiary.

The Application: Application of SCC Communications Corp. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 24351.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 no later than July 25, 2001. You may contact the commission's Customer Protection Division at (512) 936-7120. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24351.

TRD-200103929
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 9, 2001

♦ ♦ ♦

Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of the Application of Central Power and Light Company (CPL) and of Medina Electric Cooperative, Inc. (MEC) to Amend Certificated Service Area Boundaries within Webb County, Texas filed on June 28, 2001, pursuant to §§14.001, 37.051, 37.053, 37.054 and 37.056 of the Texas Utilities Code, the Public Utility Regulatory Act (PURA), and P.U.C. Substantive Rule §25.101. The applicants submit that this proceeding involves "minor boundary changes" pursuant to P.U.C. Procedural Rule §22.52(a) and P.U.C. Substantive Rule §25.101(c)(5)(B) and therefore, notice of this proposed amendment is not required. A summary of the application follows:

Docket Style and Number: Application of Central Power and Light Company and of Medina Electric Cooperative, Inc. to Amend Certificated Service Area Boundaries within Webb County, Texas - Docket Number 24323.

The Application: CPL and MEC request boundary changes in order to accommodate development west of I-35 and attendant construction by MEC to efficiently serve future development in this area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989.

TRD-200103839
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 3, 2001

♦ ♦ ♦

Public Notice of Amendment to Interconnection Agreement

On June 29, 2001, Southwestern Bell Telephone Company and Phone Remedies, LLC, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24326. 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 24326. 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 August 1, 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 Public Utility Commission Office of Customer Protection 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 24326.

TRD-200103848
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 5, 2001

♦ ♦ ♦

Public Notice of Amendment to Interconnection Agreement

On June 29, 2001, AT&T Wireless Services, Inc. and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24328. 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 24328. 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 August 1, 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 Public Utility Commission Office of Customer Protection 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 24328.

TRD-200103849
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 5, 2001

♦ ♦ ♦

Public Notice of Amendment to Interconnection Agreement

On July 2, 2001, Southwestern Bell Telephone Company and McLeodUSA Telecommunications Services, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24339. 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 24339. 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 August 1, 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 Public Utility Commission Office of Customer Protection 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 24339.

TRD-200103850
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 5, 2001

♦ ♦ ♦

Public Notice of Interconnection Agreement

On July 2, 2001, United Telephone Company of Texas, Inc., d/b/a Sprint, Central Telephone Company of Texas d/b/a Sprint (collectively, Sprint), and NTWS Ditigal Broadband, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24340. The joint application and the underlying interconnection agreement is 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 24340. 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 August 1, 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 Public Utility Commission Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24340.

TRD-200103851
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 5, 2001

♦ ♦ ♦

Public Notice of Interconnection Agreement

On July 2, 2001, United Telephone Company of Texas, Inc., d/b/a Sprint, Central Telephone Company of Texas d/b/a Sprint (collectively, Sprint), and American Fiber Network, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24341. The joint application and the underlying interconnection agreement is 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 24341. 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 August 1, 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 Public Utility Commission Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24341.

TRD-200103852
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 5, 2001

♦ ♦ ♦

Texas A&M University System, Board of Regents

Public Notice

Pursuant to §552.123, Texas Government Code, the following candidates are the finalists for the position of President of Texas A&M International University and upon the expiration of twenty-one days, final action may be taken by the Board of Regents of The Texas A&M University System:

(1) Dr. Raymond T. Garza

(2) Dr. Ray Marvin Keck, III

TRD-200103842
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University System, Board of Regents
Filed: July 3, 2001

♦ ♦ ♦

Texas Department of Transportation

Revised Request for Proposals - Aviation Professional Consulting Services

A Request for Proposals to conduct an economic impact study was published in the June 29, 2001, issue of the *Texas Register* (26 TexReg 4916). The deadline for postmarks of proposals was published as July 25, 2001, and the deadline for hand-delivery of proposals was July 27, 2001. The deadline for receipt of proposals is now being extended. The proposal's due date has been extended as follows:

Proposals must be postmarked by U. S. mail by midnight August 17, 2001. Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. on August 17, 2001; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. August 20, 2001; hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704.

If you have any questions, please call Karon Wiedemann, Director, Grant Management, Aviation Division, Texas Department of Transportation (512) 416-4520.

TRD-200103960
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: July 11, 2001

♦ ♦ ♦

How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

Texas Register
Services

The *Texas Register* offers the following services. Please check the appropriate box (or boxes).

Texas Natural Resource Conservation Commission, Title 30

❑ **Chapter 285** $25 ❑ update service $25/year *(On-Site Wastewater Treatment)*
❑ **Chapter 290** $25 ❑ update service $25/year *(Water Hygiene)*
❑ **Chapter 330** $50 ❑ update service $25/year *(Municipal Solid Waste)*
❑ **Chapter 334** $40 ❑ update service $25/year *(Underground/Aboveground Storage Tanks)*
❑ **Chapter 335** $30 ❑ update service $25/year *(Industrial Solid Waste/Municipal Hazardous Waste)*

Update service should be in ❑ printed format ❑ 3 1/2" diskette

Texas Workers Compensation Commission, Title 28

❑ Update service $25/year

Texas Register Phone Numbers	**(800) 226-7199**
Documents	(512) 463-5561
Circulation	(512) 463-5575
Marketing	(512) 305-9623
Texas Administrative Code	(512) 463-5565

Information For Other Divisions of the Secretary of State's Office

Executive Offices	(512) 463-5701
Corporations/	
Copies and Certifications	(512) 463-5578
Direct Access	(512) 475-2755
Information	(512) 463-5555
Legal Staff	(512) 463-5586
Name Availability	(512) 463-5555
Trademarks	(512) 463-5576
Elections	
Information	(512) 463-5650
Statutory Documents	
Legislation	(512) 463-0872
Notary Public	(512) 463-5705
Uniform Commercial Code	
Information	(512) 475-2700
Financing Statements	(512) 475-2703
Financing Statement Changes	(512) 475-2704
UCC Lien Searches/Certificates	(512) 475-2705

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues required. You may use your VISA or Mastercard. All purchases made by credit card will be subject to an additional 2.1% service charge. Return this form to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824. For more information, please call (800) 226-7199.

❒ **Change of Address**
(Please fill out information below)

❒ **Paper Subscription**
❒ One Year $150 ❒ Six Months $100 ❒ First Class Mail $250

❒ **Back Issue ($10 per copy)**

_____ Quantity

Volume _____, Issue #_____.
(Prepayment required for back issues)

NAME _____

ORGANIZATION_____

ADDRESS _____

CITY, STATE, ZIP _____

PHONE NUMBER _____

FAX NUMBER _____

Customer ID Number/Subscription Number _____
(Number for change of address only)

❒ **Bill Me** ❒ **Payment Enclosed**

Mastercard/VISA Number _____

Expiration Date _____ Signature _____

Please make checks payable to the Secretary of State. Subscription fees are not refundable.
Do not use this form to renew subscriptions.
Visit our home on the internet at http://www.sos.state.tx.us.

_____
_____
Periodical Postage

PAID

Austin, Texas
and additonal entry offices
_____
_____