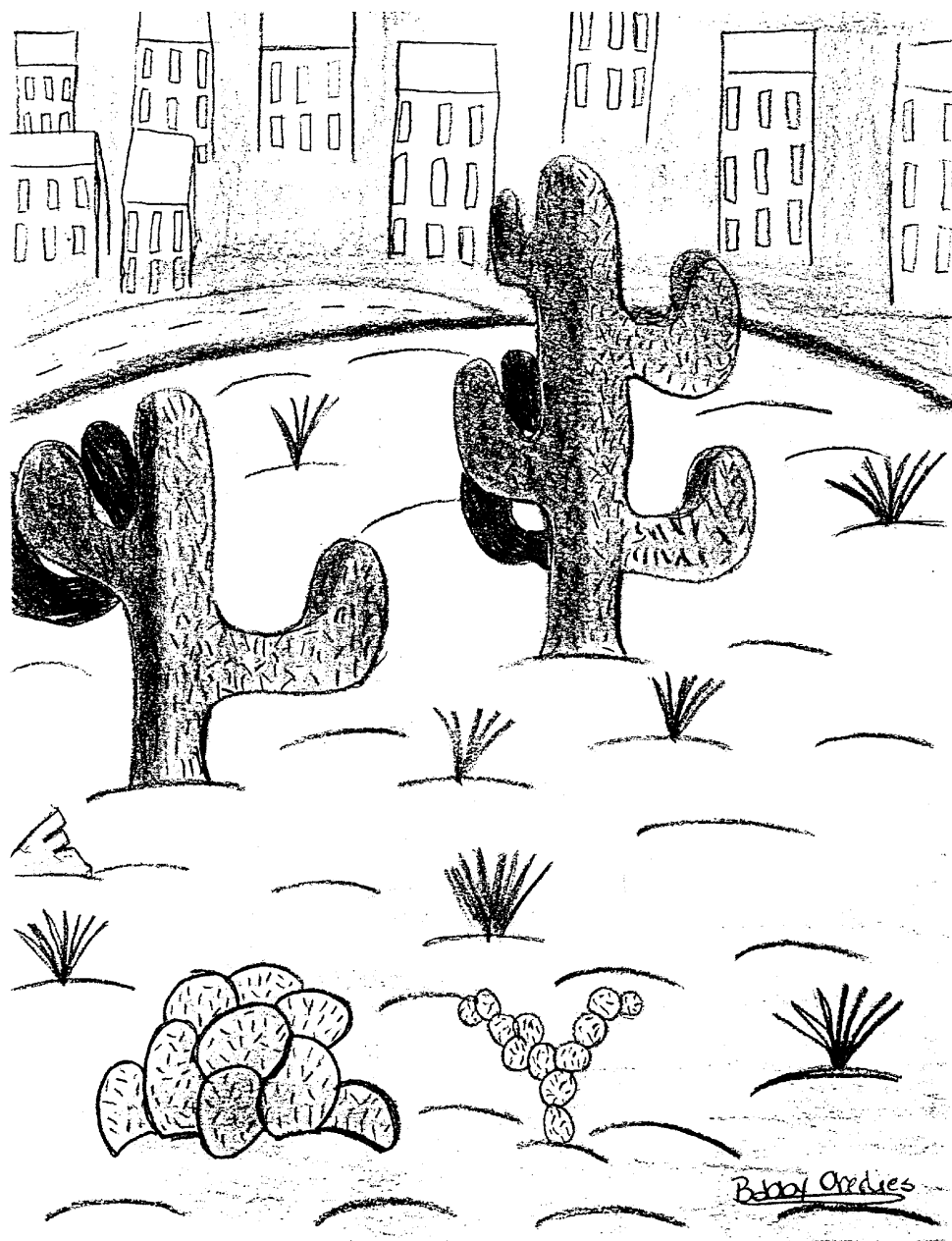

TEXAS REGISTER

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Artist: Bobby Oberlies
8th Grade
Loflin Middle School

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Open Meetings

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

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

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

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

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



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

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for August 13, 2002

Designated as presiding officer of the Teacher Retirement System of Texas, Board of Trustess for a term at the pleasure of the Governor, Terence S. Ellis of New Ulm. Mr. Ellis will replace James Simms of Amarillo as presiding officer. Mr. Simms no longer serves on the board.

Appointed to the Teacher Retirement System of Texas, Board of Trustees for terms to expire on August 31, 2007, James W. Fonteno, Jr. of Houston (replacing James Simms of Amarillo whose term expired), Jarvis Vincent Hollingsworth of Missouri City (replacing James Cummings of San Angelo whose term expired).

Rick Perry, Governor

TRD-200205507



Appointments

Appointments for August 21, 2002

Appointed to the State Commission on Judicial Conduct for a term to expire on November 19, 2005, Rolland Craten Allen, III of Corpus Christi (replacing Marvin Brittingham of Mansfield who resigned).

Appointed to the Texas Commission of Licensing and Regulation for a term to expire on February 1, 2003, Frank S. Denton of Conroe (replacing Elliott McConnell of Rockport who resigned).

Appointments for August 22, 2002

Designated as presiding officer of the Texas State Board of Social Worker Examiners for the term at the pleasure of the Governor, Joan Joy Johnson Culver of Austin. Ms. Culver will replace Deborah Hammond as presiding officer. Ms. Hammond no longer serves on the board.

Appointed to the Texas State Board of Social Worker Examiners for a term to expire on February 1, 2005, Willie McGee, Jr. of Plainview (replacing Don Kelly of Houston whose term expired).

Appointed to the Texas State Board of Social Worker Examiners for terms to expire on February 1, 2007, Holly L. Anawaty of Houston (replacing Willie McGee of Plainview whose term expired), Julia Ann Stokes of Fort Worth (replacing Deborah Hammond of Austin whose term expired).

Rick Perry, Governor

TRD-200205562



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.

Opinions

Opinion No. JC-0542

The Honorable Charles D. Penick, Bastrop County, Criminal District Attorney, 804 Pecan Street, Bastrop, Texas 78602

Re: Whether an autopsy report may be withheld from the public if a prosecutor determines that its release could hinder a murder investigation (RQ-0511-JC)

S U M M A R Y

An autopsy report prepared in connection with an inquest by a justice of the peace into a murder may be inspected by the public pursuant to section 27.004 of the Government Code. Chapter 49 of the Code of Criminal Procedure, which governs inquests, does not provide confidentiality for records of an inquest conducted by a justice of the peace, or for an autopsy report prepared as part of the inquest. We find no statute that would except such an autopsy report from public inspection under Government Code section 27.004. However, should the district attorney's office or the police department wish to prohibit public disclosure of an autopsy report to prevent hindrance of the investigation and prosecution of a murder, it might find relief by securing a court order requiring the autopsy report in the justice's custody to be withheld from public inspection.

Opinion No. JC-0543

The Honorable Clyde Herrington, Angelina County District Attorney, P.O. Box 908, Lufkin, Texas 75902-0908

Re: Whether a county that collects fees and costs under section 51.702 of the Government Code must, under section 25.0005 of the same code, "set" an increased salary for statutory county court judges, and related questions (RQ-0513-JC)

S U M M A R Y

Assuming that the requestor's statement of facts is true, Angelina County, which began collecting fees and costs under section 51.702 of the Government Code in November 1996, did not "set" increased salaries for its statutory county court judges as required under section 25.0005(a) or (e) of the same code in 1997 or 1998. See Tex. Gov't Code Ann. §§ 25.0005(a), (e), 51.702(i) (Vernon Supp. 2002). Under section 25.0005(a), Angelina County need not have increased the

judges' salaries beginning September 1 of the year it began collecting the fees and costs. To the extent Angelina County did not pay its judges the amount they were due under section 25.0005(a), each judge should receive from the County the difference between the total amount he or she received and the amount the judge should have received under that subsection.

Opinion No. JC-0544

The Honorable Kim Brimer, Chair, Business and Industry Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910

Re: Authority of a general-law municipality to assign to a "city administrator" duties reserved by statute to the mayor or city manager, and related questions (RQ-0515-JC)

S U M M A R Y

General-law cities are creatures of statute and have only those powers expressly granted by statute or necessarily implied therefrom. The legislature has expressly designated the mayor of a general-law city as the budget officer of a municipality, unless the municipality has adopted the city manager form of government, and has assigned specific duties by statute to the mayor. The city council has no authority to reassign the mayor's statutory duties to another officer.

A general-law city must hold an election pursuant to Local Government Code chapter 25 if it wishes to adopt the city manager form of government. Absent compliance with the procedures of chapter 25, the city council of a general-law city will not have authority to appoint a city manager to administer the municipal business and exercise other authority conferred upon a city manager by Local Government Code chapter 25.

The governing body may not delegate to another person the authority as budget officer that Local Government Code chapter 102 confers upon the mayor or the city manager appointed in compliance with Local Government Code chapter 25. The mayor is expressly authorized to require other city officers to provide necessary information to him and may also delegate to city employees nondiscretionary ministerial and administrative tasks necessary to carry out his statutory duties as budget officer.

For further information, please access the website at www.oag.state.tx.us. or call the Opinion Committee at 512/463-2110.

TRD-200205487

Susan D. Gusky

Assistant Attorney General

Office of the Attorney General

Filed: August 21, 2002



Requests for Opinions

RQ-0584

The Honorable Dale Tillery, Chair, Pensions & Investments Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910

Re: Whether section 824.005(b) of the Government Code, which applies to the revocation of retirement, applies to a retired teacher employed on a temporary basis by a third party that provides contractual staff services to a school (Request No. 0584-JC)

Briefs requested by September 16, 2002

RQ-0585

Eduardo J. Sanchez, M.D. Commissioner of Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199

Re: Whether drug pricing information collected by the Texas Department of Health is subject to disclosure under the Public Information Act, and related questions (Request No. 0585-JC)

Briefs requested by September 16, 2002

RQ-0586

Ms. Cynthia S. Vaughn, President, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825 Austin, Texas 78701-3945

Re: Whether the Board of Chiropractic Examiners may by rule determine which reexaminations are required under section 201.354(e) of the Government Code (Request No. 0586-JC)

Briefs requested by September 16, 2002

RQ-0587

The Honorable Jane Nelson, Chair, Sunset Advisory Commission, 1501 North Congress, 6th Floor, Robert E. Johnson Building, Austin, Texas 78701

The Honorable Warren D. Chisum, Vice Chair, Sunset Advisory Commission, 1501 North Congress, 6th Floor, Robert E. Johnson Building Austin, Texas 78701

Re: Implementation of 1999 amendments to article XVI, section 30a, of the Texas Constitution, which relates to the terms of office of members of state boards (Request No. 0587-JC)

Briefs requested by September 20, 2002

For further information, please access the Attorney General's website at www.oag.state.tx.us. or call the Opinion Committee at 512/463-2110.

TRD-200205488

Susan D. Gusky

Assistant Attorney General

Office of the Attorney General

Filed: August 21, 2002



EMERGENCY RULES

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

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

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

CHAPTER 184. SURGICAL ASSISTANTS

22 TAC §184.6

The Texas State Board of Medical Examiners adopts on an emergency basis an amendment to §184.6, concerning surgical assistants. In accordance with §2001.034(a) of the Texas Government Code, the proposed changes must be adopted on an emergency basis. Chapter 206 of the Texas Occupations Code requires the board to adopt rules for the licensure of surgical assistant applicants by September 1, 2002. The proposed changes affect the licensure requirements for all applicants, and if left unchanged, would contradict the intent of the medical board.

This section is being simultaneously proposed elsewhere in this issue of the *Texas Register*.

The amendment is adopted on an emergency basis 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.

§184.6. Licensure Documentation.

(a) Original documents may include, but are not limited to, those listed in subsections (b) and (c) of this section.

(b) Documentation required of all applicants for licensure.

(1) Birth Certificate/Proof of Age. Each applicant for licensure must provide a copy of a birth certificate and translation if necessary to prove that the applicant is at least 21 years of age. In instances where a birth certificate is not available the applicant must provide copies of a passport or other suitable alternate documentation.

(2) Name change. Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant's name has been changed by naturalization, the applicant should send the original naturalization certificate by certified mail to the board office for inspection.

(3) Examination scores. Each applicant for licensure must have a certified transcript of grades submitted directly from the appropriate testing service to the board for all examinations used in Texas or another state for licensure.

(4) Certification. All applicants must submit:

(A) a valid and current certificate from a board approved national certifying organization; and

(B) a certificate of successful completion of an educational program whose curriculum includes surgical assisting submitted directly from the program on a form provided the board, unless the applicant qualifies for the special eligibility provision regarding education under §184.4(c) of this title (relating to Qualifications for Licensure).

(5) Evaluations.

(A) All applicants must provide evaluations, on forms provided by the board, of their professional affiliations for the past three years or since graduation from an educational program, in compliance with §184.4(a)(13) of this chapter (relating to Qualifications for Licensure), whichever is the shorter period.

(B) The evaluations must come from at least three physicians who have each supervised the applicant for more than 100 hours or a majority of the applicant's work experience.

(C) An exception to subparagraph (B) of this paragraph may be made for those applicants who provide adequate documentation that they have not been supervised by at least three physicians for the three years preceding the board's receipt of application or since graduation, whichever is the shorter period.

(6) Temporary license affidavit. Each applicant must submit a completed form, furnished by the board, titled "Temporary License Affidavit" prior to the issuance of a temporary license.

(7) License verifications. Each applicant for licensure who is licensed, registered, or certified in another state must have that state submit directly to the board, on a form provided by the board, that the applicant's license, registration, or certification is current and in full force and that the license, registration, or certification has not been restricted, suspended, revoked or otherwise subject to disciplinary action. The other state shall also include a description of any sanctions imposed by or disciplinary matters pending in the state.

(c) Applicants may be required to submit other documentation, which may include the following:

(1) Translations. Any document that is in a language other than the English language will need to have a certified translation prepared and a copy of the translation submitted with the translated document.

(A) An official translation from the school or appropriate agency attached to the foreign language transcript or other document is acceptable.

(B) If a foreign document is received without a translation, the board will send the applicant a copy of the document to be translated and returned to the board.

(C) Documents must be translated by a translation agency who is a member of the American Translation Association or a United States college or university official.

(D) The translation must be on the translator's letterhead, and the translator must verify that it is a "true word for word translation" to the best of his/her knowledge, and that he/she is fluent in the language translated, and is qualified to translate the document.

(E) The translation must be signed in the presence of a notary public and then notarized. The translator's name must be printed below his/her signature. The notary public must use the phrase: "Subscribed and Sworn this _____ day of _____, 20__." The notary must then sign and date the translation, and affix his/her notary seal to the document.

(2) Arrest records. If an applicant has ever been arrested the applicant must request that the arresting authority submit to the board copies of the arrest and arrest disposition.

(3) Inpatient treatment for alcohol/substance abuse or mental illness. Each applicant that has been admitted to an inpatient facility within the last five years for treatment of alcohol/substance abuse or mental illness must submit the following:

(A) applicant's statement explaining the circumstances of the hospitalization;

(B) all records, submitted directly from the inpatient facility;

(C) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(D) a copy of any contracts signed with any licensing authority, professional society or impaired practitioner committee.

(4) Outpatient treatment for alcohol/substance abuse or mental illness. Each applicant that has been treated on an outpatient basis within the past five years for alcohol/substance abuse must submit the following:

(A) applicant's statement explaining the circumstances of the outpatient treatment;

(B) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(C) a copy of any contracts signed with any licensing authority, professional society or impaired practitioners committee.

(5) Malpractice. If an applicant has ever been named in a malpractice claim filed with any liability carrier or if an applicant has ever been named in a malpractice suit, the applicant must:

(A) have each liability carrier complete a form furnished by this board regarding each claim filed against the applicant's insurance;

(B) for each claim that becomes a malpractice suit, have the attorney representing the applicant in each suit submit a letter to the board explaining the allegation, relevant dates of the allegation, and current status of the suit. If the suit has been closed, the attorney must state the disposition of the suit, and if any money was paid, the amount of the settlement. If such letter is not available, the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided; and

(C) provide a statement composed by the applicant, explaining the circumstances pertaining to patient care in defense of the allegations.

(6) Additional documentation. Additional documentation may be required as is deemed necessary to facilitate the investigation of any application for medical licensure.

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

Filed with the Office of the Secretary of State on August 19, 2002.

TRD-200205431

Donald W. Patrick, MD, JD

Executive Director

Texas State Board of Medical Examiners

Effective Date: August 19, 2002

Expiration Date: December 17, 2002

For further information, please call: (512) 305-7016



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 60. VICTIMS' ASSISTANCE DISCRETIONARY GRANTS

SUBCHAPTER D. GRANT BUDGET REQUIREMENTS

1 TAC §60.33

The Office of the Attorney General (OAG) proposes amendments to §60.33, Professional and Contractual Services, relating to the administration of the crime victims' assistance discretionary grants (VADG). The Texas Code of Criminal Procedure, Article 56.541, authorizes the OAG to use the Compensation to Victims of Crime (CVC) fund for grants or contracts for programs that support crime victim-related services or assistance and to adopt rules necessary for the implementation of the article. Chapter 60 carries out the purpose of the statute by establishing the procedures for application and administration of VADGs or contracts which support crime victim-related services or assistance.

The OAG determined that Subchapter D Grant Budget Requirements, §60.33 Professional and Contractual Services, relating to the provisions for expenditures of funds for professional and contractual services, should be amended to enable grantees greater flexibility to procure professional and contractual services. The proposed amendment would allow grantees and entities that contract with the OAG to request a waiver from the OAG to exceed the maximum rate schedule for expenses for professional and contractual services. The new proposed paragraph, §60.33(l)(7), explains the procedure a grantee must follow to request a waiver of the maximum rate allowed. Additionally, the OAG will approve the request for waiver if it determines that the waiver is reasonable and consistent with local market rates for similar services.

Rex Uberman has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications to the state or to local governments as a result of enforcing or administering the chapter as proposed.

Mr. Uberman, has determined that for the five-year period in which the proposed amendments are in effect, the anticipated public benefit is the more efficient administration of the VADG program by the OAG, as mandated by the Texas legislature, without increased costs to the state. The proposed rules will enable direct service providers to victims of crime to provide better services and assistance to the victims of crime.

Mr. Uberman has also determined there will be no direct adverse effect on small businesses or micro-businesses because these rules do not apply to single businesses.

Mr. Uberman further determined there will be no economic costs to persons required to comply with the rule.

Comments may be submitted, in writing, no later than 30 days from the date of this publication to Mr. Uberman, OAG, (512) 936-1236, P.O. Box 12548, Austin, Texas 78711-2548 or by e-mail to rex.uberman@oag.state.tx.us.

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

The amendments affect Texas Code of Criminal Procedure, Chapter 56.

§60.33. *Professional and Contractual Services.*

(a) - (k) (No change.)

(l) All professional and contractual services must be within the following OAG maximum rate schedule unless the grantee receives prior written approval from the OAG consistent with the provisions of §60.33(l)(7) of this title:

(1) Individual consultant rates generally may not exceed \$450 per day or \$56.25 per hour[, without the prior written approval of the OAG]. The rate must be based on the prevailing market rate for

the type of work being performed. The payment may include actual time for preparation, evaluation, and travel, in addition to the time for the presentation. A grantee may also pay for travel costs.

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

(7) Before contracting for professional or contractual services that exceed the maximum rate schedule, a grantee shall request a waiver from the OAG. The request must be in writing and must be sent to the Crime Victim Services Division of the OAG. The request for waiver must include a description of the service to be procured, the rate per hour for the service, and detailed information that supports why a higher rate is justified. The OAG will respond to all waiver requests in writing indicating the OAG's approval or disapproval of the requested rate. The OAG will base decisions regarding a maximum rate waiver on the reasonableness of the requested rate compared to local market rates for similar services. The OAG may also consider other factors as necessary.

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 August 16, 2002.

TRD-200205406

Susan D. Gusky

Assistant Attorney General

Office of the Attorney General

Earliest possible date of adoption: September 29, 2002

For further information regarding this publication, please contact A.G. Younger, Agency Liaison at (512) 463-2110.



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.308

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.308, concerning enhanced direct care staff rate, in its Medicaid Reimbursement Rates chapter. The purpose of the amendment is to specify that assistant administrators cannot be included in the direct care staff cost center. The proposal clarifies: (1) the enrollment period; (2) the deadline for submission of amended reports; (3) that eligibility for reinvestment is contingent on the receipt of an acceptable report; (4) that the request to aggregate facilities for determination of the spending requirement must be received along with the report; and (5) that facilities that terminate their contract after the end of the rate year but before the spending requirement is determined are not eligible to be included in the aggregate spending calculation. The proposal establishes a 10% recoupment on the direct care rate for facilities that do not file an acceptable report within 60 days of the due date and removes the increase in the spending requirement. In addition, the proposal revises enrollment limitations for facilities that miss their staffing requirement. The proposal also adds the requirement that a facility must have requested a higher level of enhancement than

the level they were awarded in order to qualify for reinvestment of recouped funds and allows new owners of existing facilities to request a higher enhancement level than the enhancement level inherited from the previous owner. The proposal specifies that facilities whose contracts are terminated prior to the calculation of the performance weights needed in the calculation of the performance-based mitigation of the spending requirement are not eligible for the performance-based mitigation.

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

Steve Lorenzen, Director, Rate Analysis, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be clearer rules on how the spending requirement and performance-based mitigation is handled when a facility's contract has terminated. The proposal clarifies reporting requirements, aggregate spending request deadlines, enrollment deadlines, and reinvestment eligibility requirements. The proposal also establishes new enrollment limitation guidelines and allows owners of existing facilities acquired through an ownership change to request a higher enhancement level than that of the previous owner. In addition, the proposal clarifies that the assistant administrator will not be included in the direct care staff cost center. The proposal also removes the escalation of the spending requirement to 90% that was to be effective September 1, 2002. There will be no adverse economic effect on small or micro businesses as a result of enforcing or administering the section, because the proposal clarifies procedural and reporting requirements as well as eligibility requirements for reinvestment and performance-based mitigation. The proposal removes the increase in the spending requirement and imposes a 10% direct care rate recoupment for facilities that do not submit their accountability report to verify that the provider has met their spending requirement. Funds that are recouped due to the spending requirement are reinvested into enhanced rates for those facilities that exceeded their staffing or spending requirements. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Questions about the content of this proposal may be directed to Carolyn Pratt at (512) 685-3127 in HHSC Rate Analysis. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-286, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*. For further information regarding the proposal or to make the proposal available for public review, contact local offices of DHS or Carolyn Pratt at (512) 685-3127 in HHSC Rate Analysis.

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

The amendment is proposed under the Texas Government Code, §531.033, which authorizes the commissioner of HHSC to adopt rules necessary to carry out the commission's duties, and §531.021(b), which establishes the commission as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code.

The amendment implements the Government Code, §§531.033 and 531.021(b).

§355.308. *Enhanced Direct Care Staff Rate.*

(a) Direct care staff cost center. This cost center will include compensation for employee and contract labor Registered Nurses (RNs), including Directors of Nursing (DONs) and Assistant Directors of Nursing (ADONs);^[-] Licensed Vocational Nurses (LVNs), including DONs and ADONs;^[-] medication aides;^[-] and nurse aides performing nursing-related duties for Medicaid contracted beds.

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

(7) Nursing facility administrators and assistant administrators are not included in the direct care staff cost center.

(8) (No change.)

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

(d) Enrollment contract amendment. An initial enrollment contract amendment is required from each facility choosing to participate in the enhanced direct care staff rate. Participating and nonparticipating facilities may request to modify their enrollment status (i.e., a nonparticipant can request to become a participant, a participant can request to become a nonparticipant, a participant can request to change its enhancement level) during any open enrollment period. Requests to modify a facility's enrollment status during an open enrollment period must be received by HHSC Rate Analysis by the last day of the open enrollment period as per subsection (c) of this section. If the last day of the open enrollment period falls on a weekend, a national holiday, or a state holiday, then the first business day following the last day of the open enrollment period is the final day the receipt of the enrollment contract amendment will be accepted. An enrollment contract amendment that is not received by the stated deadline will not be accepted. Facilities from which HHSC Rate Analysis has not received an acceptable request to modify their enrollment by the last day of the open enrollment period will continue at the level of participation in effect during the open enrollment period within available funds. To be acceptable, an enrollment contract amendment must be completed according to instructions, signed by an authorized signator as per the Texas Department of Human Services (DHS) Form 2031 applicable to the provider's contract or ownership type, and be legible.

(e) (No change.)

(f) Staffing and Compensation Report submittal requirements. Staffing and Compensation Reports must be submitted as follows:

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

(3) Vendor hold. HHSC or its designee will place on hold the vendor payments for any facility that [which] does not submit a Staffing and Compensation Report completed in accordance with all applicable rules and instructions by the due dates described in this subsection. This vendor hold will remain in effect until an acceptable Staffing and Compensation Report is received by HHSC. Facilities that do not submit a Staffing and Compensation Report completed in accordance with all applicable rules and instructions within 60 days of the due dates described in this subsection will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of 10% of direct care dollars paid to the facility for services provided during the reporting period in question. These facilities will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC or its designee funds identified for recoupment from subsections (n) and/or (o) of this section. In addition, facilities with an ownership change or contract termination that [whø] do not submit

a Staffing and Compensation report completed in accordance with all applicable rules within 60 days of the change in ownership or contract termination will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of 10% of direct care dollars paid to the facility for services provided during the reporting period in question. These facilities will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC or its designee funds identified for recoupment from subsections (n) and/or (o) of this section.

(4) Provider-initiated amended accountability reports. Reports must be received prior to the date the provider is notified of compliance with spending and/or staffing requirements for the report in question as per subsections (n) and/or (o) of this section.

(g)-(l) (No change.)

(m) Staffing requirements for participating facilities. Each participating facility will be required to maintain adjusted LVN-equivalent minutes equal to those determined in subsection (j) of this section. Each participating facility's adjusted LVN-equivalent minutes maintained during the reporting period will be determined as follows.

(1) (No change.)

(2) Determine adjusted LVN-equivalent minutes maintained. Compare the unadjusted LVN-equivalent minutes maintained by the facility during the reporting period from paragraph (1) of this subsection to the LVN-equivalent minutes required of the facility as determined in subsection (j) of this section. The adjusted LVN-equivalent minutes are determined as follows:

(A) (No change.)

(B) If the number of unadjusted LVN-equivalent minutes maintained by the facility during the reporting period is less than the number of LVN-equivalent minutes required of the facility, but greater than the minimum LVN-equivalent minutes required for participation as determined in subsection (j)(1) of this section, the following steps are performed.

(i) (No change.)

(ii) Determine the facility's adjusted accrued revenue by multiplying the accrued revenue from clause (i) of this subparagraph by 0.85. ~~[Effective for reporting periods beginning on or after September 1, 2002; determine the facility's adjusted accrued revenue by multiplying the accrued revenue from clause (i) of this subparagraph by 0.90.]~~

(iii)-(vi) (No change.)

(n) Staffing accountability. Participating facilities will be responsible for maintaining the staffing levels determined in subsection (j) of this section. HHSC will determine the adjusted LVN-equivalent minutes maintained by each facility during the reporting period by the method described in subsection (m) of this section. ~~[Adjustments to direct care staff rates and staffing requirements and collection of recoupment and interest amounts, if applicable, will be made upon determination by HHSC that a facility is failing to meet its staffing requirement.]~~

(1) (No change.)

(2) In addition, facilities that fail to maintain the required LVN-equivalent minutes by four or more adjusted LVN-equivalent minutes, and facilities required to provide at least four LVN-equivalent minutes above their minimum staffing requirement, as determined in subsection (j)(1) of this section, and that fail to meet their minimum

staffing requirement, are subject to the following: ~~[Participating facilities required to provide less than two LVN-equivalent minutes above their minimum required LVN-equivalent minutes per resident day, as determined in paragraph (j)(1) of this subsection, who fail to maintain adjusted staffing at their required LVN-equivalent minutes and any participating facilities that fail to maintain adjusted staffing at their required LVN-equivalent minutes by less than two LVN-equivalent minutes will have their direct care staff rates and staffing requirements adjusted to a level consistent with the highest adjusted LVN-equivalent minutes, as defined in subsection (m) of this section, that they actually attained. If the adjusted level attained is less than the minimum direct care staff requirement for participation, the facility will be removed from participation.]~~

(A) Effective the first day of the rate year immediately following the determination that a facility met the qualifications detailed in paragraph (2) of this subsection, the facility will have its enrollment in the enhancement program limited to a level consistent with the highest adjusted LVN-equivalent minutes, as defined in subsection (m) of this section, that the facility actually attained plus two additional LVN-equivalent minutes. If the adjusted level attained is more than two LVN-equivalent minutes below the minimum direct care staff requirement for participation, the facility will be precluded from enrollment in the enhancement program and will be a nonparticipant. These enrollment limitations will remain in effect for the longer of either one full rate year or until the first day of the rate year that begins after funds identified for recoupment from subsections (n) and/or (o) of this section are repaid to HHSC or its designee.

~~[(3) Facilities that are required to provide two or more LVN-equivalent minutes above their minimum required LVN-equivalent minutes per resident day, as determined in paragraph (j)(1) of this section and that fail to maintain their required LVN-equivalent minutes by two or more adjusted LVN-equivalent minutes will have their direct care staff rates and staffing requirements adjusted to a level consistent with the highest adjusted LVN-equivalent minutes, as defined in subsection (m) of this section, that they actually attained. If the adjusted level attained is less than the minimum direct care staff requirement for participation, the facility will be removed from participation. These adjustments will remain in effect for the longer of either the remainder of the rate year in which the determination is made plus another full rate year or until the first day of the rate year after funds identified for recoupment from subsections (n) and/or (o) of this section are repaid to HHSC or its designee. HHSC or its designee will collect interest from participating facilities that fail to maintain their required LVN-equivalent minutes by two or more LVN-equivalent minutes as follows:]~~

(B) HHSC or its designee will collect interest from facilities that meet the qualifications of paragraph (2) of this subsection as follows:

(i) ~~[(A)]~~ Determine the average excess funds available to the provider over the reporting period as the recoupment amount from paragraph (1) of this subsection divided by two.

(ii) ~~[(B)]~~ Determine the annualized average three-month United States Treasury Bill rate during the provider's reporting period as the unweighted monthly average for all months included, either partially or fully, in the reporting period.

(iii) ~~[(C)]~~ Determine the interest rate on the recoupment amount by multiplying the annualized average rate from clause (ii) ~~[subparagraph (B)]~~ of this ~~subparagraph~~ ~~[paragraph]~~ by the number of days in the reporting period divided by the number of days in the rate year.

(iv) ~~[(D)]~~ Determine the interest on the recoupment amount by multiplying the recoupment interest rate calculated in clause (iii) subparagraph (C) of this ~~subparagraph~~ ~~[paragraph]~~ by the average excess funds available to the provider over the reporting period from clause (i) ~~[subparagraph (A)]~~ of this ~~subparagraph~~ ~~[paragraph]~~.

(o) Spending requirements for all facilities. All facilities, participants and non-participants alike, are subject to a direct care staff spending requirement with recoupment calculated as follows:

(1) At the end of the rate year, a spending floor will be calculated by multiplying accrued Medicaid fee-for-service direct care staff revenues (net of revenues recouped by HHSC or its designee due to the failure of the facility to meet a staffing requirement as per subsection (n) of this section) by 0.85. ~~[Effective for reporting periods beginning on or after September 1, 2002, the spending floor will be calculated by multiplying accrued Medicaid fee-for-service direct care staff revenues (net of revenues recouped by HHSC or its designee due to failure of the facility to meet a staffing requirement as per subsection (n) of this section) by 0.90.]~~

(2) (No change.)

(p) Mitigation of recoupment. Recoupment of funds described in subsection (o) of this section may be mitigated as follows.

(1) (No change.)

(2) Performance-based Mitigation. Recoupment of funds described in paragraph (1)(G) of this subsection will be mitigated based upon each facility's compliance with state and federal regulations as well as on the basis of resident outcomes as follows.

(A)-(F) (No change.)

(G) Facilities whose contracts are terminated, either voluntarily or involuntarily, prior to the calculation of the performance weights described in subparagraph (A) of this paragraph are not eligible for performance-based mitigation.

(q)-(x) (No change.)

(y) Change of ownership. Participation in the enhanced direct care staff rate confers to the new owner as defined in 40 TAC §19.2308 (relating to Change of Ownership) when there is a change of ownership. The new owner is responsible for the reporting requirements in subsection (f) of this section for any reporting period days occurring after the change. If the change of ownership occurs prior to or during an open enrollment period as defined in subsection (c) of this section and the new owner has not met all contracting requirements delineated in 40 TAC §19.2301 ~~[of this title]~~ (relating to Requirements for Medicaid-Contracted Facilities) by the end of the open enrollment period, participation in the enhanced direct care staff rate as it existed prior to the ownership change will confer to the new owner. The new owner may request a higher enhancement level than that conferred by submitting an acceptable enrollment contract amendment to HHSC. To be acceptable, the enrollment contract amendment must be received by HHSC Rate Analysis no later than 90 days from the date the new owner is notified in writing by DHS of the ownership- change effective date, be completed according to instructions, be signed by an authorized signator as per DHS Form 2031, Corporate Board of Directors Resolution, and be legible. Such requests will be granted within available funds.

(z) (No change.)

(aa) In cases where a parent company, sole member, or governmental body controls more than one nursing facility (NF) contract, the parent company, sole member, or governmental body may request at the time each Annual Staffing and Compensation Report is submitted, in a manner prescribed by HHSC, to have its contracts' compliance

with the spending requirements detailed in subsection (o) of this section for the applicable reporting period evaluated in the aggregate for all NF contracts it controlled at the end of the rate year or at the effective date of the change of ownership or termination of its last NF contract. In limited liability partnerships in which the same single general partner controls all the limited liability partnerships, that single general partner may make this request. Other such requests will be reviewed on a case-by-case basis. A new request to have compliance with spending requirements evaluated in the aggregate must be submitted for each reporting period. NF contracts that change ownership or terminate effective after the end of the applicable reporting period, but prior to the determination of compliance with spending requirements as per subsection (o) of this section, are excluded from all aggregate spending calculations. These contracts' compliance with spending requirements will be determined on an individual basis and the costs and revenues will not be included in the aggregate spending calculation.

(bb) (No change.)

(cc) Reinvestment. HHSC will reinvest recouped funds in the enhanced direct care staff rate program, to the extent that there are qualifying facilities.

(1) Identify qualifying facilities. Facilities meeting the following criteria during the most recent completed reporting period are qualifying facilities for reinvestment purposes.

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

(D) An acceptable Annual Staffing and Compensation Report for the reporting period was received by HHSC Rate Analysis at least 30 days prior to the date distribution of available reinvestment funds was determined.

(2) Distribution of available reinvestment funds. Available funds are distributed as described below.

(A) HHSC determines units of service provided during the most recent completed reporting period by each qualifying facility [~~requesting and~~] achieving, with unadjusted LVN-equivalent minutes as determined in subsection (m)(1) of this section, each enhancement option above the enhancement option awarded to the facility during the reporting period and multiplies this number by the rate add-on associated with that enhancement in effect during the reporting period.

(B) HHSC compares the sum of the products from subparagraph (A) of this paragraph to funds available for reinvestment.

(i) If the product is less than or equal to available funds, all ~~achieved~~ [~~requested~~] enhancements for qualifying facilities are retroactively awarded for the reporting period.

(ii) If the product is greater than available funds, retroactive enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until ~~achieved~~ [~~requested~~] enhancements are granted within available funds.

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

(dd) (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 August 19, 2002.
TRD-200205407

Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: September 29, 2002
For further information, please call: (512) 438-3734

◆ ◆ ◆
SUBCHAPTER J. PURCHASED HEALTH SERVICES
DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8061

The Health and Human Services Commission (HHSC) proposes to amend §355.8061, concerning the payment for hospital services, in its Medicaid Reimbursement Rates chapter. The proposed amendment adds language to allow for supplemental payments to certain hospitals for providing outpatient services to high-volumes of Medicaid and uninsured patients in certain large urban counties.

Don Green, Chief Financial Officer, has determined that for the first five years the proposed rule is in effect, there will be no fiscal implications for state government as a result of enforcing or administering the proposed rule. The state matching funds for this program will be made available through intergovernmental transfers from local governments. Local governments will receive additional revenues as a result of the supplemental payment provisions of this proposed rule. The additional revenues are estimated to be: \$7,500,000 in State Fiscal Year 2003; \$7,500,000 in State Fiscal Year 2004; \$7,500,000 in State Fiscal Year 2005; \$7,500,000 in State Fiscal Year 2006; \$7,500,000 in State Fiscal Year 2007.

Steve Lorenzen, Director of Rate Analysis, has determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing this section will be that additional reimbursement to hospitals serving high-volumes of Medicaid and uninsured patients will help maintain access to medically necessary services in certain large urban counties. There is no anticipated impact on small businesses and micro-businesses to comply with the section as proposed as they will not be required to alter their business practices as a result of the section. There are no anticipated economic costs to persons who are required to comply with the proposed section. There is no anticipated impact on local employment.

HHSC has determined that this proposed rule is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. The proposed rule is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

HHSC has determined that the proposed rule does not restrict or limit an owner's right to their property that would otherwise exist in the absence of governmental action and therefore does not constitute a taking under §2007.043, Government Code.

Written comments on the proposal may be submitted to Mr. Scott Reasonover, Rate Analysis Department, Texas Health and Human Services Commission, 1100 W. 49th Street, Austin, Texas 78756, within 30 days of publication of this proposal in the *Texas Register*. In addition, a public hearing concerning the proposed rule will be held Thursday, September 19, 2002, at 9:00 a.m. in the public hearing room at the Texas Health and Human Services Commission, 12555 Riata Vista Circle, Bldg. #3, Austin, Texas. To comply with federal regulations, a copy of the proposed rule is being sent to each Texas Department of Human Services (DHS) office where it will be available for public review upon request.

The rule is proposed under the Texas Government Code, §531.033, which provides the commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed rule affects the Human Resources Code, Chapter 32 and the Texas Government Code, Chapter 531.

§355.8061. *Payment for Hospital Services.*

(a) The Health and Human Services Commission (commission) or its designated agent shall reimburse hospitals approved for participation in the Texas Medical Assistance Program for covered Title XIX hospital services provided to eligible Medicaid recipients. The Texas Title XIX State Plan for Medical Assistance provides for reimbursement of covered hospital services to be determined as specified in paragraphs (1)-(4) [(3)] of this subsection.

(1) The amount payable for inpatient hospital services shall be determined as specified in §355.8063 [§29.606] of this title (relating to Reimbursement Methodology for Inpatient Hospital Services).

(2) The amount payable for outpatient hospital services shall be determined under similar methods and procedures used in the Social Security Act, Title XVIII, as amended, effective October 1, 1982 through July 31, 2000, by Public Law 97-248, except as may be otherwise specified by the Health and Human Services Commission. For the period of September 1, 1999 through and including September 30, 2001, payments to all providers were at 80.3% of allowed costs. For the period beginning October 1, 2001, Medicaid reimbursement for outpatient hospital services for high-volume providers, as defined by the commission, shall be at 84.48% of allowable cost. For the remaining providers, reimbursement for outpatient hospital services shall be at 80.3% of allowable cost. For the purpose of establishing the proposed discount factor, a high-volume provider is defined as one, which is paid at least \$200,000 during calendar year 2000. Any subsequent changes to the discount will require HHSC to hold a public hearing on proposed reimbursements before the HHSC approves any changes. The purpose of the hearing is to give interested parties an opportunity to comment on the proposed reimbursements. Notice of the hearing will be provided to the public. The notice of the public hearing will identify the name, address, and telephone number to contact for the materials pertinent to the proposed reimbursements. At least ten working days before the public hearing takes place, material pertinent to the proposed change will be made available to the public. This material will be furnished to anyone who requests it. After the public hearing, if negative comments are received, a summary of the comments made during the public hearing will be presented to the HHSC. Reimbursement for outpatient hospital surgery is limited to the lesser of the amount reimbursed to ambulatory surgical centers (ASCs) for similar services, the hospital's actual charge, the hospital's

customary charge, or the allowable cost determined by the commission or its designee.

(3) Variances shall be accounted for in the Texas State Plan for Medical Assistance or as otherwise specified by the commission.

(4) Notwithstanding other provisions of this chapter and subject to the availability of funds, supplemental payments will be made each state fiscal year in accordance with this paragraph to eligible hospitals that serve high volumes of Medicaid and uninsured patients.

(A) Supplemental payments are available under this paragraph for outpatient hospital services provided by a publicly-owned hospital or hospital affiliated with a hospital district in Bexar, Dallas, Ector, El Paso, Harris, Lubbock, Nueces, Tarrant, and Travis counties on or after July 6, 2001.

(B) State funding for supplemental payments authorized under this paragraph will be limited to and obtained through intergovernmental transfers of local or hospital district funds. The supplemental payments described in this subsection will be made in accordance with the applicable regulations regarding the Medicaid upper limit provisions codified at 42 C.F.R. §447.321.

(C) The publicly-owned hospital or hospital affiliated with a hospital district in a county listed in subparagraph (A) of this paragraph that incurs the greatest amount of cost for providing services to Medicaid and uninsured patients, will be eligible to receive supplemental high volume payments. The supplemental payments authorized under this subsection are subject to the following limits:

(i) In each state fiscal year the amount of inpatient supplemental payments and outpatient supplement payments may not exceed the hospital's "hospital specific limit," as determined under §355.8065(f)(2)(E) of this chapter (relating to Additional Reimbursement to Disproportionate Share Hospitals); and

(ii) The amount of outpatient supplemental payments and fee-for-service Medicaid outpatient payments the hospital receives in a state fiscal year may not exceed Medicaid billed charges for outpatient services provided by the hospital to fee-for-service Medicaid recipients in accordance with 42 C.F.R. §447.325.

(D) An eligible hospital will receive quarterly supplemental payments. The quarterly payments will be limited to one-fourth of the difference between the hospital's Medicaid fee-for-service outpatient Medicaid payments received and 100% of Medicaid allowable outpatient hospital cost. Medicaid payments and cost will be based on a twelve consecutive-month period of fee-for-service claims data selected by HHSC.

(E) For purposes of calculating the "hospital specific limit" under this paragraph, the "cost of services to uninsured patients" and "Medicaid shortfall", as defined by Texas Administrative Code §355.8065(b)(5) and (16), will be adjusted as follows:

(i) The amount of Medicaid payments (including inpatient and outpatient supplemental payments) that exceed Medicaid cost will be subtracted from the "Medicaid shortfall."

(ii) The amount of the "Medicaid shortfall," as adjusted in accordance with clause (i) of this subparagraph, will be subtracted from the "cost of services to uninsured patients" to ensure that, during any state fiscal year, a hospital does not receive more in total Medicaid payments (inpatient and outpatient payments, graduate medical education payments, supplemental payments and disproportionate share hospital payments) than its cost of serving Medicaid patients and patients with no health insurance.

(b) Title XIX providers may not carry forward those unreimbursed costs attributed to either the lower costs or charge limitations authorized by 42 Code of Federal Regulations §405.455 et seq., effective for all accounting periods beginning on or after January 1, 1982.

(c) The direct and indirect costs of caring for charity patients shall have no relationship to eligible recipients of the Texas Medical Assistance program and are not allowable costs under the Texas Title XIX Medical Assistance program. Obligations by hospitals to provide free care, under the Hill-Burton Act or any other arrangement as a condition to secure federal grants or loans, are not recognized as a cost under the Texas Medical Assistance program.

(d) The contents of subsection (a)-(c) of this section do not describe the amount, duration, or scope of services provided to eligible recipients under the Texas Medical Assistance 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 August 19, 2002.

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Marina S. Henderson

Executive Deputy Commissioner

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6576



1 TAC §355.8063

The Health and Human Services Commission (HHSC) proposes to amend §355.8063, concerning the reimbursement methodology for inpatient hospital services, in its Medicaid Reimbursement Rates chapter. The proposed amendments add language to implement cost-containment provisions mandated by the 77th Legislature and add four counties to the list of counties with a hospital eligible to receive supplemental payments for hospitals serving high-volumes of Medicaid and uninsured patients. The proposed amendments will implement changes necessary to maintain cost-effective reimbursement for Medicaid hospital inpatient services within appropriated funds for the 2002-2003 biennium.

Article II, section 33 of the Special Provisions Relating to All Health and Human Services Agencies contained in the General Appropriations Act (Act of May 22, 2001, 77th Leg., R.S.) directs HHSC to implement certain cost containment initiatives for the Texas Medicaid program.

These initiatives include, but are not limited to, initiatives specified in section 33. HHSC proposes to achieve some of the cost containment initiatives required by section 33, in part, through the adoption of the changes in the reimbursement for Medicaid inpatient hospital services proposed in this amendment.

The proposed amendment modifies subsection (n)(2) of §355.8063 to suspend the application of the cost-of-living index to the Medicaid standard dollar amount established for state fiscal year 2003. Subsection (t) of §355.8063 is amended to add Ector, Lubbock, Nueces, and Travis counties to the list of counties eligible for Medicaid high-volume supplemental payments. The proposed amendment adds a new subsection (u) that prescribes a methodology for calculating a high-volume reimbursement adjustment factor for certain hospitals and to

be included in the calculation of the Medicaid standard dollar amount for state fiscal year 2003.

Don Green, Chief Financial Officer, has determined that for the first five years the proposed rule is in effect, there will be no fiscal implications for state and local governments as a result of enforcing or administering the cost containment provisions of the proposed rule. Local governments will incur additional costs to administer the supplemental payments provisions of these rules; however, additional revenues will offset any such cost which are estimated to be minimal. Additional revenue to local governments with hospitals serving high-volumes of Medicaid and uninsured patients as a result of the supplemental payments provisions is estimated to be \$10,200,000 in State Fiscal Year 2003; \$10,200,000 in State Fiscal Year 2004; \$10,200,000 in State Fiscal Year 2005; \$10,200,000 in State Fiscal Year 2006; \$10,200,000 in State Fiscal Year 2007.

Steve Lorenzen, Director of Rate Analysis, has determined that for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of enforcing the proposed sections will be to provide HHSC with greater flexibility in determining supplemental payments and to maintain cost-effective reimbursement for hospital inpatient services within appropriated funds for the 2002-2003 biennium. There is no anticipated impact on small businesses and micro-businesses to comply with the sections as proposed as they will not be required to alter their business practices as a result of the sections. There are no anticipated economic costs to persons who are required to comply with the proposed sections. There is no anticipated impact on local employment.

HHSC has determined that these proposed rules are not "major environmental rules" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. The proposed rules are not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

HHSC has determined that these proposed rules do not restrict or limit an owner's right to their property that would otherwise exist in the absence of governmental action and therefore do not constitute a taking under §2007.043, Government Code.

Written comments on the proposal may be submitted to Mr. Scott Reasonover, Rate Analysis Department, Texas Health and Human Services Commission, 1100 W. 49th Street, Austin, Texas 78756, within 30 days of publication of this proposal in the *Texas Register*. In addition, a public hearing concerning the proposed rules will be held Thursday, September 19, 2002, at 9:00 a.m. in the public hearing room at the Texas Health and Human Services Commission, 12555 Riata Vista Circle, Bldg. #3, Austin, Texas. To comply with federal regulations, a copy of the proposed rules is being sent to each Texas Department of Human Services (DHS) office where it will be available for public review upon request.

The rules are proposed under the Texas Government Code, §531.033, which provides the commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal

medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed rules affect the Human Resources Code, Chapter 32 and the Texas Government Code, Chapter 531.

§355.8063. *Reimbursement Methodology for Inpatient Hospital Services.*

(a)-(m) (No change.)

(n) Adjustments to base year claims data.

(1) (No change.)

(2) The HHSC [department] or its designee updates the standard dollar amount each year for each payment division by applying a cost-of-living index to the standard dollar amount established for the base year. The cost-of-living update for state fiscal year 2003 will not be applied to the standard dollar amount for admissions during the period September 1, 2002 through August 31, 2003. The index used to update the standard dollar amounts is the greater of:

(A)-(B) (No change.)

(o)-(s) (No change.)

(t) Notwithstanding other provisions of this chapter [subchapter and subject to the availability of funds], supplemental payments will be made each state fiscal year in accordance with this subsection to eligible hospitals that serve high volumes of Medicaid and uninsured patients.

(1) Supplemental payments are available under this subsection for inpatient hospital services provided by a publicly-owned hospital or hospital affiliated with a hospital district in Bexar, Dallas, Ector, El Paso, Harris, Lubbock, Nueces, [and] Tarrant, and Travis counties on or after July 6, 2001.

(2) (No change.)

(3) In each county listed in paragraph (1) of this subsection, the publicly-owned hospital or hospital affiliated with a hospital district that incurs the greatest amount of cost for providing services to Medicaid and uninsured patients, will be eligible to receive supplemental high volume payments. The supplemental payments authorized under this paragraph are subject to the following limits:

(A) In each state fiscal year the amount of any inpatient supplemental payments and outpatient supplemental payments may not exceed the hospital's "hospital specific limit," as determined under §355.8065(f)(2)(E)[(D)] of this chapter (relating to Reimbursement to Disproportionate Share Hospitals (DSH)); and

(B) (No change.)

(4) An eligible hospital will receive quarterly supplemental payments. The quarterly payments will be limited to one-fourth of the lesser of:

(A) (No change.)

(B) The difference between the hospital's "hospital specific limit," as determined under §355.8065(f)(2)(E)[(D)] of this chapter and the hospital's DSH payments as determined by the most recently finalized DSH reporting period.

(5) (No change.)

(u) In accordance with this subsection and subject to the availability of funds, a high volume adjustment factor will be included in the

calculation of the state fiscal year 2003 (September 1, 2002 through August 31, 2003) Standard Dollar Amount described in subsection (a)(4) of this section for eligible hospitals. For purposes of this subsection, payments made in state fiscal year 2003, prior to the effective date of this subsection, may be adjusted in accordance with the methodology set out in this subsection.

(1) Eligible Hospitals. All non-state owned or operated, non public, DRG reimbursed hospitals located in urban counties with a population greater than 100,000, and Medicaid days greater than 175% of the mean Medicaid days in state fiscal year 2001 (September 1, 2000 through August 31, 2001) will be eligible for a high volume adjustment to their SDA. Medicaid days will be based on hospital claims data selected by HHSC. County population will be based on the 2000 United States census.

(2) All eligible hospitals in counties with a population less than 1,000,000 will receive a high volume adjustment factor of 6.50%; eligible hospitals in counties with a population greater than 1,000,000 will receive a high volume adjustment factor of 10.25%.

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

Filed with the Office of the Secretary of State on August 19, 2002.

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Marina S. Henderson

Executive Deputy Commissioner

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6576



1 TAC §355.8065

The Health and Human Services Commission (HHSC) proposes to amend §355.8065, concerning the Texas Medicaid Disproportionate Share Hospital Program, in its Medicaid Reimbursement Rates chapter. The proposal amends subsection (f) of section 355.8065 to reflect application of conversion factors to monthly disproportionate share hospital payments during state year 2003. The proposed amendment also changes obsolete references to the "department" and replaces them with references to HHSC.

Don Green, Chief Financial Officer, has determined that for the first five years the proposed rule is in effect, there will be no fiscal implications for state government as a result of enforcing or administering the section. There will be no fiscal impact on local governments as a result of enforcing or administering the section.

Steve Lorenzen, Director of Rate Analysis, has determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section will be increased stability within the Texas hospital industry. There is no anticipated impact on small businesses and micro-businesses to comply with the section as proposed as they will not be required to alter their business practices as a result of the section. There are no anticipated economic costs to persons who are required to comply with the proposed section. There is no anticipated impact on local employment.

HHSC has determined that this proposed rule is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a

rule the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. The proposed rule is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

HHSC has determined that this proposed rule does not restrict or limit an owner's right to their property that would otherwise exist in the absence of governmental action and therefore does not constitute a taking under §2007.043, Government Code.

Written comments on the proposal may be submitted to Mr. Scott Reasonover, Rate Analysis Department, Texas Health and Human Services Commission, 1100 W. 49th Street, Austin, Texas 78756, within 30 days of publication of this proposal in the *Texas Register*. In addition, a public hearing concerning the proposed rule will be held Thursday, September 19, 2002, at 9:00 a.m. in the public hearing room at the Texas Health and Human Services Commission, 12555 Riata Vista Circle, Bldg. #3, Austin, Texas. To comply with federal regulations, a copy of the proposed rule is being sent to each Texas Department of Human Services (DHS) office where it will be available for public review upon request.

The rule is proposed under the Texas Government Code, §531.033, which provides the commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed rule affects the Human Resources Code, Chapter 32 and the Texas Government Code, Chapter 531.

§355.8065. *Additional Reimbursement to Disproportionate Share Hospitals.*

(a) (No change.)

(b) Definitions. For purposes of this section, the following words and terms, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Bad debt charges--Uncollectible inpatient and outpatient charges that result from the extension of credit. Bad debt charges are used in the calculation of charges attributed to uninsured patients as defined in paragraph (5) of this subsection, and are used only in the limited circumstances described in subsection (f)(2)(E)(iv) of this section.

(3) (No change.)

(4) Charity charges--Total amount of hospital charges for inpatient and outpatient services attributed to charity care in a hospital fiscal year. These charges do not include bad debt charges, contractual allowances or discounts (other than for indigent patients not eligible for medical assistance under the approved Medicaid state plan); that is, reductions or discounts in charges given to other third party payers such as, but not limited to, health maintenance organizations, Medicare, or Blue Cross. Charity charges are used in the calculation of charges attributed to uninsured patients as defined in paragraph (5) of this subsection, only in the limited circumstances described in subsection (f)(2)(E)(iv) of this section. The amount of total charity

charges must be consistent with the amount reported on the Texas Department of Health's (department) annual hospital survey.

(5)-(31) (No change.)

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

(f) Reimbursing Medicaid disproportionate share hospitals. The commission [department] shall reimburse Medicaid disproportionate share hospitals on a monthly basis. Monthly payments will equal one-twelfth of annual payments unless it is necessary to adjust the amount because payments will not be made for a full 12-month period, to comply with the annual state disproportionate share hospital allotment, or to comply with other state or federal disproportionate share hospital program requirements. Before the start of the next state fiscal year, the commission [department] determines the size of the available funds to reimburse disproportionate share hospitals for the next state fiscal year, which begins each September 1. The funds available to reimburse the state chest hospitals and state mental hospitals equal the total of their adjusted hospital specific limits. The available fund for the remaining hospitals equals the lesser of the funds remaining in the state's annual disproportionate share hospital allotment or the sum of qualifying hospitals' adjusted hospital specific limits. Payments shall be made in the following manner, unless the commission [department] determines the hospital's proposed reimbursement has exceeded its specific limit.

(1) (No change.)

(2) For the remaining hospitals, payments will be based on both weighted inpatient Medicaid days and weighted low income days. The commission [department] weighs each hospital's total inpatient Medicaid days and low income days by the appropriate weighing factor. The commission [department] defines a low income day as a day derived by multiplying a hospital's total inpatient census days from its fiscal year ending in the previous calendar year by its low income utilization rate. Hospital districts and city/county hospitals with greater than 250 licensed beds in the state's largest MSAs shall receive weights based proportionally on the MSA population according to the most recent decennial census. MSAs with populations greater than or equal to 150,000, according to the most recent decennial census, are considered as the "largest MSAs." Children's hospitals also shall receive weights because of the special nature of the services they provide. All other hospitals receive weighing factors of 1.0. The inpatient Medicaid days of each hospital shall be based on the latest available state fiscal year data for patients entitled to Title XIX benefits. The available fund shall be divided into two parts. One half of the available fund will reimburse each qualifying hospital on a monthly basis by its percent of the total inpatient Medicaid days. One-half of the available fund will reimburse each qualifying hospital by its percent of the total low income days. The commission [department] determines whether hospitals in rural areas will receive 5.5% or more of the gross disproportionate share hospital funds for non-state hospitals. If hospitals in rural areas will receive at least 5.5% of the gross non-state hospitals funds, the commission [department] will reimburse them using existing principles. If hospitals in rural areas will not receive at least 5.5% of gross non-state hospital funds, the commission [department] will reimburse them at 5.5% of non-state hospital funds, using existing principles. Reimbursement for the remaining hospitals is determined monthly as follows.

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

(D) For state fiscal year 2003 (September 1, 2002, through August 31, 2003), the monthly disproportionate share payment calculated under subparagraph (C) of this paragraph is subject to a conversion factor that is applied as follows:

(i) A conversion factor of 1.10 is applied to payments made to hospital districts located in MSAs with populations greater than 3 million.

(ii) A conversion factor of 1.163881 is applied to payments made to hospital districts and city hospitals located in MSAs with populations between 1 and 3 million.

(iii) A conversion factor of .974 is applied to payments made to children's hospitals.

(iv) A conversion factor of .798724 is applied to payments made to private, urban, general hospitals located in a MSA.

(v) A conversion factor of 1.0 is applied to payments made to all other hospitals.

(vi) For purposes of this section, a private, urban, general hospital is defined as a hospital that is not operated by a political subdivision of the state, is not licensed under Chapter 577, Health and Safety Code, to provide mental health services or is not exempted from the Medicare and Medicaid prospective payment systems as a children's hospital, and is eligible for additional reimbursement from the disproportionate share hospital fund.

(E) [(D)] The commission [department] or its designee determines the hospital specific limit for each disproportionate share hospital. This limit is the sum of a hospital's Medicaid shortfall, as defined in subsection (b)(16) of this section, and its cost of services to uninsured patients, as defined in subsection (b)(5) of this section, multiplied by the appropriate inflation update factor, as provided for in subsection (g)(2)(E) of this section.

(i) The Medicaid shortfall includes total Medicaid billed charges and any Medicaid payment made for the corresponding inpatient and outpatient services delivered to Texas Medicaid clients, as determined from the hospital's fiscal year claims data, regardless of whether the claim was paid. These denied claims include, but are not limited to, patients whose spell of illness claims were exhausted, or payments were denied due to late filing. See subsection (b)(16) of this section for definition of "Medicaid shortfall."

(ii) The total Medicaid billed charges for each hospital are converted to cost, utilizing a calculated cost-to-charge ratio (inpatient and outpatient). The commission [department] or its designee determines that ratio by using the hospital's Form HCFA 2552, Hospital and Hospital Health Care Complex Cost Report, that was submitted for the fiscal year ending in the previous calendar year. The commission [department] or its designee uses the latest available Medicaid cost report in the absence of the Medicaid cost report submitted in the fiscal year ending in the previous calendar year. To determine the cost-to-charge ratio (inpatient and outpatient) for each hospital, the commission [department] or its designee uses the total cost from the HCFA 2552, Worksheet B, Part I, Column 25, and total charges from the HCFA 2552, Worksheet C Part I, Column 6. The ratio is the total cost divided by the total gross patient charges.

(iii) The commission or its designee determines the cost of services to patients who have no health insurance or source of third party payments for services provided during the fiscal year for each hospital. Hospitals are surveyed each year to determine charges that can be attributed to patients without insurance or other third party resources. The charges from reporting hospitals are multiplied by each hospital's cost-to-charge ratio (inpatient and outpatient) to determine the cost.

(iv) Hospitals that do not respond to the survey, or that are unable to determine accurately the charges attributed to patients without insurance, shall have their bad debt charges as defined in

subsection (b)(2) of this section, and their charity charges as defined in subsection (b)(4) of this section, reduced by a percentage derived from a representative sample of hospitals to be determined annually by the commission or its designee. The commission or its designee derives the percentages using the following formula; for each specific category of hospitals listed in clause (v) of this subparagraph, the commission or its designee sums the total amount of charges for patients without health insurance or other third party payments. For each specific category of hospitals listed in clause (v) of this subparagraph, the commission or its designee sums the charity and bad debt charges. For each specific category of hospitals listed in clause (v) of this subparagraph, the department then divides the charges for patients without health insurance or other third party payments by the sum of charity and bad debt charges. The commission or its designee then uses the resulting ratio for each specific category of hospitals listed in clause (v) of this subparagraph in the following manner. Individual hospitals that do not respond to the survey, or that are unable to accurately determine the charges attributed to patients without insurance have their hospital's individual sum of bad debt and charity charges multiplied by the appropriate ratio for the specific hospital category. After the commission or its designee has calculated a value for the charges for patients without health insurance or other source of third party payment for each individual hospital, the commission or its designee multiplies each hospital's calculated value by that hospital's cost-to-charge ratio (inpatient and outpatient) to obtain the proxy cost of services delivered to uninsured patients at each hospital.

(v) The representative sample of hospitals is one of the following specific categories of hospitals: urban public, other urban, rural, state-operated psychiatric and nonstate psychiatric. In the event that less than 20% of the hospitals in a specific category provide data to the commission or its designee, the commission or its designee uses the overall ratio calculated for all responding hospitals. The commission or its designee creates additional categories, by submitting a state plan amendment, as it deems appropriate for the economic and efficient operation of the Medicaid disproportionate share hospital program.

(vi) After the commission or its designee determines each disproportionate share hospital's cost of services to patients who have no health insurance or source of third party payments for services provided during the year, the commission or its designee subtracts from each hospital's cost of services the amount of payments made by or on behalf of those patients who have no health insurance or source of third party payments for services provided during the year.

(F) [(E)] The commission or its designee shall trend each hospital's "hospital specific limit" calculated from its historical base period cost report to the state's fiscal year disproportionate share program. For hospitals without a full 12-month fiscal year cost report, the commission or its designee shall convert their costs to annualized hospital specific limits. The commission or its designee shall use the inflation rates described in subsection (b)(12) of this section [title]. The commission or its designee shall calculate the number of months from the mid-point of the hospital's cost reporting period to the mid-point of the state fiscal year disproportionate share program. The commission or its designee shall then multiply the portion of the hospital's cost report year occurring in the state fiscal year by the inflation update factor used for each state fiscal year in the calculation of hospital reimbursement rates for each state fiscal year. The product of these calculations shall be multiplied by each hospital's "hospital specific limit" to obtain each hospital's "adjusted hospital specific limit."

(G) [(F)] The commission or its designee compares the projected payment for each disproportionate share hospital, as determined by subsections (d) and (e) of this section, with its adjusted hospital specific limit, as determined by subparagraphs (E) and (F) [(D) and (E)] of this paragraph. If the hospital's projected payment is greater than its adjusted hospital specific limit, the commission or its designee reduces the hospital's payment to its adjusted hospital specific limit.

(H) [(G)] If there are disproportionate share hospital funds left in the available fund for the remaining hospitals, because some hospitals have had their disproportionate share hospital payments reduced to their adjusted hospital specific limits, the commission or its designee distributes the excess funds according to the provisions in this section. For hospitals whose projected disproportionate share hospital payments are less than their adjusted hospital specific limits, the commission or its designee does the following:

(i) calculate the difference between its adjusted hospital specific limit and its projected disproportionate share hospital payment;

(ii) add all of the differences from clause (i) of this subparagraph;

(iii) calculate a ratio for each hospital by dividing the difference from clause (i) of this subparagraph by the sum for clause (ii) of this subparagraph; and

(iv) multiply the ratio from clause (iii) of this subparagraph by the remaining available fund. Remaining Available Fund x

(I) [(H)] Only those hospitals that are below their adjusted hospital specific limits are eligible to participate in this distribution. The disproportionate share hospital funds remaining in the available fund are distributed to the hospitals that have not already reached their adjusted hospital specific limits. Each hospital's total disproportionate share payment (including the redistribution of excess funds) cannot exceed its adjusted hospital specific limit.

(g)-(i) (No change.)

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

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Marina S. Henderson

Executive Deputy Commissioner

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6576



TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 43. TUBERCULOSIS

SUBCHAPTER A. CATTLE

4 TAC §43.2

The Texas Animal Health Commission proposes to amend Chapter 43, §43.2, entitled, "Tuberculosis." Specifically, the proposal

is amending Section 43.2, related to Interstate Movement. The purpose of this proposal is to put in place tuberculosis test requirements for cattle moving interstate and coming from Mexico. The amendments also modify existing movement requirements to confirm the changes in the federal standards as well as to reorganize current subsections to follow a more logical progression.

On June 6, 2002, the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS) published an interim rule (Docket 02-021-1) that removed the split-state status of Texas for tuberculosis (TB) and reclassified the state as Modified Accredited Advanced effective June 3, 2002. Based on that change of status, all Texas breeding cattle will be required to have been tested negative for tuberculosis within 60 days of interstate movement, or originate from a TB accredited free herd, or move directly to slaughter. The current federal rule, found in Title 9 of the Code of Federal Regulations, Chapter 77, Section 77.7, requires that an Accredited Free state that has diagnosed tuberculosis in two or more herds within a 48-month period will be reclassified as Modified Accredited Advanced.

The problem of tuberculosis in feeder cattle imported from Mexico has been well documented for more than 20 years. The Binational Committee of the USAHA has been instrumental in development of TB programs in the northern states of Mexico in an effort to reduce the risk of importation of infected cattle. These efforts resulted in significant declines in both the number and rate of TB infected Mexican origin cattle slaughtered at US plants during the period 1993-1998. However, there has been an equally significant increase in both the number and rate of infected Mexican steers slaughtered in 1999-2002. This reversal in trends and the associated risks warrant consideration of additional safeguards to address these risks. The commission believes the greatest risk lies in those feeder cattle that are grazed in proximity to herds of US breeding cattle. During the period 1997-2001, our records indicate that 109 cases of TB were detected in Mexican feeder cattle that were grazed or fed in Texas. These cattle originated from 76 different feedyard lots. Follow-up epidemiological investigations document that 50 percent (38/76) of these lots were grazed in Texas prior to entering the feedyard.

The commission is proposing additional requirements for entry of feeder cattle from Mexico. These regulations would limit the entry of such cattle to an approved feedyard or an approved pasture. The concept of an approved feedyard is that all cattle entering the facility are fed for slaughter only, and may not be moved to any destination other than another approved feedyard, approved pasture, or direct to slaughter. These facilities would be prohibited from feeding or growing replacement beef or dairy cattle. The approval of pastures to be used for grazing of Mexican feeder cattle would require that the owner or operator of the premise apply for a permit from the TAHC prior to stocking with such cattle. The owner or operator must meet specifications for fencing and other barriers (roads, rivers, etc.) that effectively prevent contact with all breeding cattle and any other cattle that are not on the premises defined in the approved pasture agreement. The provisions would also include identification requirements for US feeder cattle that are exposed to, or grazed with these animals. All cattle on these approved pastures will be moved by permit to approved pastures, approved feedyards or slaughter.

There are control risks associated with TB in roping/rodeo cattle imported from Mexico. The problem with TB in rodeo and roping cattle imported from Mexico is similar to those described for feeder cattle. It is difficult to estimate prevalence of infection in

this class of cattle due to the fact that APHIS does not routinely discriminate between rodeo/roping cattle and feeder cattle on the VS Form 17-30 importation documents. Many, if not most, animals imported for use as roping stock are noted as feeder steers on the import documents. TAHC and APHIS records document that at least 11 percent (6/54) of investigations of Mexican cattle cases closed in FY 2001-2002 were determined to be cattle used for rodeo/roping purposes. Research of import records at the APHIS port of Del Rio, Texas for the same period indicates that six percent of feeder cattle imports are roping/rodeo cattle. Therefore, the commission believes that the prevalence of TB in this class of cattle is at least comparable, if not greater than in feeder cattle. In addition, commission experience with the risk imposed by these cattle includes two tracebacks involving Mexican origin rodeo/roping cattle in FY 1999-2000 that resulted in the depopulation of 89 additional cattle exposed to TB infection. Since this class of cattle live much longer and are subject to more extensive movements and potential contacts with US cattle compared to feeder cattle, we propose that more stringent safeguards be developed to control the risks.

Section 43.2 is being reorganized to put the subsections in a more logical order. Subsections (a) and (b) are regarding entry requirements from other states and areas which have a federal tuberculosis status. Subsections (c) are regarding the special requirements for the state of Michigan and the tuberculosis quarantine areas in Michigan. Subsection (e) is from a foreign country which has a similar tuberculosis accredited status and Subsection (f) is for countries or areas without such a program. Subsection (g) is for cattle from Mexico. Subsection (h) is for breeding cattle of Texas origin moving interstate.

The commission is amending the entry requirements, as proposed in subsection (a) and (b) from other states to reflect changes in the federal interstate movement requirements as contained in 9 CFR, Part 77.8 through 77.31.

The commission is making amendments to requirements for cattle originating from Mexico. The commission is repealing the existing language which addressed the different status states as recommended by the Binational Committee. Those classifications are no longer reflective of the current federal entry requirements and, as such, the commission repeals that language and proposes amendments which are reflective of the current federal standard. The commission makes a change to subsection (f) (1) that testing of sexually intact animals from countries without a comparable tuberculosis program will be performed by a veterinarian employed by the TAHC or APHIS/VS. This reflects the current handling of these cattle by commission standard.

In addition, for cattle from Mexico, the commission is recommending the following entry requirements: 1.) Sexually neutered horned cattle imported from Mexico must originate from a herd which has passed a whole herd test within 12 months prior to importation; 2.) These animals are to be TB tested by a USDA/APHIS veterinarian at the port of entry; 3.) They are to be permitted to a premise of destination under Hold Order until permanently identified by methods approved by the Commission (i.e., firebrand, hornbrand or other appropriate methods) and retested for TB 60-120 days after importation at the owner's expense; and 4.) they are to be retested annually at the owner's expense.

Mr. Bruce Hammond, Deputy Director for Administration and Finance, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be additional fiscal implications for state government as a result of enforcing or

administering the rules. The funding for this exceptional item is added in the commission's appropriation request and would be used to control risks associated with tuberculosis in feeder cattle imported from Mexico. The commission estimates that the total cost of enforcing this rule will be \$5,023,958 for fiscal years 2003 through 2005. A three year cost is provided because it is anticipated that at the end of this period the state will have attained "free" status and the program will no longer be required. Emergency funding from the state for fiscal year 2003 in the amount of \$226,860 along with authority to add an additional 13 FTEs will be requested for the Governor's Office of Budget, Planning and Policy. Federal funding to be used primarily for TB testing of dairy animals and purebred beef herds in fiscal year 2003 is to be requested in the amount of \$4,074,832. An exceptional funding item for fiscal years 2004 and 2005 with the agency's Legislative Appropriations Request submittal seeks funding and the FTE authority to continue the control of the risk of TB in the amount of \$220,742 for each year, or a total of \$441,484 for the biennium.

Mr. Hammond also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to protect the Texas livestock industry, and specifically cattle, from cattle movements into the state which expose Texas animals to tuberculosis. There is a cost to the local producers who handle such livestock with associated test costs, but the overall intent of the rule is to protect the Texas livestock industry with all the benefits associated with becoming a tuberculosis free state.

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

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

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

Chapter 43 is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, Section 161.041 (a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, by Section 161.041 (b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the commission determines that a disease listed in Section 161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. That is found in Section 161.061.

As a control measure, the commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international

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

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

Section 161.061 provides that if the commission determines that a disease listed in Section 161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. No other statutes, articles, or codes are affected by the amendments.

§43.2. Interstate Movement Requirements.

(a) All cattle and bison originating from a federally recognized accredited tuberculosis free state, or area, as provided by Title 9 of the Code of Federal Regulations, Part 77, Section 77.8, or from a tuberculosis accredited herd are exempt from tuberculosis testing requirements.

(b) All cattle and bison originating from a state or area with anything less than a tuberculosis free state status shall be tested negative for tuberculosis in accordance with the appropriate status requirements as contained in Title 9 of the Code of Federal Regulations, Part 77, Sections 77.10 through 77.31, prior to entry with results of this test recorded on the certificate of veterinary inspection.

(c) Special entry requirements for cattle and bison originating from the TB quarantined area in Michigan. The quarantined area defined by the Michigan Department of Agriculture, effective January 1, 1999, includes all premises located in an area bordered by I-75 to the west, M-55 to the south, and Lake Huron and the Straits of Mackinac to the east and north. The quarantined area includes all of the Alcona, Alpena, Montmorency, Oscoda, and Presque Isle counties, and portions of Cheboygan, Crawford, Iosco, Ogemaw, Otsego, and Roscommon counties as well as any other counties or parts of counties added to the quarantine zone by the state of Michigan.

(1) All cattle and bison shall originate from an accredited herd.

(2) In addition, all animals 6 months of age and older shall be tested negative for tuberculosis within 60 days prior to entry with results of this test recorded on the certificate of veterinary inspection.

(d) Special entry requirements for cattle and bison originating from all other areas in Michigan, as provided in subsection (c) of this section. All cattle and bison shall:

(1) originate from an accredited herd; or

(2) originate from a herd that had a negative whole herd test including all animals 12 months and older during the previous 12 months; and

(3) be tested negative for tuberculosis within 60 days prior to entry with results of the tests recorded on the certificate of veterinary inspection.

(e) All other cattle from foreign countries, foreign states, or areas within foreign countries defined by the Commission, with comparable tuberculosis status would enter by meeting the requirements for a state with similar status as stated in subsections (a) and (b) of this section.

(f) All sexually intact cattle, from any foreign country or part thereof with no recognized comparable Tuberculosis status.

(1) To be held for purposes other than for immediate slaughter or feeding for slaughter in a quarantined feedlot or designated pen, must be tested at the port of entry into Texas under the supervision of the port veterinarian, and shall be under quarantine on the first premise of destination in Texas pending a negative tuberculosis test no earlier than 120 days and no later than 180 days after arrival. The test will be performed by a veterinarian employed by the TAHC or APHIS/VS.

(2) When destined for feeding for slaughter in a quarantined feedlot or designated pen, must be tested at the port-of-entry into Texas under the supervision of the port veterinarian; moved directly to the quarantined feedlot or designated pen only in sealed trucks; accompanied with a VS 1-27 permit issued by TAHC or USDA personnel; and "S" branded prior to or upon arrival at the feedlot.

(g) Cattle originating from Mexico.

(1) All sexually intact cattle shall meet the requirements provided for in subsection (f) of this section.

(2) Steers and spayed heifers from Mexico shall meet the federal importation requirements as provided in Title 9 of the Code of Federal Regulations, Part 93, Section 93.427, regarding importation of cattle from Mexico. In addition to the federal requirements, steers and spayed heifers must be moved under permit to an approved pasture, approved feedlot, quarantined feedlot, or designated pen.

(3) Cattle utilized as rodeo and/or roping stock shall meet the requirements set out in subsection (f) (1) of this section and the applicable requirement listed in subparagraphs (A)-(B) of this paragraph:

(A) All sexually intact cattle shall be retested annually for tuberculosis at the owner's expense and the test records shall be maintained with the animal and available for review.

(B) All sexually neutered horned cattle imported from Mexico are recognized as potential rodeo and/or roping stock and must:

(i) originate from a herd which has passed a herd of origin test for tuberculosis within the previous 12 months, and

(ii) be tested for tuberculosis at the port of entry under the supervision of the USDA port veterinarian, and

(iii) be moved by permit to a premise of destination and remain under Hold-Order, which restricts movement, until permanently identified by methods approved by the commission, and retested for tuberculosis between 60 and 120 days after entry at the owner's expense, and

(iv) be retested for tuberculosis annually at the owner's expense and the test records shall be maintained with the animal and available for review.

(4) Regardless of reproductive status, test history, or Mexican State of origin, Holstein and Holstein cross cattle are prohibited from entering Texas.

(5) All cattle moved into Texas from Mexico shall be identified with an "M" brand prior to moving to a destination in Texas.

(6) A copy of the certificate issued by an authorized inspector of the United States Department of Agriculture, Animal and Plant Health Inspection Service, for the movement of Mexico cattle into Texas must accompany such animals to their final destination in Texas, or so long as they are moving through Texas.

(h) All Texas origin breeding cattle moving interstate from Texas; including cows, bulls, bred heifers, and other cattle for use as breeding animals, shall be officially identified and pass a negative tuberculosis test within 60 days of movement from the state. These requirements are a minimum and the receiving state for such cattle shipments may have additional requirements. Cattle which are exempt from the test requirement include:

(1) Cattle that originate from an Accredited herd, or

(2) Cattle that originate from a herd which has passed a herd of origin test for tuberculosis within the previous 6 months, or

(3) Nursing calves moving with TB test negative dams, or

(4) Cattle that are moved direct to slaughter.

[(a) All dairy and registered beef breeding cattle that are parturient or postparturient or 18 months of age or older shall be tested negative for tuberculosis within six months prior to entry with results of this test recorded on the certificate of veterinary inspection.]

[(b) All dairy and registered beef breeding cattle originating from an accredited tuberculosis free area or herd are exempt from testing requirements in subsection (a) of this section provided the herd number is stated on the certificate of veterinary inspection. All dairy and registered beef breeding cattle moving directly from a farm-of-origin to a USDA-approved market in Texas are exempt from testing requirements provided the animals are held in quarantine pens at the market to be sold to slaughter or quarantined feedlot.]

[(c) All sexually intact cattle, from any foreign country or part thereof with no recognized comparable Tuberculosis status:]

[(1) To be held for purposes other than for immediate slaughter or feeding for slaughter in a quarantined feedlot or designated pen, must be tested at the port of entry into Texas under the supervision of the port veterinarian, and shall be under quarantine on the first premise of destination in Texas pending a negative tuberculosis test no earlier than 120 days and no later than 180 days after arrival. The test will be performed at the owner's expense.]

[(2) When destined for feeding for slaughter in a quarantined feedlot or designated pen, must be tested at the port of entry into Texas under the supervision of the port veterinarian; moved directly to the quarantined feedlot or designated pen only in sealed trucks; accompanied with a VS 1-27 permit issued by TAHC or USDA personnel; and "S" branded prior to or upon arrival at the feedlot.]

[(d) Steers and spayed heifers from Mexico may enter as follows:]

[(1) From states that have been determined by the Commission, acting on the recommendation of the Binational Committee, to have fully implemented the Eradication Phase of the Mexican Tuberculosis Eradication Program (Stage II States): steers and spayed heifers must be tested negative for tuberculosis in accordance with the Norma Oficial Mexicana (NOM) within 60 days prior to entry into the United States.]

[(2) From states that have been determined by the Commission, acting on the recommendation of the Binational Committee, to

have fully implemented the Control/Preparatory Phase of the Mexican Tuberculosis Eradication Program (Stage I States): steers and spayed heifers must be tested negative for tuberculosis prior to movement into a Stage II State. Upon entry into the Stage II State, the animals must be quarantined and have two additional negative tuberculosis tests. The first test in the Stage II State must be conducted at least 60 days after the test in the Stage I State. The second test in the Stage II State must be conducted at least 60 days after the first test in the Stage II State, but not more than 60 days before moving to the United States border.]

[(3) From states that have been determined by the Commission, acting on the recommendation of the Binational Committee, to have achieved Accredited Free status (Accredited Free States): steers and spayed heifers may move directly into the state without testing or further restrictions provided they are moved as a single group, and not commingled with other cattle prior to arriving at the border.]

[(4) From states that are not Stage II, Stage I, or Accredited Free (Stage 0 States): Steers and spayed heifers must be tested negative for tuberculosis prior to movement into a Stage II State. Upon entry into a Stage II State, the animals must be quarantined and have two additional negative tuberculosis tests. The first test while in the Stage II State must be conducted at least 60 days after the test in the Stage 0 State. The second test, while in the Stage II State, must be conducted at least 90 days after the first test in the Stage II State, but no more than 60 days before moving to the United States border.]

[(5) From Accredited Tuberculosis Free herds from Stage I or Stage 0 States: steers and spayed heifers that are moved directly from the herd of origin across the border as a single group and not commingled with other cattle prior to arriving at the border may enter as follows:]

[(A) Steers and spayed heifers originating from a Stage I State may move into a Stage II State without a tuberculosis test and enter Texas after meeting the requirements set out in paragraph (1) of this subsection.]

[(B) Steers and spayed heifers originating from Stage 0 States may move into a Stage II State without a tuberculosis test and enter Texas after meeting the requirements set out in paragraph (2) of this subsection.]

[(6) All steers and spayed heifers arriving at ports for export from Mexico into the U.S. must be accompanied by a "Certificate of Origin" specifying the State in Mexico from which the consignment originated. Additionally, tuberculosis tests required by the State of destination in the U.S. must be listed on the certificate or accompany the certificate.]

[(e) In addition to the entry requirements set out in subsections (c) and (d) of this section, rodeo stock from Mexico shall be tested for tuberculosis by a U.S. accredited veterinarian or under the supervision of a USDA/APHIS port veterinarian within 12 months prior to their utilization as rodeo or roping stock, and retested for tuberculosis every 12 months thereafter.]

[(f) Regardless of reproductive status, test history, or Mexican State of origin, Holstein and Holstein cross cattle are prohibited from entering Texas.]

[(g) All other cattle from foreign countries, foreign states, or areas within foreign countries defined by the Commission, with comparable tuberculosis status would enter by meeting the requirements for a state with similar status as stated in subsections (a) and (b) of this section.]

[(h) "M"-branding requirements are set out in §41.1 of this title (relating to Tick Eradication).]

{(i) Special entry requirements for cattle and bison originating from the TB quarantined area in Michigan. The quarantined area defined by the Michigan Department of Agriculture, effective January 1, 1999, includes all premises located in an area bordered by I-75 to the west, M-55 to the south, and Lake Huron and the Straits of Mackinac to the east and north. The quarantined area includes all of the Alcona, Alpena, Montmorency, Oscoda, and Presque Isle counties, and portions of Cheboygan, Crawford, Iosco, Ogemaw, Otsego, and Roscommon counties as well as any other counties or parts of counties added to the quarantine zone by the state of Michigan.}

{(1) All cattle and bison shall originate from an accredited herd.}

{(2) In addition, all animals 6 months of age and older shall be tested negative for tuberculosis within 60 days prior to entry with results of this test recorded on the certificate of veterinary inspection.}

{(j) Special entry requirements for cattle and bison originating from all other areas in Michigan, as provided in subsection (i) of this section. All cattle and bison shall:}

{(1) originate from an accredited herd; or}

{(2) originate from a herd that had a negative whole herd test including all animals 12 months and older during the previous 12 months; and}

{(3) be tested negative for tuberculosis within 60 days prior to entry with results of the tests recorded on the certificate of veterinary inspection.}

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 August 19, 2002.

TRD-200205427

Gene Snelson

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: September 29, 2002

For further information, please call: (512) 719-0714



CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §§51.1, 51.4, 51.9

The Texas Animal Health Commission (commission) proposes to amend Chapter 51, §§51.1, 51.4, and 51.9, entitled, "Entry Requirements." The purpose of these amendments to Chapter 51 is to consolidate all of the commission's animal health entry requirements into one chapter.

The commission adopted a new Chapter 51, entitled "Entry Requirements." The purpose of this Chapter is to consolidate all of the commission's animal health entry requirements into one chapter. The rules were published for comment in the March 29, 2002 issue of the *Texas Register* (27 TexReg 2341 - 2604) and the adoption was published in the June 14, 2002 issue of the *Texas Register* (27 TexReg 5025 - 5314)

Prior to the adoption the commission had entry requirements spread through 12 different chapters. Those requirements were generally located in chapters designated for a specific species or disease. In order to provide a more cohesive organization of the agency's regulatory requirements, the commission is in the

process to consolidate all the entry requirements into one chapter. This chapter is organized by providing for a centralized location for all general, exceptions and special requirements. The specific entry requirements are then located by species with specific requirements delineated by disease. The commission believes this will provide a more user friendly format for someone to use who is trying to comply with legal requirements when bringing livestock into Texas. Also, the commission believes this effort will help insure consistency throughout the various requirements through the consolidation efforts.

During the consolidation effort there were a couple issues that need to be changed in order to reflect actual requirements. In Section 51.4 (a) there is a need to remove language regarding an exemption for poultry entering Show, Fairs and Exhibitions. That requirement was actually removed from the existing requirement but was inadvertently left in during the consolidation effort. The commission is repealing that exemption and it will not be in effect during the Texas show, fair and exhibition season.

Also in Section 51.4 (b) (2) regarding test requirement for breeding rams the reference to Section 51.6 is incorrect and as such is being amended to insert the correct reference located in Section 51.12, regarding entry requirements for sheep.

This proposal repropose a brucellosis test requirements for exotic cervids entering Texas. This is found in Section 51.9 and during the consolidation process this requirement was inadvertently left out and is being repropose. The commission would note that in the interim before adoption of the rule all exotic cervids entering Texas must still obtain their brucellosis test prior to entry. If an exotic cervid enters Texas without the brucellosis test and Hold Order, restricting movement, will be issued by the executive director under the authority of Section 51.6 (c), the brucellosis test will be required. Section, 51.6 (c), regarding "Inspection or testing", provides that the executive director of the commission may detain and require an inspection or test of any animal for the detection of any disease or parasite or parasitic infestation when the executive director has determined there is a risk of disease or parasite transmission or infestation which would have a detrimental effect on the Texas livestock industry. Entry may be denied based on the results of these tests or inspections or all movement within Texas may be restricted based on the risk. In order to protect the Texas livestock industry in efforts to eradicate Brucellosis from Texas it is necessary to insure that all exotic cervids have had this test.

In 51.9 (a) (4) for exotic swine an exemption for the brucellosis or pseudorabies is added for swine which are enrolled in either a pseudorabies qualified herd or a brucellosis validated free herd. Also clarification was added to the definition of "E" Permit, as found in Section 51.1 regarding the additional testing requirements. Additional testing requirements or restrictions are not always required for entry and therefore language is added to clarify that issue.

Bruce Hammond, Deputy Director for Administration and Finance, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rules.

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

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

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

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

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

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

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

Section 161.061 provides that if the commission determines that a disease listed in Section 161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. No other statutes, articles, or codes are affected by the amendments.

§51.1. Definitions.

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

(1) Accredited veterinarian--A licensed veterinarian who is approved to perform specified functions required by cooperative state-federal disease control eradication programs pursuant to Code of Federal Regulations, Parts 160 and 161.

(2) Animal--includes livestock, exotic livestock, domestic fowl, and exotic fowl.

(3) Assembly--Boarding stables, boarding pastures, breeding farms, parades, rodeos, roping events, trail rides, and training stables.

(4) Certificate of veterinary inspection--A document signed by an accredited veterinarian that shows the livestock, poultry, exotic livestock, or exotic fowl listed were inspected and subjected to tests, immunizations, and treatment as required by the commission. Certificates are valid for 45 days for equine and 30 days for all other species.

(5) Cervidae--Deer, elk, moose, caribou and related species in the Cervidae family, raised under confinement or agricultural conditions for the production of meat or other agricultural products or for sport or exhibition, and free-ranging cervidae when they are captured for any purpose.

(6) Commission--the Texas Animal Health Commission.

(7) Commuter Flock--A National Poultry Improvement Plan (pullorum-typhoid clean or equivalent) flock in good standing with operations in participating states that are under single ownership or management control whose normal operations require interstate movement of hatching eggs and/or baby poultry without change of ownership for purposes of hatching, feeding, rearing or breeding. The owner or representative of the company owning the flock and chief animal health officials of participating states of origin and destination must have entered into a signed "Commuter Poultry Flock Agreement."

(8) Commuter Cattle Herd--A herd of cattle located in two or more states that is documented as a valid ranching operation by those states in which the herd is located and which requires movement of cattle interstate from a farm of origin or returned interstate to a farm of origin in the course of normal ranching operations, without change of ownership, directly to or from another premise owned, leased, or rented by the same individual. An application for "commuter herd" status must be signed by the owner and approved by the states in which the herd is located. This status will continue until canceled by the owner or one of the signatory states.

(9) Commuter Swine Herd--A swine herd located in two or more states that is documented as a valid ranching operation by those states in which the herd is located and which requires movement of swine interstate from a farm of origin or returned interstate to a farm of origin in the course of normal ranching operations, without change of ownership, directly to or from another premise owned, leased, or rented by the same individual. An application for "commuter herd" status must be signed by the owner and approved by the states in which the herd is located. This status will continue until canceled by the owner or one of the signatory states.

(10) Equine interstate passport--A document signed by an accredited veterinarian that shows the equine listed were inspected, subjected to tests, immunizations and treatment as required by the issuing state animal health agency, and contains a description of the equine listed. The passport is valid for six months when accompanied by proof

of an official negative EIA test within the previous six months. Permanent individual animal identification in the form of a lip tattoo, brand or electronic implant is required for all equine approved for the equine interstate passport. This document is valid for equine entering from any state that has entered into a written agreement to reciprocate with Texas.

(11) Equine identification card--A document signed by the owner and a brand inspector or authorized state animal regulatory agency representative that lists the animal's name and description and indicates the location of all identifying marks or brands. This document is valid for equine entering from any state which has entered into a written agreement to reciprocate with Texas.

(12) Exotic livestock--grass-eating or plant-eating, single-hooved or cloven-hooved mammals that are not indigenous to this state and are known as ungulates, including animals from the swine, horse, tapir, rhinoceros, elephant, deer, and antelope families.

(13) Exotic fowl--any avian species that is not indigenous to this state. The term includes ratites.

(14) Livestock--cattle, horses, mules, asses, sheep, goats, and hogs.

(15) Interstate show--A show, fair, or exhibition that permits livestock and poultry from other states to enter for show or exhibition and be held in common facilities with Texas origin livestock and poultry of the same species.

(16) Permit--A document recognized by the commission with specified conditions relative to movement, testing and vaccinating of animal which is required to accompany the animal entering, leaving or moving within the State of Texas.

(A) "E" permit--Premovement authorization for entry of animal into the state by the Texas Animal Health Commission. The "E" PERMIT states the conditions under which movement may be made, and will provide any appropriate restrictions and test requirements after arrival. The permit is valid for 15 days.

(B) VS 1-27 (VS Form 1-27)--A premovement authorization for movement of animals to restricted designations.

(17) Sponsor--An owner or person in charge of an exhibition, show or fair.

(18) Waybill--A document used for livestock moving directly to a livestock market, quarantined feedlot, or slaughter plant. The waybill contains the following information:

- (A) name and address of owner or shipper;
- (B) point of origin;
- (C) number and type of livestock;
- (D) purpose of movement; and
- (E) destination.

§51.4. Shows, Fairs and Exhibitions.

(a) Out-of-state or area origin.

(1) Animals entering for exhibition and sale shall be accompanied by a certificate of veterinary inspection and a permit for entry. Livestock and poultry entering only for exhibition purposes are required to be accompanied by a certificate of veterinary inspection.

(2) For poultry the certificate shall also state that they have passed a negative test for pullorum typhoid within 30 days prior to shipment or that they originate from flocks which have met the pullorum-typhoid requirements of the Texas Pullorum-Typhoid Program

and/or the National Poultry Improvement Plan. Poultry shall originate from flocks or hatcheries free of pullorum disease and fowl typhoid or have a negative pullorum-typhoid test within 30 days before exhibition. [Poultry entering from out-of-state are not required to have a certificate of veterinary inspection if: They are entered in a show, fair, or exhibition of less than 10 days duration with immediate return to the state of origin; accompanied by a VS 9-2 or NPIP 3B blood testing report or a current state testing report form; originate from a state that is classified as United States Pullorum-Typhoid Free; and the state of origin has no flock under federal or state quarantine for any infectious disease of poultry.]

(3) Cattle. Vaccination for brucellosis is not required for cattle from Class Free States.

(4) Equine may enter shows, fairs, exhibitions or assemblies without a certificate of veterinary inspection when accompanied by a valid equine interstate passport or equine identification card and a completed VS Form 10-11 showing negative results to an official EIA test within the previous six months. Horses entering a pari-mutuel track must have a negative EIA test within the past 12 months and a Certificate of Veterinary Inspection.

(b) In-state origin.

(1) Equine. Must have had a negative EIA test within the past 12 months if entering a show, fair, exhibition, or assembly. Horses entering a pari-mutuel track must have a negative EIA test within the past 12 months and a Certificate of Veterinary Inspection. Foals less than eight months of age, as evidenced by the lack of the eruption of the third pair of upper incisors, nursing a negative dam are exempt from testing.

(2) Breeding rams. May enter shows, fairs, and exhibitions without a test for *Brucella ovis* if they originate in Texas. (See: §51.12 [§51-6] of this title (relating to Entry Requirements for Sheep).

(3) Other livestock and poultry shall meet the same requirements as for those entering from out-of-state, and be accompanied by a certificate of veterinary inspection when entering shows, fairs, and exhibitions that are determined to be interstate.

(4) Exhibition swine originating in Texas. These swine entered in terminal shows are exempt from brucellosis, leptospirosis, and pseudorabies testing and vaccination requirements.

§51.9. Exotic Livestock and Fowl.

(a) Exotic Livestock. The following named species entering the State of Texas shall meet the specific requirements in paragraphs (1)-(4) of this subsection:

(1) Exotic cervidae-- Negative to a brucellosis test within 30 days prior to entry. Tuberculosis test requirements see [See] §51.10 of this chapter (relating to Entry Requirements for Cervidae).

(2) Exotic Bovidae--Negative to a brucellosis test within 30 days prior to entry. Negative to a tuberculosis test within 60 days prior to entry.

(3) Camelidae--Negative to a brucellosis and axillary skin test for tuberculosis within six months prior to entry on all animals 18 months of age and older. All neutered camelidae are exempt from the Brucellosis test requirements.

(4) Exotic Swine--Negative to a brucellosis and pseudorabies test within 30 days prior to entry. Swine from a pseudorabies qualified or a brucellosis validated free herd are exempt from that test requirement.

(b) Exotic Fowl. Ratites entering the State of Texas shall meet the specific requirements listed in paragraphs (1)-(4) of this subsection:

(1) Each bird will be individually identified with an implanted electronic device (microchip). The identification will be shown on the certificate of veterinary inspection along with the location and name brand of the implanted electronic device. If an animal has more than one implanted microchip, then the location, microchip number, and name brand of each will be documented on the certificate of veterinary inspection. Birds or hatching eggs must originate from flocks that show no evidence of infectious disease and have had no history of Avian Influenza in the past six months. In addition, each bird must be tested and found to be serologically negative for Avian Influenza and Salmonella pullorum-typhoid from a sample collected within 30 days of shipment. A bird serologically positive for Avian Influenza may be admitted if a virus isolation test via cloacal swab conducted within 30 days of shipment is negative for Avian Influenza. The testing is to be performed in a state approved diagnostic laboratory in the state of origin. Serologically positive birds admitted under this section must be held under quarantine on the premise of destination in Texas for virus isolation retest.

(2) Ratites destined for slaughter only may enter Texas accompanied by an entry permit and either a waybill or health certificate without meeting the requirements of paragraph (1) of this subsection.

(3) All ratites originating within Texas and changing ownership or being offered for public sale or sold by private treaty within the state must be individually identified with an implanted electronic device, a tag or band.

(4) All identification must be maintained in the sale records for consignments to a public sale or in the records of the buyer and seller when the animals are sold at private treaty. These records must be maintained for a period of three years.

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

Filed with the Office of the Secretary of State on August 19, 2002.

TRD-200205428

Gene Snelson

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: September 29, 2002

For further information, please call: (512) 719-0714



TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 1. CONSUMER CREDIT REGULATION

SUBCHAPTER F. ALTERNATE CHARGES FOR CONSUMER LOANS

7 TAC §1.606

The Finance Commission of Texas proposes new 7 TAC §1.606 concerning alternate charges for consumer Subchapter F loans.

The purpose of the new 7 TAC §1.606 is a reproposal of the amendment to 7 TAC §1.601 that was proposed by the Finance

Commission in February 2002. The amendment makes technical and conforming changes to the rule that parallels examination policies. The rule relates to consistent limitations on acquisition charges under Subchapters E and F.

Section 1.606 provides that an acquisition charge (\$10 on a cash advance of \$100 to \$500) may only be assessed to a borrower once in a given month for loans with a term of one month or less. This is a conforming charge, consistent with the application of the agency's examination policy for more than thirty years. Additionally this rule provides consistency on the earning of acquisition charges between the intent of the creation of Subchapter F and its application through the present day, including the treatment of payday loans under this section of law. This rule change is necessary to provide clarity and consistency to lenders who construct their transactions in compliance with Chapter 342.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of the amendments will be consistent application of examination policies. Additionally creditors will be more informed regarding the situations in which fees can be assessed.

Comments on the proposed amendments may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by e-mail to: leslie.pettijohn@occc.state.tx.

The new rule is proposed under the Texas Finance Code §11.304 and §342.551, which authorizes the Finance Commission of Texas to adopt rules to enforce Title 4 of the Texas Finance Code.

These rules affect Texas Finance Code Chapter 342, Subchapters E and F.

§1.606. Limitation on Acquisition Charge.

For a Subchapter F loan with an initial term of one month or less, an acquisition charge may only be contracted for, charged, or collected once during a month to the same borrower for that loan, any refinancing of that loan, or any new loan made to the borrower within the same month.

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 August 16, 2002.

TRD-200205399

Leslie L. Pettijohn

Commissioner

Finance Commission of Texas

Earliest possible date of adoption: September 29, 2002

For further information, please call: (512) 936-7640



SUBCHAPTER Q. CHAPTER 342, PLAIN LANGUAGE CONTRACT PROVISIONS

7 TAC §§1.1221, 1.1222, 1.1224 - 1.1227

The Finance Commission of Texas (the commission) proposes new 7 TAC §§1.1221-1.1222 and §§1.1224-1.1227 concerning a plain language model contract for Subchapter G second lien home equity loan contracts. New 7 TAC §§1.1221-1.1222 and §§1.1224-1.1227 includes proposed clauses, disclosures, layout, and font type for Subchapter G second lien home equity loan contracts.

The purpose of the rules is stated in the purpose clause, §1.1221, and is to implement the provisions of Texas Finance Code §341.502, which requires contracts for consumer loans under Chapter 342, whether in English or in Spanish, to be written in plain language. The proposed rule provides model contract provisions for use by licensees of the Office of Consumer Credit Commissioner. Use of the model contract is optional however, should a licensee choose not to use the model contract, contracts must be submitted to the agency in accordance with the provisions of 7 TAC §1.841.

Section 1.1222 explains the relationship of federal law to the state requirements. The section describes how conflicts or inconsistencies shall be resolved.

Section 1.1223 is reserved for definitions.

Section 1.1224 details the required format, typeface, and font for model plain language Subchapter G second lien home equity loan contracts. The requirements are necessary to ensure that the contract will be easy for consumers to read and understand.

Section 1.1225 identifies the types of provisions that may be included in a Subchapter G second lien home equity loan contract.

Section 1.1226 contains the model clauses. These clauses are the agency's interpretation of a plain language version of typical contract provisions.

Section 1.1227 outlines permissible changes that licensees can make to a contract and still comply with the model provisions. This section provides licensees with flexibility in using a model contract. Licensees may use additional documents, including affidavits, in connection with the model documents contained in this rule. The additional documents may provide the parties with additional certainty on certain issues including whether the home equity loan was made on the conditions expressed in Texas Constitution, Article XVI, Section 50(a)(6)(Q). Licensees may change the model documents so that they are in compliance with Mortgage Electronic Registration Systems, Inc. ("MERS").

Leslie L. Pettijohn, Consumer Credit Commissioner, 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 administering the rules.

Commissioner Pettijohn has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the new rules will be enhanced compliance with the credit laws, simpler credit contracts, and increased uniformity and consistency in credit contracts. Additional economic costs will be incurred by a person required to comply with this proposal. Because a licensee fully complies with the proposal by using the model forms, the additional costs imposed by the proposal are limited to costs associated with copying a contract and costs attributable to loss of obsolete forms inventory. Additional copy costs are estimated to be approximately \$0.30-\$0.40 per contract. There will be no adverse effect on small businesses as compared to the effect on large businesses. Some licensees who use or lease specialized computer software programs for their loan business may experience some additional

costs. These costs are impossible to predict. The agency has attempted to lessen these costs by providing the software programmers with the text of the contracts. Whether programmers will use the adopted form or submit non-standard contracts for review is not predictable. Whether the programmers will charge an additional fee for a contract they do not have to draft is also not predictable.

Comments on the proposed new rules may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to leslie.pettijohn@occc.state.tx.us.

The new section is proposed under the Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter and Texas Finance Code §341.502 grants the Finance Commission the authority to adopt rules to govern the form of Subchapter G second lien home equity loan contracts and to adopt model plain language contracts.

These rules affect Texas Finance Code Chapter 342, Subchapter G.

§1.1221. Purpose.

(a) The purpose of these rules is to provide a model plain language contract in English for Texas Finance Code, Chapter 342, Subchapter G home equity loan transactions. The establishment of model provisions for these transactions will encourage use of simplified wording that will ultimately benefit consumers by making these contracts easier to understand. Use of the "plain language" model contract by a licensee is not mandatory. The licensee, however, may not use a contract other than a model contract unless the licensee has submitted the contract to the commissioner in compliance with §1.841 of this title. The commissioner shall issue an order disapproving the contract if the commissioner determines the contract does not comply with this section or rules adopted under this section. A licensee may not claim the commissioner's failure to disapprove a contract constitutes an approval.

(b) These provisions are intended to constitute a complete plain language Subchapter G home equity loan contract however, a licensee is not limited to the contract provisions addressed by these rules.

§1.1222. Relationship with Federal Law.

In the event of an inconsistency or conflict between the disclosure or notice requirements in these provisions and any current or future federal law, regulation, or interpretation, the requirements of the federal law, regulation, or interpretation will control to the extent of the inconsistency. The remainder of the contract will remain in full force and effect. Use of the Federal Reserve Board's promulgated model forms complies with the Truth-in-Lending requirements of this chapter.

§1.1224. Format, Typeface, and Font.

(a) Plain language contracts must be printed in an easily readable font and type size pursuant to Texas Finance Code §341.502(a). If other state or federal law requires a different type size for a specific disclosure or contractual provision, the type size specified by the other law should be used.

(b) The text of the document must be set in a readable typeface. Typefaces considered to be readable include: Times, Scala, Caslon, Century Schoolbook, Helvetica, Arial, and Garamond.

(c) Titles, headings, subheadings, captions, and illustrative or explanatory tables or sidebars may be used to distinguish between different levels of information or provide emphasis.

(d) Typeface size is referred to in points (pt). Because different typefaces in the same point size are not of equal size, typeface is not strictly defined but is expressed as a minimum size in the Times typeface for visual comparative purposes. Use of a larger typeface is encouraged. The typeface for the federal disclosure box or other disclosures required under federal law must be legible, but no minimum typeface is required. Generally, the typeface for the remainder of the contract must be at least as large as 8pt in the Times typeface.

§1.1225. Contract Provisions.

(a) A Chapter 342, Subchapter G home equity loan contract may include, but is not limited to, the following contract provisions to the extent not prohibited by law or regulation. If the licensee desires to exercise its rights under one of the following provisions, it must include that provision in the contract. A licensee who does not desire to apply a provision is not required to include it in the contract. For example, a licensee who does not assess a fee for dishonored checks may omit the dishonored check fee clause. A licensee may also exclude non-relevant portions of a model clause. For example, a licensee who does not routinely finance certain insurance coverages may omit those non-applicable portions of the model clause. A Chapter 342, Subchapter G second lien home equity loan contract may contain the following provisions:

- (1) Identification of the parties, including the name and address of each party and specifying the pronouns that designate the borrower and the lender.
- (2) A Truth-in-Lending Act (TILA) disclosure box.
- (3) An Itemization of Amount Financed box.
- (4) A promise to pay.
- (5) A late charge provision.
- (6) A provision for after maturity interest.
- (7) A prepayment clause.
- (8) A provision specifying the finance charge earnings and refund method.
- (9) A provision contracting for a fee for a dishonored check.
- (10) A provision specifying the conditions causing default.
- (11) A provision regarding property insurance.
- (12) A credit insurance disclosure box.
- (13) A provision regarding the mailing of notices to the borrower.
- (14) A provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration.
- (15) A provision expressing no waiver of licensee's rights.
- (16) A collection expense clause.
- (17) A provision providing for joint liability.
- (18) A usury savings clause.
- (19) A savings clause stating that if any part of the Loan Agreement is declared invalid, the rest remains valid.

(20) An integration clause stating that the contract supersedes all prior agreements and that the contract may not be changed by oral agreement.

(21) A provision stating that the homestead described in the loan agreement is subject to the lien of the security document.

(22) A provision specifying that federal law and Texas law apply to the contract.

(23) Complaints and inquiries notice.

(24) A provision describing the collateral.

(25) Signature blocks.

(b) The security document for a Chapter 342, Subchapter G second lien home equity loan contract may contain the following provisions:

- (1) A definition section.
- (2) A provision regarding the secured nature of the agreement.
- (3) A provision regarding the transfer of rights in the property.
- (4) Borrower and Lender's promise.
- (5) A provision regarding late charges and prepayment of principal and interest.
- (6) A provision regarding the funds for escrow items.
- (7) A provision regarding charges and liens.
- (8) A provision regarding property insurance.
- (9) A provision stating that the borrower occupies the property as his homestead.
- (10) A provision regarding preservation, maintenance, protection, and inspection of the property.
- (11) A provision specifying the conditions causing actual fraud.
- (12) A provision regarding protection of the lender's interest in the property and rights under the security document.
- (13) A provision regarding the assignment of miscellaneous proceeds and forfeiture.
- (14) A provision specifying that the borrower is not released from liability if lender modifies the payment schedule.
- (15) A provision regarding joint and several liability and specifying that the person who signs the contract grants their ownership in the homestead and binds their successors and assigns.
- (16) A provision regarding the extension of credit charges.
- (17) A provision regarding the delivery of notices.
- (18) A provision regarding the law governing the contract, stating that if any part of the contract is declared invalid, the rest of the contract remains valid.
- (19) A provision regarding rules of clause construction.
- (20) A provision specifying that the lender will give borrower a copy of all signed documents at the time the loan agreement is made.
- (21) A provision regarding a transfer of interest in the property.

(22) A provision regarding borrower's right to reinstate after acceleration.

(23) A provision regarding the sale of the loan, change of loan servicer, notice of grievance, and lender's right to comply.

(24) A provision regarding hazardous substances.

(25) A provision regarding acceleration and remedies.

(26) A provision regarding power of sale.

(27) A provision regarding the release of the lien securing the loan agreement.

(28) A provision specifying that the loan agreement is given without personal liability against each owner of the homestead and against the spouse of each owner.

(29) A provision specifying that the borrower has not been required to repay another debt with the proceeds of the loan.

(30) A provision specifying that the borrower has not assigned wages as security for the loan agreement.

(31) A provision specifying that lender and borrower have agreed in writing to the fair market value of the homestead.

(32) A provision regarding trustees and trustee liability.

(33) A provision regarding lender's waiving additional collateral.

(34) A default provision.

(35) Signature blocks.

(36) A non-purchase disclosure.

§1.1226. Model Clauses.

(a) Generally. These model clauses are the plain language rendition of contract clauses that have typically been stated in technical legal terms. Nothing in this regulation prohibits a contract from including provisions that provide more favorable results for the borrower than those that would result from the use of a model clause.

(b) For a Chapter 342, Subchapter G second lien home equity loan contract:

(1) The model identification clause lists the account or contract number, the name and address of the creditor or lender, the date of the note, and the name and address of the borrower. The model clause identifying the pronouns used for the borrower and lender reads: "A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder." "The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments."

(2) A Truth-in-Lending Act (TILA) disclosure box reads: Figure: 7 TAC §1.1226(b)(2)

(3) An Itemization of Amount Financed box. The itemization of amount financed box is not required if the licensee provides the borrower with a good faith estimate or a settlement statement as permitted by the Truth-in-Lending Act.

(A) For use when the administrative fee is financed reads: Figure: 7 TAC §1.1226(b)(3)(A)

(B) For use when the administrative fee is paid in cash reads: Figure: 7 TAC §1.1226(b)(3)(B)

(4) Promise to Pay. One permissible change to the model language for the scheduled installment earnings method would be to allow partial prepayments of the principal during the term of the loan. This variation on the Texas scheduled installment earnings method would allow periodic reductions of the principal balance by partial prepayments. This variation would allow reductions of the principal balance that were not originally scheduled. The model clause for the borrower's promise to pay reads: "This loan is an Extension of Credit defined by Section 50(a)(6), Article XVI of the Texas Constitution."

(A) For contracts using the Scheduled Installment Earnings Method: "I promise to pay the Total of Payments to the order of you. I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(B) For contracts using the True Daily Earnings Method: "I promise to pay the cash advance plus the accrued interest to the order of you. I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(5) Late Charge. Licensees using contracts using the True Daily Earnings Method are not permitted to assess a late charge. The model late charge provision for contracts using the Scheduled Installments Earnings Method reads: "If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment."

(6) After Maturity Interest. The model provision for after maturity interest reads: "If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due."

(7) Prepayment Clause. The model prepayment clause reads:

(A) For contracts using the Scheduled Installment Earnings Method: "I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."

(B) For contracts using the True Daily Earnings Method: "I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."

(8) Finance Charge and Refund Method. The model provision specifying the finance charge earnings and refund method reads:

(A) For contracts using Scheduled Installment Earnings Method - Section 342.301 rate loans reads: Figure: 7 TAC §1.1226(b)(8)(A)

(B) For contracts using Scheduled Installment Earnings Method with prepayments option - Section 342.301 rate loans reads: Figure: 7 TAC §1.1226(b)(8)(B)

(C) For contracts using True Daily Earnings Method - Section 342.301 rate loans reads: Figure: 7 TAC §1.1226(b)(8)(C)

(9) Dishonored Check Fee. The model dishonored check fee provision reads: "I agree to pay you a fee of up to \$25 for a returned check. You may add the fee to the amount I owe or collect it separately."

(10) Default Clause. The model provision specifying the conditions causing default reads: Figure: 7 TAC §1.1226(b)(10)

(11) Property Insurance. The model provision regarding property insurance reads:
Figure: 7 TAC §1.1226(b)(11)

(12) Credit Insurance. If single premium credit insurance is allowable, a permissible change to the disclosure can be to offer a single charge for the entire term of the loan. The term for the single premium charge should be shown for the original term of the loan, unless otherwise specified. Licensee has the option of including language that reads: "The insurance will cancel on the date when the total past due premiums equal or exceed four times the first month premium." The industry standard regarding the relationship between total past due premiums and the first month premium in this equation appears to be four times therefore, that standard is applied here. However, if a different time frame is more appropriate, that time frame may be used. The model credit insurance disclosure box reads:
Figure: 7 TAC §1.1226(b)(12)

(13) Mailing of Notices to Borrower. The model provision regarding the mailing of notices to the borrower reads: "You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it by first class mail."

(14) Due on Sale Clause, Notice of Intent to Accelerate, and Notice of Acceleration. The model provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration reads: "If all or any interest in the homestead is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law. If you exercise this option, you will give me notice of acceleration (i.e., payment of all I owe at once). This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement."

(15) No Waiver of Lender's Rights. The model provision expressing no waiver of lender's rights reads: "If you don't enforce your rights every time, you can still enforce them later."

(16) Collection Expense Clause. The model collection expense clause reads: "If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by law, including Section 50(a)(6), Article XVI of the Texas Constitution. These expenses include, for example, reasonable attorneys' fees. I understand that these fees are not for maintaining or servicing this Loan Agreement."

(17) Joint Liability. The model provision providing for joint liability reads: "I understand that you may seek payment from only me without first looking to any other Borrower. You can enforce your rights under this Loan Agreement solely against the homestead. This Loan Agreement is made without personal liability against each owner of the homestead and against the spouse of each owner unless the owner or spouse obtained this loan by actual fraud. If this loan is obtained by actual fraud, I will be personally liable for the debt, including a judgment for any deficiency that results from your sale of the homestead for an amount less than is owed under this Loan Agreement."

(18) Usury Savings Clause. The model usury savings clause reads: "I do not have to pay interest or other amounts that are more than the law allows."

(19) Savings Clause. The model clause stating that if any part of the contract is invalid, the rest remains valid reads: "If any part of

this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with law, that law will control. The part of the Loan Agreement that conflicts with the law will be modified to comply with the law. The rest of the Loan Agreement remains valid."

(20) Contract Supersedes Prior Agreements. The model integration clause providing that the contract supersedes prior agreements and statements reads: "This written Loan Agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between us relating to this Loan Agreement. Any change to this agreement must be in writing. Both you and I have to sign written agreements."

(21) Security Document. The model provision stating that the homestead described in the Loan Agreement is subject to the lien of the Security Document reads: "The homestead described above by the property address is subject to the lien of the Security Document. I will see the separate Security Document for more information about my rights and responsibilities."

(22) Application of Law. The model clause specifying that federal law and Texas law apply to the contract reads: "Federal law and Texas law apply to this Loan Agreement. The Texas Constitution will be applied to resolve any conflict between the Texas Constitution and any other law."

(23) Complaints and Inquiries. The model complaints and inquiries notice reads: "This lender is licensed and examined by the State of Texas Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems. Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, www.occc.state.tx.us, (512) 936-7600, (800) 538-1579."

(24) Clause Describing Collateral. The model provision describing the collateral reads: "The homestead described above by the property address is subject to the lien of the Security Document."

(25) Signature Blocks. Licensee may also provide additional signature lines for witness signatures.
Figure: 7 TAC §1.1226(b)(25)

(c) For the security document for a Chapter 342, Subchapter G second lien home equity loan contract:

(1) The model definition section reads:

(A) "Loan Agreement" means the Note, Security Document, deed of trust, any other related document, or any combination of those documents, under which you have extended credit to me.

(B) "Security Document" means this document, which is dated _____, together with all Riders to this document.

(C) "I" or "me" means _____, the grantor under this Security Document and the person who signed the Note ("Borrower").

(D) "You" means _____, the Lender and any holder entitled to receive payments under the Note. Your address is _____. You are the beneficiary under this Security Document.

(E) "Trustee" is _____ Trustee's address is _____:

(F) "Note" means the promissory Note signed by me and dated _____. The Note states that the amount I owe you is _____ dollars (U.S. \$ _____) plus interest. I have promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than _____.

(G) "My Homestead" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Extension of Credit" means the debt evidenced by the Note, as defined by Section 50(a)(6), Article XVI of the Texas Constitution and all the documents executed in connection with the debt.

(I) "Riders" means all Riders to this Security Document that I execute.
Figure: 7 TAC §1.1226(c)(1)(I)

(J) "Applicable Law" means all controlling applicable federal, Texas and local constitutions, statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on me or My Homestead by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section _____ of this Security Document.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than proceeds paid under my insurance) for: damage or destruction of My Homestead; condemnation or other taking of all or any part of My Homestead; conveyance instead of condemnation; or misrepresentations or omissions related to the value or condition of My Homestead.

(O) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amounts under this Security Document.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Document, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of me" means any party that has taken title to My Homestead, whether or not that party has assumed my obligations under the Loan Agreement.

(R) "Ground Rents" means amounts I owe if I rented the real property under the buildings covered by this Security Document. One of these arrangements usually takes the form of a long-term "ground lease."

(2) Secured Agreement. The model provision regarding the secured nature of the agreement reads: "To secure this loan, I give

you a security interest in My Homestead including existing and future improvements, easements, fixtures, attachments, replacements and additions to the property, insurance refunds, and proceeds. This security interest is intended to be limited to the homestead property and not other collateral, as required under the Texas Constitution."

(3) Transfer of Rights in the Property. The model provision regarding a transfer of rights in the property reads:
Figure: 7 TAC §1.1226(c)(3)

(4) Borrower and Lender's Promise. The model provision regarding borrower and lender's promise to comply with the terms of the security document reads: "You and I promise:"

(5) Late Charges and Prepayment. The model provision regarding late charges and prepayment of principal and interest reads:
Figure: 7 TAC §1.1226(c)(5)

(6) Funds for Escrow Items. The model provision regarding the funds for Escrow Items reads:
Figure: 7 TAC §1.1226(c)(6)

(7) Charges and Liens. The model provision regarding charges and liens reads:
Figure: 7 TAC §1.1226(c)(7)

(8) Property Insurance. The model provision regarding property insurance reads:
Figure: 7 TAC §1.1226(c)(8)

(9) Homestead. The model provision stating that the borrower occupies the property as his homestead reads: "I now occupy and use the property secured by this Security Document as my Texas homestead."

(10) Preservation, Maintenance, Protection, and Inspection of the Property. The model provision regarding preservation, maintenance, protection, and inspection of the property reads: "I will not destroy, damage or impair My Homestead, allow it to deteriorate, or commit waste. Whether or not I live in My Homestead, I will maintain it in order to prevent it from deteriorating or decreasing in value due to its condition. I will promptly repair the damage to My Homestead to avoid further deterioration or damage unless you and I agree in writing that it is economically unreasonable. I will be responsible for repairing or restoring My Homestead only if you release the insurance or condemnation proceeds for the damage to or the taking of My Homestead. You may release proceeds for the repairs and restoration in a single payment or in a series of payments as the work is completed. I still am obligated to complete repairs or restoration of My Homestead even if there are not enough proceeds to complete the work. You or your agent may inspect My Homestead. You may inspect the interior of My Homestead with reasonable cause. You will give me notice stating reasonable cause when or before the interior inspection occurs."

(11) Conditions Causing Actual Fraud. The model provision specifying the conditions causing actual fraud reads:
Figure: 7 TAC §1.1226(c)(11)

(12) Protection of Lender's Interest in the Property and Rights Under the Security Document. The model provision regarding protection of the lender's interest in the property and rights under the security document reads:
Figure: 7 TAC §1.1226(c)(12)

(13) Assignment of Miscellaneous Proceeds and Forfeiture. The model provision regarding the assignment of miscellaneous proceeds and forfeiture reads:
Figure: 7 TAC §1.1226(c)(13)

(14) Forbearance Not a Waiver. The model provision specifying that the borrower is not released from liability if lender modifies the payment schedule reads: "My successors and I will not be released from liability if you extend the time for payment or modify the payment schedule. If I pay late, you will not have to sue me or my successor to require timely future payments. You may refuse to extend time for payment or modify this Loan Agreement even if I request it. If you do not enforce your rights every time, you may enforce them later."

(15) Joint and Several Liability, Security Document Execution, Successors Obligated. The model provision regarding joint and several liability and specifying that the person who signs the contract grants their ownership in the homestead and binds their successors and assigns reads:
Figure: 7 TAC §1.1226(c)(15)

(16) Extension of Credit Charges. The model provision regarding the Extension of Credit charges reads:
Figure: 7 TAC §1.1226(c)(16)

(17) Delivery of Notices. The model provision regarding the delivery of notices reads: "Under the Loan Agreement, you and I will give notices to each other in writing. Any notice under the Loan Agreement will be considered given to me when it is mailed by first class mail or when actually delivered to me at my address if given by another means. You will give notice to My Homestead address unless I provide you a different address. I will notify you promptly of any change of address. I will comply with any reasonable procedure for giving a change of address that you provide. There will only be one address for notice under the Loan Agreement. Notice to me will be considered notice to all persons who are obligated under the Loan Agreement unless Applicable Law requires a separate notice. I may give you notice by delivering or mailing it by first class mail to the address provided by you, unless you require a different procedure. You, however, will not receive notice under the Loan Agreement until you actually receive it. Legal requirements governing notices subject to the Loan Agreement will prevail over conditions in the Loan Agreement."

(18) Governing Law and Severability. The model provision regarding the law governing the contract, stating that if any part of the contract is declared invalid, the rest of the contract remains valid reads: "The Loan Agreement will be governed by Texas and federal law. If any provision in the Loan Agreement conflicts with any legal requirement, all non-conflicting provisions will remain effective."

(19) Rules of Construction. The model provision regarding rules of clause construction reads:
Figure: 7 TAC §1.1226(c)(19)

(20) Loan Agreement Copies. The model provision specifying that the lender will give borrower a copy of all signed documents at the time the loan agreement is made reads: "At the time the Loan Agreement is made, you will give me copies of all documents I sign."

(21) Transfer of Interest in Property. The model provision regarding a transfer of interest in the property reads: "Interest in My Homestead means any legal or beneficial interest. This term includes those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement (the intent of which is the transfer of title by me at a future date to a purchaser). If any part of My Homestead is sold or transferred without your prior written permission, you may require immediate payment of all I owe. You will not exercise this option if disallowed by Applicable Law. If you accelerate, you will give me notice. The notice of acceleration will allow me at least 21 days from the date the notice is given to pay all I owe. If I fail to timely pay all I owe, you may pursue any remedy allowed by the Loan Agreement without further notice or demand."

(22) Borrower's Rights to Reinstate After Acceleration. The model provision regarding borrower's right to reinstate after acceleration reads:
Figure: 7 TAC §1.1226(c)(22)

(23) Sale of Note, Change of Loan Servicer, Notice of Grievance, Lender's Right to Comply. The model provision regarding the sale of the loan, change of loan servicer, notice of grievance, and lender's right to comply reads:
Figure: 7 TAC §1.1226(c)(23)

(24) Hazardous Substances. The model provision regarding hazardous substances reads:
Figure: 7 TAC §1.1226(c)(24)

(25) Acceleration and Remedies. The model provision regarding acceleration and remedies reads:
Figure: 7 TAC §1.1226(c)(25)

(26) Power of Sale. The model provision regarding power of sale reads:
Figure: 7 TAC §1.1226(c)(26)

(27) Release. The model provision regarding the release of the lien securing the loan agreement reads: "You will cancel and return the Note to and give me, in recordable form, a release of lien securing the Loan Agreement or a copy of any endorsement of the Note and assignment of the lien to a lender that is refinancing the Loan Agreement. I will pay only the cost of recording the release of lien. My acceptance of the release or endorsement and assignment will end all of your duties under section 50(a)(6), Article XVI of the Texas Constitution."

(28) Non-Recourse Liability. The model provision specifying that the loan agreement is given without personal liability against each owner of the homestead and against the spouse of each owner reads:
Figure: 7 TAC §1.1226(c)(28)

(29) Proceeds. The model provision specifying that the borrower has not been required to repay another debt with the proceeds of the loan reads: "I am not required to apply the proceeds of the Loan Agreement to repay another debt except a debt secured by My Homestead or a debt to another lender."

(30) No Assignment of Wages. The model provision specifying that the borrower has not assigned wages as security for the loan agreement reads: "I have not assigned wages as security for the Loan Agreement."

(31) Acknowledgment of Fair Market Value. The model provision specifying that lender and borrower have agreed in writing to the fair market value of the homestead reads: "You and I agreed in writing to the fair market value of My Homestead on the date of the Loan Agreement."

(32) Trustees and Trustee Liability. The model provision regarding trustees and trustee liability reads:
Figure: 7 TAC §1.226(c)(32)

(33) Waiver of Additional Collateral. The model provision regarding lender's waiving additional collateral reads:
Figure: 7 TAC §1.1226(c)(33)

(34) Default. The model default provision reads: "Any default of my agreements with you will be a default of this Security Document."

(35) Signature Blocks. The model provision regarding Signature Blocks reads:
Figure: 7 TAC §1.1226(c)(35)

(36) Non-purchase Disclosure. The model provision indicating that the security document does not finance a purchase transaction should appear at the beginning of the document, below the heading and prior to the definition section. The model provision reads: "This Security Document is not intended to finance my acquisition of the Property."

§1.1227. Permissible Changes.

(a) A licensed lender may consider making the following types of changes to the model clauses:

(1) The addition of information related to information set forth in the model clauses that is not otherwise prohibited by law.

(2) Substituting another term for "Lender" or "Borrower" that has the same meaning, or use of pronouns such as "you," "we," and "us."

(3) The model clauses may be presented in any order, and may be combined or further segregated at the licensee's option.

(4) Inserting descriptive headings or number provisions.

(5) Changing the case of a word if otherwise permitted by the Texas Finance Code.

(6) Other changes which do not affect the substance of the disclosures.

(7) A sample model note is presented in the following example.

Figure: 7 TAC §1.1227(a)(7).

(8) A sample model security document is presented in the following example.

Figure: 7 TAC §1.1227(a)(8).

(b) An authorized licensee has considerable flexibility to arrange the format of the model form if the revised format does not significantly adversely affect the substance, clarity, or meaningful sequence of the disclosures.

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 August 16, 2002.

TRD-200205400

Leslie L. Pettijohn

Commissioner

Finance Commission of Texas

Earliest possible date of adoption: September 29, 2002

For further information, please call: (512) 936-7640



PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 25. PREPAID FUNERAL CONTRACTS

SUBCHAPTER B. REGULATION OF LICENSES

7 TAC §25.19

The Finance Commission of Texas (the commission) proposes an amendment to §25.19, concerning notice of seizure and the

bid process for prepaid funeral contracts. The proposed amendment will correct a citation in §25.19(a) that changed as a result of the 1997 codification of prepaid funeral services laws into the Finance Code.

Everette Jobe, General Counsel, Texas Department of Banking, has determined that, for each year of the first five years that the proposed amendment is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the section as amended.

Mr. Jobe has also determined that, for each of the first five years the amendment as proposed will be in effect, the public benefit anticipated as a result of the amendment will be the replacement of an obsolete statutory reference with a correct citation. There is no anticipated cost to persons who are required to comply with the amendment as proposed. There will be no adverse economic effect on small businesses.

Comments concerning the proposed section must be submitted no later than 30 days after the date of publication to Robin Robinson, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, or by email to robin.robinson@banking.state.tx.us.

The amendment is proposed under Finance Code, §154.051, which authorizes the commission to adopt rules necessary to enforce and administer Finance Code, Chapter 154.

Finance Code, Chapter 154, is affected by the proposed amendment.

§25.19. *Notice of Seizure; the Bid Process.*

(a) Notice to purchasers. Within 30 days of cancellation of a permit to sell prepaid funeral benefits and the seizure of prepaid funeral funds, the department shall notify those who have purchased prepaid funeral contracts from the cancelled permit holder. The notice shall inform the purchasers of the cancellation and seizure; provide instructions set out in Finance Code, §154.413 [Texas Civil Statutes, Article 548b, §4(g)]; provide an address to which any future payments due under the contracts must be sent; explain how monies can be released from the seized funds prior to selection of a successor permit holder; and explain how the contract may be cancelled should the purchaser wish to cancel it.

(b)-(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 August 16, 2002.

TRD-200205324

Everette D. Jobe

Certifying Official

Texas Department of Banking

Proposed date of adoption: October 18, 2002

For further information, please call: (512) 475-1300



CHAPTER 29. SALE OF CHECKS ACT

7 TAC §29.2

The Finance Commission of Texas (the commission) proposes to amend §29.2, concerning application fees, examination costs, and assessment fees. Section 29.2 implements Finance Code, §152.304(a), which requires a license holder to pay an

annual license renewal fee in an amount established by rule, and §152.102(2), which authorizes the commission to set fees for applications, licenses, notices, and examinations to defray the cost of administering Finance Code, Chapter 152.

The commission proposes to amend §29.2(c)(2) to increase the annual fee to renew an existing license from \$500 to \$1,500. The \$1,000 increase is necessary to more fully recover the cost of processing a renewal application. The fee increase is proposed to comply with Finance Code, §152.205(1), which requires the department to collect fees in an amount established by rule that is sufficient to administer Finance Code, Chapter 152.

The commission proposes to amend §29.2(d) to increase examination fees from \$500 per examiner per day plus associated travel costs to \$600 per examiner per day plus associated travel costs for any additional examination that is required in the same fiscal year because of a license holder's failure to comply with Finance Code, Chapter 152, commission rules, or department requests. This \$100 increase is necessary to more fully recover the cost of examiner salaries in these additional examinations.

The fee rate increases are established by the commission, and not mandated by the legislature. The proposed fee increases are necessary because the existing fees do not fully fund the costs of administering Finance Code, Chapter 152.

Factors which have led to the necessity of the increased fees include inflation and rising program costs. No examination fee increase has been imposed on license holders since April 1997, and the last increase in the annual renewal fee was effective January 1, 1987. The increases proposed in §29.2 will be the first in over five years and the first increase in the renewal fee in over 15 years.

Russell Reese, Director of Special Audits, Texas Department of Banking (department), has determined that, for each year of the first five years that the fee increases as proposed are in effect there will be no fiscal implication for state or local government as a result of enforcing or administering the section. The total amount of revenues collected by the department for all regulatory programs will remain approximately the same. The increased fees from sale of check licensees will allow this regulatory program to fully fund the costs of administering Finance Code, Chapter 152.

Mr. Reese also has determined that, for each of the first five years the proposed increases will be in effect, the economic costs to persons required to comply with the rule will be: (1) increased license renewal application fees, and (2) increased fees for additional examinations of license holders who fail to comply with the law. Assuming that license holders comply with the law and no additional examinations are necessary, the yearly increase to each license holder will be \$1,000.

Of the 63 sale of check license holders, 16 are micro-businesses and 21 are small businesses under the definitions of those terms in Government Code, §2006.001. The department compared the cost of compliance (aggregate cost of renewal fees) for micro-businesses and small businesses with the cost of compliance for the larger businesses by determining the cost for each \$100 of sales for the three classes of businesses in accordance with Government Code, §2006.002. The license renewal fee increase on micro-businesses under the proposal will be an average of \$0.00316054 per \$100 in sales. The license renewal fee increase on small businesses will be approximately \$0.00014576 per \$100 in sales. The license

renewal fee increase on other businesses will be approximately \$0.00005761 per \$100 in sales.

Comments on the proposed rule may be submitted to Shannon Phillips Jr., Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, or by email to Shannon.Phillips@banking.state.tx.us.

The amendments are proposed under Finance Code, §152.304(a), which requires a license holder to pay to the commissioner a license renewal fee in an amount established by rule, and §152.102(2), which authorizes the commission to set fees for applications, licenses, notices, and examinations to defray the cost of administering Finance Code, Chapter 152.

Finance Code, Chapter 152, is affected by the proposed amendment.

§29.2. *Fees and Assessments.*

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

(c) Filing fees. The filing fees established in this subsection either are specifically set out in the Finance Code, Chapter 152, or set in accordance with the Finance Code, Chapter 152, to reasonably approximate the agency's cost of administering the Finance Code, Chapter 152, with respect to each particular filing.

(1) (No change.)

(2) Annual renewal fee. Each application for a renewal license must be submitted to the department on or before April 15th of each year together with the annual renewal fee of \$1,500 [~~\$500~~].

(d) Financial audit fees. The department shall annually assess each licensee a financial audit fee for one financial audit, not to exceed \$8,000 in a fiscal year, at a rate of not more than \$0.02 per \$1,000 of the amount of money orders, travelers checks, and other payment instruments sold and transmission money received by the licensee within the state of Texas, based on the total dollar amount of transactions reflected in the examination report or annual renewal filing, whichever is more recent. The department may levy this fee in quarterly or fewer installments in such periodically adjusted amounts as reasonably appear necessary to defray the costs of financial audit and the administration of the Finance Code, Chapter 152. If the financial audit fee computed in this manner is less than \$2,500, a minimum financial audit fee of \$2,500 will be levied and collected. In addition to the financial audit fee, each licensee shall reimburse the department for all travel costs related to the financial audit. If more than one financial audit of a license is required in the same fiscal year as a result of the licensee's failure to comply with the Finance Code, Chapter 152, or this chapter or as a result of its failure to comply with departmental requests in furtherance of the department's regulatory responsibilities under the Finance Code, Chapter 152, or this chapter, an additional fee of \$600 [~~\$500~~] per day, plus associated travel costs, will be assessed against the licensee for each examiner assigned to an additional financial audit. Financial audit fees may be decreased if the commissioner determines that a lesser sum than otherwise would be collected is required to administer the Finance Code, Chapter 152.

(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 August 16, 2002.
TRD-200205325

Everette D. Jobe
Certifying Official
Texas Department of Banking
Proposed date of adoption: October 18, 2002
For further information, please call: (512) 475-1300

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**PART 4. TEXAS SAVINGS AND LOAN
DEPARTMENT**

**CHAPTER 80. MORTGAGE BROKER AND
LOAN OFFICER LICENSING**
SUBCHAPTER B. PROFESSIONAL CONDUCT
7 TAC §80.10

The Finance Commission of Texas (the Finance Commission) proposes to amend 7 TAC §80.10 by retitling the rule as "Prohibitions on false, misleading, or deceptive practices and improper dealings", restructuring the current text of this section as subsection 80.10(a), and by adopting new text in new subsection 80.10(b).

Section 156.303(a)(3) of the Act prohibits licensed mortgage brokers and loan officers from engaging in improper dealings while performing acts that require a license. Since there is no definition of improper dealings in the Act, the purpose of new subsection 80.10(b) is to clarify the meaning of this term.

Proposed new subsection 80.10(b) provides that improper dealings includes, but is not limited to, three types of misconduct. The first type is negligence or incompetence in performing the act of a mortgage broker or loan officer. The second type is violating any provision of a federal, state, or local law, including a final court decision, which governs the same subject matter that is governed by the Act or by Texas Administrative Code, Title 7, Part IV, Chapter 80. The third type is violating any provision of seven laws listed, which consist of the Real Estate Settlement Procedures Act, Regulation X, Truth in Lending Act, Regulation Z, Equal Credit Opportunity Act, Regulation B, and Article XVI, Section 50 of the Texas Constitution, as well as their successor statutes and provisions.

With respect to the incorporation by reference of the federal statutes and regulations listed in proposed subsection 80.10(b)(3), the Texas Savings and Loan Department (the department) would note that these statutes and regulations have long established a national standard for the origination of residential mortgage loans. Consequently, the department believes that a Texas-licensed mortgage broker or loan officer who originates a loan in violation of these standards would be engaging in conduct that constitutes "improper dealings" within the meaning of Section 156.303(a)(3) of the Act.

The effect of new subsection 80.10(b) would be to make a licensee's negligence, incompetence, or violation of the provisions of any other law that governs mortgage broker activity a violation of Section 156.303(a)(3) of the Act and grounds for disciplinary action against the licensee.

The Act establishes a Mortgage Broker Advisory Committee to advise the Commissioner and the Commission on the promulgation of forms and regulations and the implementation of the Act. The Advisory Committee met on August 6, 2002, and reviewed this proposed new section of the regulations.

James L. Pledger, Savings and Loan Commissioner, has determined that for the first five year period the new subsection, as proposed, will be in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering these sections.

Mr. Pledger estimates that for the first five years the proposed new subsection is in effect, the public will benefit from the department's increased ability to take disciplinary action against licensees engaged in improper dealings. Additionally, the licensee population will benefit by having a clearer concept of what constitutes improper dealings, so that they can take steps to prevent such misconduct from occurring. No difference will exist between the cost of compliance for small business and the cost of compliance for the largest business affected by the new sections.

Comments on the proposed new subsection may be submitted in writing to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar, Suite 201, Austin, Texas 78705-4294, or e-mailed to TSLD@tsld.state.tx.us

The new subsection is proposed under *Finance Code*, Section 11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under *Finance Code*, Section 156.102(a), which authorizes the commissioner, subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act. The section of the Act affected by the proposed new subsection is *Finance Code*, Section 156.303(a)(3).

§80.10. Prohibition on false, misleading, or deceptive practices and improper dealings.

(a) No Mortgage Broker or Loan Officer may:

(1) knowingly misrepresent his or her relationship to a Mortgage Applicant or any other party to an actual or proposed Mortgage Loan transaction;

(2) knowingly misrepresent or understate any cost, fee, interest rate, or other expense in connection with a Mortgage Applicant's applying for or obtaining a Mortgage Loan;

(3) disparage any source or potential source of Mortgage Loan funds in a manner which knowingly disregards the truth or makes any knowing and material misstatement or omission;

(4) knowingly participate in or permit the submission of false or misleading information of a material nature to any person in connection with a decision by that person whether or not to make or acquire a Mortgage Loan.

(5) as provided for by the Real Estate Settlement Procedures Act and its implementing regulations, broker, arrange, or make a Mortgage Loan in which the Mortgage Broker or Loan Officer retains fees or receives other compensation for services which are not actually performed or where the fees or other compensation received bear no reasonable relationship to the value of services actually performed;

(6) recommend or encourage default or delinquency or continuation of an existing default or delinquency by a Mortgage Applicant on any existing indebtedness prior to closing a Mortgage Loan which refinances all or a portion of such existing indebtedness;

(7) induce or attempt to induce a party to a contract to breach the contract so the person may make a Mortgage; or

(8) engage in any other practice which the Commissioner, by published interpretation, has determined to be false, misleading, or deceptive.

(b) The term "improper dealings" in Section 156.303(a)(3) of the Act includes, but is not limited to, the following:

(1) Acting negligently or incompetently in performing an act for which a person is required under the Act to hold a license;

(2) Violating any provision of a federal, state, or local constitution, statute, rule, ordinance, regulation, or final court decision that governs the same activity, transaction, or subject matter that is governed by the provisions of the Act or this Chapter; or

(3) Violating any provision of the following statutes, regulations, and constitutional provisions, or their successor statutes, regulations, and provisions:

(A) Real Estate Settlement Procedures Act, 12 U.S.C. Chapter 2600;

(B) Regulation X, 24 C.F.R. Part 3500;

(C) Consumer Credit Protection Act, 15 U.S.C. Chapter 1600 (Truth in Lending Act);

(D) Regulation Z, 12 C.F.R. Part 226;

(E) Equal Credit Opportunity Act, 15 U.S.C. §1691;

(F) Regulation B, 12 C.F.R. Part 202; and

(G) Section 50, Article XVI, Texas Constitution.

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 August 19, 2002.

TRD-200205409

Michael Chisum

General Counsel

Texas Savings and Loan Department

Earliest possible date of adoption: September 29, 2002

For further information, please call: (512) 475-1350

TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 26. PRACTICE AND PROCEDURE

13 TAC §26.27

The Texas Historical Commission (hereafter referred to as the commission) proposes an amendment to Section 26.27 (Title 13, Part II, Chapter 26 of the Texas Administrative Code), relating to Disposition of Archeological Artifacts and Data. This change is needed to eliminate a reference to a timeline and accreditation of curatorial facilities by the Council of Texas Archeologist.

F. Lawrence Oaks, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Oaks has also determined that for each year of the first five-year period the rule amendments are in effect the public benefit anticipated as a result of this amendments will be. Additionally, Mr. Oaks as determined that there will be no effect on small businesses, and there is no anticipated economic cost to persons who are required to comply with these rule amendments as proposed.

Comments on the proposal may be submitted to F. Lawrence Oaks, Executive Director, Texas Historical Commission, P. O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments are proposed under the Texas Natural Resources Code, Title 9, Chapter 191 which provides the commission with authority to promulgate rule that will reasonably effect the purposes of this chapter.

§26.27. *Disposition of Archeological Artifacts and Data.*

(a) Processing. Investigators who receive permits shall be responsible for cleaning, conserving, cataloguing, and preserving all collections, specimens, samples, and records, and for the reporting of results of the investigation.

(b) Ownership. All specimens, artifacts, materials, and samples plus original field notes, maps, drawings, photographs, and standard state site survey forms, resulting from the investigations remain the property of the State of Texas. Certain exceptions left to the discretion of the commission are contained in the Texas Natural Resources Code, Section 191.052 (b). The commission will determine the final disposition of all artifacts, specimens, materials, and data recovered by investigations on State Archeological Landmarks or potential landmarks, which remain the property of the State. Antiquities from State Archeological Landmarks are of inestimable historical and scientific value and should be preserved and utilized in such a way as to benefit all the citizens of Texas. It is the rule of the commission that such antiquities shall never be used for commercial exploitation.

(c) Housing, conserving, and exhibiting antiquities from State Archeological Landmarks.

(1) After investigation of a State Archeological Landmark has culminated in the reporting of results, the antiquities will be permanently preserved in research collections at the curatorial facility approved by the commission. Prior to the expiration of a permit, proof that archeological collections and related field notes are housed in a curatorial facility is required. Failure to demonstrate proof before the permit expiration date may result in the principal investigator and co-principal investigator falling into default status.

(2) [~~By December 31, 2002, institutions that curate artifacts recovered under Antiquities Permit(s) must be accredited through the Council of Texas Archeologists Accreditation and Review Council accreditation program.~~] Institutions housing antiquities from State Archeological Landmarks will also be responsible for adequate security of the collections, continued conservation, periodic inventory, and for making the collections available to qualified institutions, individuals, or corporations for research purposes.

(3) Exhibits of materials recovered from State Archeological Landmarks will be made in such a way as to provide the maximum amount of historical, scientific, archeological, and educational information to all the citizens of Texas. First preference will be given to traveling exhibits following guidelines provided by the commission and originating at an adequate facility nearest to the point of recovery.

Permanent exhibits of antiquities may be prepared by institutions maintaining such collections following guidelines provided by the commission. A variety of special, short-term exhibits may also be authorized by the commission.

(d) Access to antiquities for research purposes. Antiquities retained under direct supervision of the commission will be available under the following conditions:

(1) Request for access to collections must be made in writing to the curatorial facility holding the collections indicating to which collection and what part of the collection access is desired; nature of research and special requirements during access; who will have access, when, and for how long; type of report which will result; and expected date of report.

(2) Access will be granted during regular working hours to qualified institutions or individuals for research culminating in non-permit reporting. A copy of the report will be provided to the commission.

(3) Data such as descriptions or photos when available will be provided to institutions or individuals on a limited basis for research culminating in nonprofit reporting. A copy of the report will be provided to the commission.

(4) Access will be granted to corporations or individuals preparing articles or books to be published on a profit-making basis only if there will be no interference with conservation activities or regular research projects; photos are made and data collected in the facility housing the collection; arrangements for access are made in writing at least one month in advance; cost of photos and data and a reasonable charge of or supervision by responsible personnel are paid by the corporation or individual desiring access; planned article or publication does not encourage or condone treasure hunting activity on public lands, State Archeological Landmarks, or National Register sites, or other activities which damage, alter, or destroy cultural resources; proper credit for photos and data are indicated in the report; a copy of the report will be provided to the commission.

(5) The commission may maintain a file of standard photographs and captions available for purchase by the public.

(6) A written agreement containing the appropriate stipulations will be prepared and executed prior to the access.

(7) Institutions, organizations, and agencies designated by the commission as depositories for antiquities collections shall promulgate reasonable rules and regulations governing access to those collections in their custody.

(e) Pursuant to Texas Natural Resources Code sec. 191.091-092, all antiquities found on land or under waters belonging to the State of Texas or any political subdivision of the State belong to the State of Texas. The commission is charged with the administration of the Antiquities Code and exercises the authority of the State in matters related to these held-in-trust collections.

(f) Decisions regarding the disposal, deaccession, or destructive analysis of held-in-trust collections are the legal responsibility of the commission. Acceptable circumstances for disposal, deaccessioning, or destructive analysis are provided by these rules. Exceptions may be considered by the commission. Under no circumstances will held-in-trust collections be disposed of, or deaccessioned through sale.

(g) Disposal. The commission's rules for disposal applies to objects and samples prior to accessioning that have been recovered from a site on public lands or under public waters under an Antiquities Permit issued by the commission.

(1) Disposal of recovered objects or samples from a site on public lands or from public waters under an antiquities permit issued by the commission must be approved by the commission. Approval for anticipated disposal is by means of an approved research design at the time the Antiquities Permit is issued. The manner in which the object or sample is to be disposed must be included in the research design. Additional disposal not included in the approved research design must be approved by the commission prior to any disposal action.

(2) The appropriate reasons for disposal include, but are not limited to, the following:

(A) Objects that are highly redundant and without additional merit;

(B) Objects that lack historical, cultural, or scientific value;

(C) Objects that have decayed or decomposed beyond reasonable use and repair or that by their condition constitute a hazard to other objects in the collection.

(D) Objects that may be subject to disposal as required by federal laws.

(3) Items disposed of after recovery must be documented in the notes, and final report, with copies provided to the curatorial facility.

(4) The commission relinquishes title for the State to any object or sample approved for disposal. The object or sample must be disposed of in a suitable manner.

(h) Deaccession. The commission's rules for deaccession recognizes the special responsibility associated with the receipt and maintenance of objects of cultural, historical, and scientific significance in the public trust. Although curatorial facilities become stewards of held-in-trust collections, title is retained by the commission for the State. Thus, the decision to deaccession held-in-trust objects or collections is the responsibility of the commission. The commission recognizes the need for periodic reevaluations and thoughtful selection necessary for the growth and proper care of collections. The practice of deaccessioning under well-defined guidelines provides this opportunity.

(1) Deaccessioning may be through voluntary or involuntary means. The transfer, exchange, or deterioration beyond repair or stabilization or other voluntary removal from a collection in a curatorial facility is subject to the limitations of this rule.

(2) Involuntary removal from collections occurs when objects, samples, or records are lost through theft, disappearance, or natural disaster. If the whereabouts of the object, sample, or record is unknown, it may be removed from the responsibility of the curatorial facility, but the commission will not relinquish title in case the object, sample, or record subsequently is returned.

(i) Accredited curatorial facilities. Authority to deal with deaccessioning of limited categories of objects and samples from held-in-trust collections is delegated to a curatorial facility approved by the commission to hold state held-in-trust collections through a contractual agreement between the curatorial facility and the commission. Annual reports will be submitted to the commission on these deaccessioning actions.

(1) If the commission determines that a curatorial facility has acted in violation of the contractual agreement and this rule, the contractual agreement will be terminated. From that date forward, the commission will review and decide on all deaccession actions of that curatorial facility concerning held-in-trust objects and samples. A new

contractual agreement may be executed at such time as the commission determines that the curatorial facility has come into compliance with this rule.

(2) Curatorial facilities not yet approved by the commission to hold state held-in-trust collections shall submit written deaccession requests of objects and samples from held-in-trust collections to the commission.

(3) Requests to deaccession a held-in-trust collection in its entirety must be submitted to the commission.

(4) The reasons for deaccessioning all or part of held-in-trust collections include, but are not limited to, the following:

(A) Objects lacking provenience that are not significant or useful for research, exhibit, or educational purposes in and of themselves;

(B) Objects or collections that do not relate to the stated mission of the curatorial facility. Objects or collections that are relevant to the stated mission of the curatorial facility may not be deaccessioned on the grounds that they are not relevant to the research interests of current staff or faculty;

(C) Objects that have decayed or decomposed beyond reasonable use or repair or that by their condition constitute a hazard in the collections;

(D) Objects that have been noted as missing from a collection beyond the time of the next collections-wide inventory are determined irretrievable and subject to be deaccessioned as lost;

(E) Objects suspected as stolen from the collections must be reported to the commission in writing immediately for notification to similar curatorial facilities, appropriate organizations, and law enforcement agencies. Objects suspected as stolen and not recovered after a period of three years or until the time of the next collections-wide inventory are determined irretrievable and subject to being deaccessioned as stolen;

(F) Objects that have been stolen and for which an insurance claim has been paid to the curatorial facility.

(G) Objects that may be subject to deaccessioning as required by federal laws.

(H) Deaccession for reasons not listed above must be approved on a case-by-case basis by the commission.

(j) Title to Objects or Collections Deaccessioned. If deaccessioning is for the purpose of transfer or exchange, commission retains title for the State to the object or collection. A new held-in-trust agreement must be executed between the receiving curatorial facility and the THC.

(1) If deaccessioning is due to theft or loss, the commission will retain title for the State to the object or collection in case it is ever recovered, but the curatorial facility will no longer be responsible for the object or collection.

(2) If deaccessioning is due to deterioration or damage beyond repair or stabilization, the commission relinquishes title for the State to the object or collection and the object or collection must be discarded in a suitable manner.

(k) Destructive Analysis. The commission's rules for destructive analysis applies only to samples and objects from held-in-trust collections accessioned into the holdings of a curatorial facility. Destructive analysis of samples or objects prior to placement in a curatorial

facility is covered by the research design approved for the Antiquities Permit. Authority to deal with destructive analysis requests of categories of objects and samples from held-in-trust collections is delegated to a curatorial facility approved by the commission to hold state held-in-trust collections through a contractual agreement between the curatorial facility and the commission. Annual reports will be submitted to the commission on these destructive analysis actions.

(1) A written research proposal must be submitted to the curatorial facility stating research goals, specific samples or objects from a held-in-trust collection to be destroyed, and research credentials in order for the curatorial facility to establish whether the destructive analysis is warranted.

(2) If the commission determines that a curatorial facility has acted in violation of the contractual agreement and this rule, the contractual agreement will be terminated. From that date forward, the commission will review and decide on all destructive analysis actions of that curatorial facility concerning held-in-trust objects and samples. A new contractual agreement may be executed at such time as the commission determines that the curatorial facility has come into compliance with these rules.

(3) Curatorial facilities not yet approved by the commission to hold state held-in-trust collections shall submit destructive analysis requests of objects and samples from held-in-trust collections to the commission.

(4) Conditions for approval of destructive analysis may include qualifications of the researcher, uniqueness of the project, scientific value of the knowledge sought to be gained, and the importance, size, and condition of the object or sample.

(5) Objects and samples from held-in-trust collections approved for destructive analysis purposes are loaned to the institution where the researcher is affiliated. Objects and samples will not be loaned to individuals for destructive analysis.

(6) If the curatorial facility denies a request for destructive analysis of a sample or object from a held-in-trust collection, appeal of the decision is through the commission.

(7) Information gained from the analysis must be provided to the curatorial facility as a condition of all loans for destructive analysis purposes. After completion of destructive analysis, the researcher must return the information (usually in the form of a research report) in order for the loan to be closed. Two copies of any publications resulting from the analysis must be sent to the curatorial facility. If the object or sample is not completely destroyed by the destructive analysis, the remainder must be returned to the curatorial facility.

(8) It is the responsibility of the curatorial facility to monitor materials on loan for destructive analysis, to assure their correct use, and to note the returned data in the records.

(9) The commission does not relinquish title for the State to an object or sample that has undergone destructive analysis and the object or sample is not deaccessioned.

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 August 11, 2002.
TRD-200205292

F. Lawrence Oaks
Executive Director
Texas Historical Commission
Earliest possible date of adoption: September 29, 2002
For further information, please call: (512) 463-5711

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TITLE 16. ECONOMIC REGULATION

**PART 8. TEXAS RACING
COMMISSION**

**CHAPTER 309. RACETRACK LICENSES AND
OPERATIONS**

**SUBCHAPTER D. GREYHOUND
RACETRACKS**

DIVISION 2. OPERATIONS

16 TAC §309.351

The Texas Racing Commission proposes an amendment to §309.351, relating to kennel contracts. The amendment will clarify the Commission's approval process for kennel contracts, establish a deadline for filing executed contracts, clarify permissible deductions by an association, and prohibit individuals with an interest in the association from executing a kennel contract. The amendment will enable a more efficient auditing process and eliminate any potential conflict of interest issues.

Judith L. Kennison, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government.

Ms. Kennison has also determined that for each of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the proposal will be that the public is assured that Commission uses the most efficient auditing procedures. There may be limited economic impact to small or micro businesses that hold an interest in the association and ownership interest in a greyhound kennel, as this practice will be prohibited. There is no anticipated economic cost to an individual required to comply with the amendment as proposed. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Written comments must be submitted within 30 days after publication of the proposed amendments in the *Texas Register* to Judith L. Kennison, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, fax (512) 833-6907.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.021 which authorizes the Commission to regulate all aspects of greyhound racing; §10.03 which requires greyhound racetracks to contract with kennels; and §10.06 which requires an association to contract with Texas owned kennels.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§309.351. *Kennel Contracts.*

(a) In contracting with a kennel owner, an association shall use a contract approved by the executive secretary. In approving the contracts, the executive secretary shall consider the degree to which

the contract complies with applicable law, ensures the continuity of high quality racing, preserves property owned by the kennel owners and the association, and ensures the ability of the kennel owner and the association to have a profitable relationship through the contract. After receiving approval, an association shall deliver a copy of the approved contract form to the Texas Greyhound Association.

(b) An [Not later than January 31 of each year for which the contract is to be performed, an] association shall file a copy of each executed kennel contract with the Commission. An association conducting year-round racing shall file the contracts on or before January 31 of each year. An association conducting seasonal racing shall file the contracts on or before the 30th day before the first day of the race meet.

(c) An association shall deliver a copy of the kennel contract to each party to the contract.

(d) A kennel contract may not authorize a deduction from the purse payable to the greyhound owner except a deduction that is directly related to the owner's privileges and responsibilities as a greyhound owner. [Under a contract with a kennel owner, an association may not charge the kennel owner for providing any services or facilities other than electricity.]

(e) An association may not contract with a kennel owner if the kennel owner or a person related to the kennel owner within the first degree of affinity or consanguinity [member of the kennel owner's immediate family] owns an interest in the association.

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 August 16, 2002.

TRD-200205401

Judith L. Kennison

General Counsel

Texas Racing Commission

Earliest possible date of adoption: September 29, 2002

For further information, please call: (512) 833-6699

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**CHAPTER 311. OTHER LICENSES
SUBCHAPTER D. ALCOHOL AND DRUG
TESTING**

DIVISION 1. DRUGS

16 TAC §311.302

The Texas Racing Commission proposes an amendment to §311.302, relating to drug testing of licensees. The amendment will update the rule to reflect the current procedure if an individual refuses to submit to drug testing. In practice, the individual is referred to the Commission's medical review officer, not to the Commission, upon a first or second refusal to submit to drug testing.

Judith L. Kennison, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government.

Ms. Kennison has also determined that for each of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the proposal will be that the public is

assured that the Commission's rules are current and accurate. There will be no economic impact to small or micro businesses. There is no anticipated economic cost to an individual required to comply with the amendment as proposed. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Written comments must be submitted within 30 days after publication of the proposed amendments in the *Texas Register* to Judith L. Kennison, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, fax (512) 833-6907.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.021, which authorizes the Commission to regulate all aspects of horse and greyhound racing; and §5.01, which authorizes the Commission to establish reasonable and necessary conditions for licensure.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§311.302. Subject to Testing.

(a) The stewards or racing judges may require an occupational licensee acting pursuant to the license to submit to a urine test or other non-invasive fluid test at any time while on association grounds.

(b) A licensee who refuses to submit to such a test when requested to do so by the stewards or racing judges shall be suspended for at least 30 days [~~and referred to the Commission~~]. A licensee who refuses to submit to a test for the second time shall be suspended by the stewards or racing judges for at least six months [~~and referred to the Commission~~]. In addition, for a first or second refusal, the licensee shall be referred to the medical review officer in accordance with the penalties and conditions for the associated violation under §311.308 of this title (relating to Penalties). A licensee who refuses to submit to a test for a third or subsequent time shall be suspended by the stewards or racing judges for one year and referred to the Commission.

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

Filed with the Office of the Secretary of State on August 16, 2002.

TRD-200205402

Judith L. Kennison

General Counsel

Texas Racing Commission

Earliest possible date of adoption: September 29, 2002

For further information, please call: (512) 833-6699



16 TAC §311.308

The Texas Racing Commission proposes an amendment to §311.308, relating to penalties for violation of prohibited drug use or possession. The amendment will insert the proper cross-referenced rules. In addition, the amendment will also discontinue the requirement that the stewards or racing judges must defer to a physician when there is suspicion of impairment before they may prohibit a licensee from participating in racing for the remainder of the day.

Judith L. Kennison, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government.

Ms. Kennison has also determined that for each of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the proposal will be that the public is assured the Commission rules are current and accurate. There will be no economic impact to small or micro businesses. There is no anticipated economic cost to an individual required to comply with the amendment as proposed. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Written comments must be submitted within 30 days after publication of the proposed amendments in the *Texas Register* to Judith L. Kennison, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, fax (512) 833-6907.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.021, which authorizes the Commission to regulate all aspects of horse and greyhound racing; and §5.01, which authorizes the Commission to establish reasonable and necessary conditions for licensure.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§311.308. Penalties.

(a) The stewards or racing judges shall impose penalties in accordance with this section for a violation of §311.301 of this title (relating to Use Prohibited). A penalty imposed under this section is appealable pursuant to §307.67 of the Rules (relating to Appeal to the Commission.) [~~in the same manner as other orders of the stewards or racing judges.~~]

(b) If the stewards or racing judges require a licensee to submit to testing under §311.302 of this title (relating to Subject to Testing) as prescribed under §311.303 of this chapter (relating to Method of Selection) [~~for reasonable belief~~], the stewards or racing judges shall prohibit the licensee from participating in racing for the remainder of that [~~race~~] day [~~on the recommendation of a physician who has examined the licensee~~].

(c) For a first violation, the stewards or racing judges shall:

(1) suspend the licensee's license for at least 30 days; and

(2) prohibit the licensee from participating in racing until:

(A) the licensee's condition has been evaluated by the medical review officer or a person designated by the medical review officer under §311.306 of this title (relating to Medical Review Officer);

(B) the licensee has satisfactorily complied with any rehabilitation requirements ordered by the medical review officer; and

(C) the licensee has produced a negative test result.

(d) For a second violation, the stewards or racing judges shall:

(1) suspend the licensee's license for at least six months; and

and

(2) prohibit the licensee from participating in racing until:

(A) the licensee has satisfactorily completed a certified substance abuse rehabilitation program approved by the medical review officer; and

(B) the licensee produces a negative test result.

(e) For a third or subsequent violation, the stewards or racing judges shall suspend the licensee for one year and refer the licensee to the Commission.

(f) After a suspended licensee has satisfactorily complied with any rehabilitation requirements ordered by the medical review officer or completed a certified substance abuse rehabilitation program approved by the medical review officer, the licensee may apply to have the license reinstated. The stewards or racing judges shall ~~may~~ reinstate the license if the stewards or racing judges determine the licensee poses no danger to other licensees or race animals and that reinstatement is in the best interest of racing. On reinstatement, the stewards or racing judges shall require the licensee to submit to further drug testing to verify continued compliance with the Rules ~~[unimpairment]~~ and complete any additional rehabilitation or after-care drug treatment recommended by the medical review officer.

(g) All specimens to be tested under this subchapter shall be obtained and tested in accordance with §311.304 (relating to Taking of Samples.) ~~[by the Commission under conditions properly controlled to guarantee the integrity of the process. The charges for tests conducted under this subchapter shall be forwarded to the Commission for approval as to the reasonableness of the charges in relation to industry standards for comparable testing procedures.]~~ The Commission shall pay the cost of the initial test. The licensee being tested is responsible for paying the costs of all subsequent tests ~~[other than the initial test].~~

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 August 16, 2002.

TRD-200205403

Judith L. Kennison

General Counsel

Texas Racing Commission

Earliest possible date of adoption: September 29, 2002

For further information, please call: (512) 833-6699



CHAPTER 321. PARI-MUTUEL WAGERING SUBCHAPTER C. REGULATION OF LIVE WAGERING

DIVISION 2. DISTRIBUTION OF PARI-MUTUEL POOLS

16 TAC §321.318

The Texas Racing Commission proposes an amendment to §321.318, relating to special wagers. The amendment would remove the necessity of repeated and subsequent Commission approval of special wagers so long as the wager remains unchanged.

Ms. Kennison has also determined that for each of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the proposal will be that the public is assured the Commission uses the most efficient processes available. There will be no economic impact to small or micro businesses. There is no anticipated economic cost to an individual required to comply with the amendment as proposed. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Written comments must be submitted within 30 days after publication of the proposed amendments in the *Texas Register* to

Judith L. Kennison, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, fax (512) 833-6907.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §11.011, which authorizes the Commission to regulate pari-mutuel wagering on greyhound and horse races.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§321.318. *Special Wager.*

(a) Special wager authorized.

(1) Subject to the prior approval of the Commission, an association may offer a special wager in any form of wager authorized by the Rules. All applicable laws and rules that apply to the form of wager selected for the special wager apply to the special wager.

(2) A special wager must be based on the outcome of a race or races and comply with the definition of pari-mutuel wagering as defined by the Act, §1.03(18). The wager must be based on the performance of a specific race animal or animals in a race or races.

(3) All tickets on a special wager shall be calculated as a separate pool. If a special wager uses a point system to determine the winning tickets, the stewards or racing judges are responsible for certifying the accuracy of the point totals for purposes of payoff calculations and pool distribution. The use of any point system must be based on objective criteria.

(b) Approval of special wager.

(1) To offer a special wager, an association must file a written request with the executive secretary. The request must be filed no later than the 30th day before the day on which the Commission is to consider the request.

(2) The request must state:

- (A) the name of the wager;
- (B) the type of wagering pool to be used;
- (C) the method by which winning tickets will be determined; and
- (D) the method for addressing dead heats, no contest races, scratches, jockey changes, coupled entries, prevention of start, and disqualifications.

(3) After reviewing the request, the executive secretary may request additional information regarding the special wager.

(4) If the Commission determines the proposed special wager will be offered in a manner that complies with the Rules and that is consistent with maintaining the integrity of pari-mutuel wagering, the Commission may approve the request. The Commission may place reasonable conditions on the approval of the special wager. The Commission has sole discretion to approve or disapprove requests for special wagers.

(5) The executive secretary shall notify the association of the Commission's decision regarding the request no later than the fifth day after the Commission's decision.

(6) Approval of a special wager is perpetual, unless the association proposes to change the method by which winning tickets will be determined or the method for addressing dead heats, no contest races, scratches, jockey changes, coupled entries, prevention of start, and disqualifications. In that instance, the association must obtain approval for the changes in the special wager.

(c) Notice of special wager.

(1) An association shall publish notice of a special wager that is approved in its program at least 14 days before the first day the special wager will be offered. If the wager is to be offered during the first 14 days of a live race meeting, the association shall publish notice of the special wager in the program for every race day in the race meeting before the day the special wager is to be offered.

(2) The association shall post in a prominent place in the grandstand of the racetrack a full description of the special wager, including all information described in Subsection (b)(2) of this section and any conditions imposed by the Commission.

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

Filed with the Office of the Secretary of State on August 16, 2002.

TRD-200205404
Judith L. Kennison
General Counsel

Texas Racing Commission

Earliest possible date of adoption: September 29, 2002

For further information, please call: (512) 833-6699



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

CHAPTER 173. PHYSICIAN PROFILES

The Texas State Board of Medical Examiners proposes an amendment to §173.3 and repeal of §173.6, concerning physician profiles. The amendment and repeal will clarify the rules regarding physician-initiated updates to the profile.

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

Ms. Shackelford also has determined that for each year of the first five years the amendment and repeal as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be clarification in the rules regarding physician-initiated updates to the profile. There will be no effect on small or micro businesses.

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

22 TAC §173.3

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

The following is affected by the proposed amendment: Texas Occupations Code, §154.006.

§173.3. *[Initial Collection of Profile Data and]Physician-Initiated Updates [During the Renewal Process].*

(a) Physicians are required to attest as to whether or not the physician's profile information is correct at the time of the physician's annual registration and to initiate correction of any incorrect information [The board shall send a copy of the Form to the physician with the physician's annual renewal form].

(b) Physicians should maintain current profile information by submitting updates and corrections as changes occur[The physician shall comply with the request for information by returning the Form to the board prior to the expiration date of the physician's annual registration permit].

(c) The physician shall make necessary corrections and updates by submitting a profile update and correction form or by submitting it online if completing the annual registration via the internet.

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 August 19, 2002.

TRD-200205429
Donald W. Patrick, MD, JD
Executive Director

Texas State Board of Medical Examiners

Earliest possible date of adoption: September 29, 2002

For further information, please call: (512) 305-7016



22 TAC §173.6

(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 following is affected by the proposed repeal: Texas Occupations Code, §154.006.

§173.6. *Physician-Initiated Updates Outside of the Renewal Process.*

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 August 19, 2002.

TRD-200205430
Donald W. Patrick, MD, JD
Executive Director

Texas State Board of Medical Examiners

Earliest possible date of adoption: September 29, 2002

For further information, please call: (512) 305-7016



CHAPTER 184. SURGICAL ASSISTANTS

22 TAC §184.6

The Texas State Board of Medical Examiners proposes an amendment to §184.6, concerning surgical assistants. In accordance with §2001.034(a) of the Texas Government Code, the proposed changes must be adopted on an emergency basis. Therefore, this section is being simultaneously adopted on an emergency basis elsewhere in this issue of the *Texas Register*. Chapter 206 of the Texas Occupations Code requires the board to adopt rules for the licensure of surgical assistant applicants by September 1, 2002. The proposed changes affect the licensure requirements for all applicants, and if left unchanged, would contradict the intent of the medical board.

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

Ms. Shackelford also has determined that for each year of the first five years the amendment as proposed is in effect the public benefit anticipated as a result of enforcing the section will be updated licensure requirements for all applicants. There will be no effect on small or micro businesses.

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

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

The following is affected by the proposed amendment: Texas Occupations Code, Chapter 106, Subchapter E.

§184.6. *Licensure Documentation.*

(a) Original documents may include, but are not limited to, those listed in subsections (b) and (c) of this section.

(b) Documentation required of all applicants for licensure.

(1) Birth Certificate/Proof of Age. Each applicant for licensure must provide a copy of a birth certificate and translation if necessary to prove that the applicant is at least 21 years of age. In instances where a birth certificate is not available the applicant must provide copies of a passport or other suitable alternate documentation.

(2) Name change. Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant's name has been changed by naturalization, the applicant should send the original naturalization certificate by certified mail to the board office for inspection.

(3) Examination scores. Each applicant for licensure must have a certified transcript of grades submitted directly from the appropriate testing service to the board for all examinations used in Texas or another state for licensure.

(4) Certification. All applicants must submit:

(A) a valid and current certificate from a board approved national certifying organization; and

(B) a certificate of successful completion of an educational program whose curriculum includes surgical assisting submitted

directly from the program on a form provided the board, unless the applicant qualifies for the special eligibility provision regarding education under §184.4(c) of this title (relating to Qualifications for Licensure).

(5) Evaluations.

(A) All applicants must provide evaluations, on forms provided by the board, of their professional affiliations for the past three years or since graduation from an educational program, in compliance with §184.4(a)(13) of this chapter (relating to Qualifications for Licensure), whichever is the shorter period.

(B) The evaluations must come from at least three physicians who have each supervised the applicant for more than 100 hours or a majority of the applicant's work experience.

(C) An exception to subparagraph (B) of this paragraph may be made for those applicants who provide adequate documentation that they have not been supervised by at least three physicians for the three years preceding the board's receipt of application or since graduation, whichever is the shorter period.

(6) Temporary license affidavit. Each applicant must submit a completed form, furnished by the board, titled "Temporary License Affidavit" prior to the issuance of a temporary license.

(7) License verifications. Each applicant for licensure who is licensed, registered, or certified in another state must have that state submit directly to the board, on a form provided by the board, that the applicant's license, registration, or certification is current and in full force and that the license, registration, or certification has not been restricted, suspended, revoked or otherwise subject to disciplinary action. The other state shall also include a description of any sanctions imposed by or disciplinary matters pending in the state.

(c) Applicants may be required to submit other documentation, which may include the following:

(1) Translations. Any document that is in a language other than the English language will need to have a certified translation prepared and a copy of the translation submitted with the translated document.

(A) An official translation from the school or appropriate agency attached to the foreign language transcript or other document is acceptable.

(B) If a foreign document is received without a translation, the board will send the applicant a copy of the document to be translated and returned to the board.

(C) Documents must be translated by a translation agency who is a member of the American Translation Association or a United States college or university official.

(D) The translation must be on the translator's letterhead, and the translator must verify that it is a "true word for word translation" to the best of his/her knowledge, and that he/she is fluent in the language translated, and is qualified to translate the document.

(E) The translation must be signed in the presence of a notary public and then notarized. The translator's name must be printed below his/her signature. The notary public must use the phrase: "Subscribed and Sworn this _____ day of _____, 20__." The notary must then sign and date the translation, and affix his/her notary seal to the document.

(2) Arrest records. If an applicant has ever been arrested the applicant must request that the arresting authority submit to the board copies of the arrest and arrest disposition.

(3) Inpatient treatment for alcohol/substance abuse or mental illness. Each applicant that has been admitted to an inpatient facility within the last five years for treatment of alcohol/substance abuse or mental illness must submit the following:

(A) applicant's statement explaining the circumstances of the hospitalization;

(B) all records, submitted directly from the inpatient facility;

(C) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(D) a copy of any contracts signed with any licensing authority, professional society or impaired practitioner committee.

(4) Outpatient treatment for alcohol/substance abuse or mental illness. Each applicant that has been treated on an outpatient basis within the past five years for alcohol/substance abuse must submit the following:

(A) applicant's statement explaining the circumstances of the outpatient treatment;

(B) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(C) a copy of any contracts signed with any licensing authority, professional society or impaired practitioners committee.

(5) Malpractice. If an applicant has ever been named in a malpractice claim filed with any liability carrier or if an applicant has ever been named in a malpractice suit, the applicant must:

(A) have each liability carrier complete a form furnished by this board regarding each claim filed against the applicant's insurance;

(B) for each claim that becomes a malpractice suit, have the attorney representing the applicant in each suit submit a letter to the board explaining the allegation, relevant dates of the allegation, and current status of the suit. If the suit has been closed, the attorney must state the disposition of the suit, and if any money was paid, the amount of the settlement. If such letter is not available, the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided; and

(C) provide a statement composed by the applicant, explaining the circumstances pertaining to patient care in defense of the allegations.

(6) Additional documentation. Additional documentation may be required as is deemed necessary to facilitate the investigation of any application for medical licensure.

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

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Donald W. Patrick, MD, JD

Executive Director

Texas State Board of Medical Examiners

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For further information, please call: (512) 305-7016



CHAPTER 185. PHYSICIAN ASSISTANTS

The Texas State Board of Medical Examiners proposes amendments to §§185.2 - 185.4, and 185.6 and 185.7 repeal of §§185.8-185.30, and new §§185.8-185.25, concerning physician assistants. The sections are being amended and proposed new for general clean up and updates to the Texas Occupations Code cites. Several sections are being repealed in order to simply re-number and make minor changes to the text of the rules. Also, by repealing these sections it allows reference to other chapters without duplicating the entire text.

The language contained in repealed §185.8(b)(5) is being moved into Chapter 175 and will appear in a later proposal to that chapter.

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

Ms. Shackelford also has determined that for each year of the first five years the amendments, repeals and new sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be general clean-up of existing rules and the allowance of referencing other chapters without duplicating text. There will be no effect on small or micro businesses.

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

22 TAC §§185.2 - 185.4, 185.6, 185.7, 185.8 - 185.25

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

The following is affected by the proposed amendments and new sections: Texas Occupations Code, Chapter 204.

§185.2. Definitions.

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

(1) Act - The Physician Assistant Licensing Act, Texas Occupations Code Annotated, Title 3, Subtitle C, Chapter 204 as amended.

(2) Agency - The divisions, departments, and employees of the Texas State Board of Medical Examiners, the Texas State Board of Physician Assistant Examiners, and the Texas State Board of Acupuncture Examiners.

(3) [(2)] Alternate physician - A physician providing appropriate supervision on a temporary basis not to exceed fourteen consecutive days.

(4) [(3)] APA - The Administrative Procedure Act, Texas Government Code, Chapter 2001 as amended.

(5) Applicant - A party seeking a license from the Texas State Board of Physician Assistant Examiners.

(6) [(4)] Board or the "physician assistant board" - The Texas State Board of Physician Assistant Examiners.

(7) [(5)] Medical Board - The Texas State Board of Medical Examiners.

(8) Medical Practice Act - Texas Occupations Code Annotated, Title 3, Subtitle B, as amended.

(9) Open Meetings Act - Texas Government Code Annotated, Chapter 551 as amended.

(10) Party - The physician assistant board and each person named or admitted as a party in a SOAH hearing or contested case before the physician assistant board.

(11) [(6)] Physician assistant - A person licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners.

(12) [(7)] State - Any state, territory, or insular possession of the United States and the District of Columbia.

(13) [(8)] Submit - The term used to indicate that a completed item has been actually received and date-stamped by the board along with all required documentation and fees, if any.

(14) [(9)] Supervising physician - A physician licensed by the medical board either as a doctor of medicine or doctor of osteopathic medicine who assumes responsibility and legal liability for the services rendered by the physician assistant, and who has received approval from the medical board to supervise a specific physician assistant.

(15) [(10)] Supervision - Overseeing the activities of, and accepting responsibility for, the medical services rendered by a physician assistant. Supervision does not require the constant physical presence of the supervising physician but includes a situation where a supervising physician and the person being supervised are, or can easily be, in contact with one another by radio, telephone, or another telecommunication device.

§185.3. Meetings.

(a) The board shall meet at least four times a year to carry out the mandates of the Physician Assistant Licensing Act.

(b) Special meetings may be called by the presiding officer of the board, by resolution of the board, or upon written request to the presiding officer of the board signed by at least three members of the board.

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

(d) 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 any 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 or if no candidate receives a majority of the votes cast on the first ballot, a second ballot shall be conducted between the two candidates receiving the highest number of votes.

(e) The board, at a regular meeting or special meeting, may elect from its membership a presiding officer and a secretary for one year.

(f) The board, at a regular meeting or special meeting, upon majority vote of the members present, may remove the presiding officer or the secretary from office.

(g) The following are standing and permanent committees of the board. The responsibilities and authority of these committees shall include those duties and powers as defined in paragraphs (1)-(3) of

this subsection and such other responsibilities and authority which the board may from time to time delegate to these committees.

(1) Licensure Committee.

(A) Draft and review proposed rules regarding licensure, and make recommendations to the board regarding changes or implementation of such rules.

(B) Draft and review proposed rules pertaining to the overall licensure process, and make recommendations to the board regarding changes or implementation of such rules.

(C) Receive and review applications for licensure in the event the eligibility for licensure of an applicant is in question.

(D) Present the results of reviews of applications for licensure, and make recommendations to the board regarding licensure of applicants whose eligibility is in question.

(E) Make recommendations to the board regarding matters brought to the attention of the Licensure Committee.

(2) Disciplinary and Ethics Committee.

(A) Draft and review proposed rules regarding the discipline of physician assistants and enforcement of the Physician Assistant Licensing Act [~~§18 and §19~~].

(B) Oversee the disciplinary process and give guidance to the board and staff regarding methods to improve the disciplinary process and more effectively enforce the Physician Assistant Licensing Act [~~§18 and §19~~].

(C) Monitor the effectiveness, appropriateness, and timeliness of the disciplinary process.

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

(E) Draft and review proposed ethics guidelines and rules for the practice of physician assistants, and make recommendations to the board regarding the adoption of such ethics guidelines and rules.

(F) Make recommendations to the board and staff regarding policies, priorities, budget, and any other matters related to the disciplinary process and enforcement of the Physician Assistant Licensing Act [~~§18 and §19~~].

(G) Make recommendations to the board regarding matters brought to the attention of the Disciplinary and Ethics Committee.

(3) Long Range Planning Committee.

(A) Formulate and make recommendations to the board concerning future board goals and objectives and the establishment of priorities and methods for their accomplishment.

(B) Study and make recommendations to the board regarding the role and responsibility of the board officers and committees.

(C) Study and make recommendations to the board regarding ways to improve the efficiency and effectiveness of the administration of the board.

(D) 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.

(E) Study and make recommendations to the board regarding legislative changes pertinent to the practice of Physician Assistants.

(F) Study and make recommendations to the board regarding financial issues.

(h) Meetings of the board and of its committees are open to the public unless such meetings are conducted in executive session pursuant to the Open Meetings Act, the Physician Assistant Licensing Act, or the Medical Practice Act. 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 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.

(i) 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 (h) 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 medical board's offices or, at the discretion of the board's presiding officer, in the meeting room after recess or adjournment; no interview may be conducted in the hallways of the medical board's offices; and 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 (h) of this section.

(j) The secretary of the board shall assume the duties of the presiding officer in the event of the presiding officer's absence or incapacity.

(k) In the event of the absence or temporary incapacity of the presiding officer, and the secretary, the members of the board may elect another member to act as the presiding officer of a board meeting or may elect an interim acting presiding officer for the duration of the absences or incapacity.

(l) Upon the death, resignation, removal or permanent incapacity of the presiding officer or the secretary, the board shall elect from its membership an officer to fill the vacant position. Such an election shall be conducted as soon as practicable at a regular or special meeting of the board.

§185.4. *Procedural Rules for Licensure Applicants.*

(a) Except as otherwise provided in this section, an individual shall be licensed by the board before the individual may function as a physician assistant. A license shall be granted to an applicant who:

- (1) submits an application on forms approved by the board;
- (2) pays the appropriate application fee as prescribed by the board;

(3) has successfully completed an educational program for physician assistants or surgeon assistants accredited by the Commission on Accreditation of Allied Health Education Programs, or by that committee's predecessor or successor entities, and holds a valid and current certificate issued by the National Commission on Certification of Physician Assistants ("NCCPA");

(4) certifies that the applicant is mentally and physically able to function safely as a physician assistant;

(5) does not have a license, certification, or registration as a physician assistant in this state or from any other licensing authority that is currently revoked or on suspension or the applicant is not subject to probation or other disciplinary action for cause resulting from the applicant's acts as a physician assistant, unless the board takes that fact into consideration in determining whether to issue the license;

(6) is of good moral character;

(7) submits to the board any other information the board considers necessary to evaluate the applicant's qualifications; and

(8) meets any other requirement established by rules adopted by the board.

(b) The following documentation shall be submitted as a part of the licensure process:

(1) **Name Change.** Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present certified copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant's name has been changed by naturalization the applicant should send the original naturalization certificate by certified mail to the board for inspection.

(2) **Certification.** Each applicant for licensure must submit:

(A) a letter of verification of current NCCPA certification sent [valid and current certificate from the National Commission on Certification of Physician Assistants ("NCCPA")] directly from NCCPA [on a form provided by the board], and

(B) a certificate of successful completion of an educational program submitted directly from the program on a form provided by the board.

~~[(3) Fingerprint Card. Each applicant must complete and submit a fingerprint card. This fingerprint card must be completed through an agency trained in taking fingerprints.]~~

(3) [(4)] **Verification from other states.** Each applicant for licensure who is licensed, registered, or certified in another state must have that state submit directly to the board, on a form provided by the board, that the physician assistant's license, registration, or certification is current and in full force and that the license, registration, or certification has not been restricted, canceled, suspended, or revoked. The other state shall also include a description of any sanctions imposed by or disciplinary matters pending in the state.

(4) [(5)] **State License Registration.** Each applicant, if licensed, registered, or certified in another state as a physician assistant, must submit a copy of the license registration certificate to the board. The license, registration, or certificate number and the date of expiration must be visible on the copy.

(5) [(6)] **Arrest Records.** If an applicant has ever been arrested, a copy of the arrest and arrest disposition needs to be requested from the arresting authority and that authority must submit copies directly to the board.

(6) [(7)] Malpractice. If an applicant has ever been named in a malpractice claim filed with any liability carrier or if an applicant has ever been named in a malpractice suit, the applicant must:

(A) have each liability carrier complete a form furnished by this board regarding each claim filed against the applicant's insurance;

(B) for each claim that becomes a malpractice suit, have the attorney representing the applicant in each suit submit a letter directly to the board explaining the allegation, dates of the allegation, and current status of the suit. If the suit has been closed, the attorney must state the disposition of the suit, and if any money was paid, the amount of the settlement. The letter shall be accompanied by supporting documentation including court records if applicable. If such letter is not available, the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided; and

(C) provide a statement, composed by the applicant, explaining the circumstances pertaining to patient care in defense of the allegations.

(7) [(8)] Additional Documentation. Additional documentation as is deemed necessary to facilitate the investigation of any application for licensure must be submitted.

(c) The executive director shall review each application for licensure and shall recommend to the board all applicants eligible for licensure. The executive director also shall report to the board the names of all applicants determined to be ineligible for licensure, together with the reasons for each recommendation. An applicant deemed ineligible for licensure by the executive director may request review of such recommendation by a committee of the board within 20 days of receipt of such notice, and the executive director may refer any application to said committee for a recommendation concerning eligibility. If the committee finds the applicant ineligible for licensure, such recommendation, together with the reasons therefor, shall be submitted to the board unless the applicant requests a hearing within 20 days of receipt of notice of the committee's determination. The hearing shall be before an administrative law judge of the State Office of Administrative Hearings and shall comply with the Administrative Procedure Act and its subsequent amendments and the rules of the State Office of Administrative Hearings and the board. The committee may refer any application for determination of eligibility to the full board. The board shall, after receiving the administrative law judge's proposed findings of fact and conclusions of law, determine the eligibility of the applicant for licensure. A physician assistant whose application for licensure is denied by the board shall receive a written statement containing the reasons for the board's action. All reports received or gathered by the board on each applicant are confidential and are not subject to disclosure under the Public Information Act [Open Records Law]. The board may disclose such reports to appropriate licensing authorities in other states.

(d) All physician assistant applicants shall provide sufficient documentation to the board that the applicant has, on a full-time basis, actively practiced as a physician assistant, has been a student at an acceptable approved physician assistant program, or has been on the active teaching faculty of an acceptable approved physician assistant program, within either of the last two years preceding receipt of an application for licensure. The term "full-time basis," for purposes of this section, shall mean at least 20 hours per week for 40 weeks duration during a given year. Applicants who do not meet the requirements of subsections (a) and (b) of this section may, in the discretion of the board, be eligible for an unrestricted license or a restricted license subject to one or more of the following conditions or restrictions as set forth in paragraphs (1)-(4) [(5)] of this subsection:

[(1) current certification by the National Commission on the Certification of Physician Assistants;]

(1) [(2)] completion of specified continuing medical education hours approved for Category 1 credits by a CME sponsor approved by the American Academy of Physician Assistants;

(2) [(3)] limitation and/or exclusion of the practice of the applicant to specified activities of the practice as a physician assistant;

(3) [(4)] remedial education; and

(4) [(5)] such other remedial or restrictive conditions or requirements which, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice as a physician assistant.

(e) Applicants for licensure:

[(1) whose documentation indicates any name other than the name under which the applicant has applied must furnish proof of the name change;]

(1) [(2)] whose application for licensure which has been filed with the board office and which is in excess of two years old from the date of receipt, shall be considered inactive. Any fee previously submitted with the application shall be forfeited. Any further application procedure for licensure will require submission of a new application and inclusion of the current licensure fee;

(2) [(3)] who in any way falsify the application may be required to appear before the board;

(3) [(4)] on whom adverse information is received by the board may be required to appear before the board;

(4) [(5)] shall be required to comply with the board's rules and regulations which are in effect at the time the completed application form and fee are filed with the board;

(5) [(6)] may be required to sit for additional oral or written examinations that, in the opinion of the board, are necessary to determine competency of the applicant;

(6) [(7)] must have the application of licensure complete in every detail 20 days prior to the board meeting in which they are considered for licensure. Applicants may qualify for a Temporary License prior to being considered by the board for licensure, as required by §185.7 of this title (relating to Temporary License);

(7) [(8)] who previously held a Texas health care provider license may be required to complete additional forms as required.

§185.6. Annual Renewal of License.

(a) Physician assistants [Assistants] licensed under the Physician Assistant Licensing Act shall register annually and pay a fee. A physician assistant may, on notification from the board, renew an unexpired license by submitting the required form and documents and by paying the required renewal fee to the board on or before the expiration date of the permit. The fee shall accompany the required form which legibly sets forth the licensee's name, mailing address, business address, and other necessary information prescribed by the board.

(b) The following documentation shall be submitted as part of the renewal process:

(1) Continuing Medical Education. As a prerequisite to the annual registration of a physician assistant's license, 40 hours of continuing medical education (CME) are required to be completed in the following categories:

(A) at least one-half of the hours are to be from formal courses that are designated for Category I credit by a CME sponsor approved by the American Academy of Physician Assistants.

(B) The remaining hours may be from Category II composed of informal self-study, attendance at hospital lectures, grand rounds, ~~or~~ case conferences, or by providing volunteer medical services at a site serving a medically underserved population, other than at a site that is the primary practice site of the license holder, and shall be recorded in a manner that can be easily transmitted to the board upon request.

(2) A physician assistant 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 annual registration which are in excess of the 40 hour annual requirement and such excess hours may be applied to the following years' requirements. A maximum of 80 total excess credit hours may be carried forward and shall be reported according to whether the hours are Category I and/or Category II. 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.

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

(A) catastrophic illness;

(B) military service of longer than one year's duration outside the United States;

(C) residence of longer than one year's duration outside the United States; or

(D) 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.

(4) Exemptions are subject to the approval of the licensure committee of the board.

(5) A temporary exception under paragraph (3) of this subsection may not exceed one year but may be renewed annually, subject to the approval of the board.

(6) 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.

(7) 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.

(8) Unless exempted under the terms of this section, a physician assistant licensee's apparent failure to obtain and timely report the 40 hours of CME as required and provided for in this section shall result in nonrenewal of the license until such time as the physician assistant obtains and reports the required CME hours; however, the executive director of the board may issue to such a physician assistant 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 assistant's CME hours and]~~ to allow the physician assistant 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.

(c) Falsification of an affidavit or submission of false information to obtain renewal of a license shall subject a physician assistant to denial of the renewal and/or to discipline pursuant to the Physician Assistant Licensing Act, §§204.301 - .303 ~~[\$19]~~.

(d) If the renewal fee and completed application form are not received on or before the expiration date of the permit, the fees set forth in Chapter 175 of this title (Fees, Penalties, and Applications) shall apply. ~~[the following penalties will be imposed:]~~

~~{(1) one to 90 days late - \$50.00 plus the required annual registration fee;}~~

~~{(2) 91 days to one year late - \$100.00 plus the required annual registration fee;}~~

~~{(3) over one year late - unless an investigation is pending, license will automatically be canceled;}~~

(e) The board shall not waive fees or penalties.

(f) The board shall stagger annual registration of physician assistants proportionally on a periodic basis.

(g) Practicing as a physician assistant as defined in the Physician Assistant Licensing Act without an annual registration permit for the current year as provided for in the board rules has the same force and effect as and is subject to all penalties of practicing as a physician assistant without a license.

(h) Physician assistants [Assistants] shall inform the board [Board] of address changes within two weeks of the effective date of the address change.

§185.7. Temporary License.

(a) The board may issue a temporary license to an applicant who:

(1) meets all the qualifications for a license under the Physician Assistant Licensing Act but is waiting for the next scheduled meeting of the board for the license to be issued; ~~or~~

(2) seeks to temporarily substitute for a licensed physician assistant during the licensee's absence, if the applicant:

(A) is licensed or registered in good standing in another state, territory, or the District of Columbia;

(B) submits an application on a form prescribed by the board; and

(C) pays the appropriate fee prescribed by the board; ~~[-]or~~

(3) has graduated from an educational program for physician assistants or surgeon assistants accredited by the Commission on Accreditation of Allied Health Education Programs or by the committee's predecessor or successor entities no later than six months previous to the application for temporary licensure and is waiting for examination results from the National Commission on Certification of Physician Assistants.

(b) A temporary license may be valid for not more than one year from the date issued.

§185. 8. Inactive License.

(a) A license holder may have the license holder's license placed on inactive status by applying to the board. A physician assistant with an inactive license is excused from paying renewal fees on the license and may not practice as a physician assistant in Texas.

(b) In order for a license holder to be placed on inactive status, the license holder must have a current annual registration permit.

(c) A license holder who practices as a physician assistant while on inactive status is considered to be practicing without a license.

(d) A physician assistant may return to active status by applying to the board, paying the license renewal fee, complying with the requirements for license renewal under the Physician Assistant Licensing Act and complying with subsection (e) of this section.

(e) A physician assistant applicant applying to return to active status shall provide sufficient documentation to the board that the applicant has, on a full-time basis as defined in §185.4(d) of this chapter, actively practiced as a physician assistant or has been on the active teaching faculty of an acceptable approved physician assistant program, within either of the two years preceding receipt of an application for reactivation. Applicants who do not meet this requirement may, in the discretion of the board, be eligible for the reactivation of a license subject to one or more of the following conditions or restrictions as set forth in paragraphs (1)-(5) of this subsection:

(1) current certification by the National Commission on the Certification of Physician Assistants;

(2) completion of specified continuing medical education hours approved for Category 1 credits by a CME sponsor approved by the American Academy of Physician Assistants;

(3) limitation and/or exclusion of the practice of the applicant to specified activities of the practice as a physician assistant;

(4) remedial education; and

(5) such other remedial or restrictive conditions or requirements which, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice as a physician assistant.

§185.9. Reissuance of License Following Revocation.

(a) The applicant must complete in every detail the application for reissuance of a license following revocation including payment of the required application fee.

(b) The applicant must appear before the board to state the reasons for the request for reissuance of license.

(c) Application for reissuance of a license following revocation cannot be considered more often than annually.

(d) Reissuance of a license following revocation shall be at the discretion of the board upon a showing by the applicant that reissuance is in the best interest of the public.

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

§185.10. Physician Assistant Scope of Practice.

The physician assistant shall provide, within the education, training, and experience of the physician assistant, medical services that are delegated by the supervising physician. The activities listed in paragraphs (1)-(9) of this subsection may be performed in any place authorized by a supervising physician, including, but not limited to a clinic, hospital, ambulatory surgical center, patient home, nursing home, or other institutional setting. Medical services provided by a physician assistant may include, but are not limited to:

(1) obtaining patient histories and performing physical examinations;

(2) ordering and/or performing diagnostic and therapeutic procedures;

(3) formulating a working diagnosis;

(4) developing and implementing a treatment plan;

(5) monitoring the effectiveness of therapeutic interventions;

(6) assisting at surgery;

(7) offering counseling and education to meet patient needs;

(8) requesting, receiving, and signing for the receipt of pharmaceutical sample prescription medications and distributing the samples to patients in a specific practice setting where the physician assistant is authorized to prescribe pharmaceutical medications and sign prescription drug orders at a site, as provided by the Medical Practice Act, Chapter 157, and its subsequent amendments, or as otherwise authorized by this Act or board rule;

(9) the signing or completion of a prescription as provided by the Medical Practice Act, Chapter 157; and

(10) making appropriate referrals.

§185.11. Tasks Not Permitted to be Delegated to a Physician Assistant.

Except at sites designated by the Medical Practice Act, Chapter 157, the supervising physician shall not allow a physician assistant to prescribe or supply medication.

§185.12. Identification Requirements.

A physician assistant licensed by the board shall keep the physician assistant's Texas license available for inspection at the physician assistant's primary place of business and shall, when engaged in professional activities, wear a name tag identifying the physician assistant as a physician assistant.

§185.13. Notification of Intent to Practice and Supervise.

(a) A physician assistant licensed under the Physician Assistant Licensing Act must, before beginning practice or upon changing practice, submit notification of the license holder's intent to begin practice. Notification under this section must include:

(1) the name, business address, Texas physician assistant license number, and telephone number of the physician assistant; and

(2) the name, business address, Texas medical license number, and telephone number of the supervising physician.

(b) A physician assistant must submit notification of any changes in, or additions to, the person acting as a supervising physician for the physician assistant not later than the 30th day after the date the change or addition is made.

(c) For the purposes of this section, a single form prescribed by the board shall be used to provide notification of the license holder's intent to begin practice or any changes in, or additions to, the person acting as a supervising physician.

(d) If a supervising physician will be unavailable to supervise the physician assistant as required by this section, arrangements shall be made for an alternate physician to provide that supervision. The alternate physician providing that supervision shall affirm in writing and document through a log where the physician assistant is located that he or she is familiar with the protocols or standing delegation orders in use and is accountable for adequately supervising care provided pursuant to those protocols or standing delegation orders. The log shall be

kept with the protocols or standing orders. The log shall contain dates of the alternate physician supervision and be signed by the alternate physician acknowledging this responsibility. The physician assistant is responsible for verifying that the alternate physician is a licensed Texas physician holding an unrestricted and active license.

§185.14. Physician Supervision.

(a) Supervision shall be continuous, but shall not be construed as necessarily requiring the constant physical presence of the supervising physician at a place where physician assistant services are performed while the services are performed. Telecommunication shall always be available.

(b) It is the obligation of each team of physician(s) and physician assistant(s) to ensure that:

- (1) the physician assistant's scope of practice is identified;
- (2) delegation of medical tasks is appropriate to the physician assistant's level of competence;
- (3) the relationship between the members of the team is defined;
- (4) the relationship of, and access to, the supervising physician is defined;
- (5) a process for evaluation of the physician assistant's performance is established; and
- (6) the physician assistant's annual registration permit is current.

(c) A physician assistant may have more than one supervising physician.

(d) Physician assistants must utilize mechanisms which provide medical authority when such mechanisms are indicated, including, but not limited to, standing delegation orders, standing medical orders, protocols, or practice guidelines.

§185.15. Supervising Physician.

(a) To be authorized to supervise a physician assistant, a physician must:

- (1) be currently licensed as a physician in this state by the medical board. The license must be unrestricted and active and may not be under any order of the medical board;
- (2) notify the board of the physician's intent to supervise a physician assistant; and
- (3) submit a statement to the board that the physician will:
 - (A) supervise the physician assistant according to rules adopted by the board; and
 - (B) retain professional and legal responsibility for the care rendered by the physician assistant.

(b) A physician assistant may be supervised by an alternate supervising physician in the absence of the supervising physician consistent with this chapter, the Texas Medical Practice Act, the Physician Assistant Licensing Act, board rules, medical board rules, and any standing orders or protocols established in accordance with these statutes and rules.

§185.16. Employment Guidelines.

(a) Except as otherwise provided in this section, a physician may supervise up to five physician assistants, or their full-time equivalents. "Full time" shall mean no more than 50 hours per week.

(b) A physician assistant may not independently bill patients for the services provided by the physician assistant except where provided by law.

(c) Except at a site serving medically underserved populations, a physician assistant shall not practice at a site where that physician assistant's supervising physician is not present at least 20 percent of the site's listed business hours unless the supervising physician has obtained a waiver under §193.6(i) of this title (relating to Waivers).

(d) A physician who provides medical services in preventive medicine, disease management, health and wellness education, or similar services in an accredited academic/teaching institution listed in paragraphs (1)-(10) of this subsection, or its affiliates, may be denoted as the supervising physician for more than five physician assistants in that institution or its affiliates, provided the supervising physician determines that the physician assistants are properly trained to deliver the services, that the services are of such a nature that they may be safely and competently delivered by the supervised physician assistants, and the proper paperwork has been filed with the agency. The supervision of physician assistants must comply with all institutional rules and there must be accurate and timely internal institutional records, which are available upon request within 24 hours to the agency, which list the name and license number of the physician who is specifically assigned to actively supervise each physician assistant at one of the following institutions:

- (1) University of Texas Medical Branch at Galveston;
- (2) University of Texas Southwestern Medical Center at Dallas;
- (3) University of Texas Health Science Center at Houston;
- (4) University of Texas Health Science Center at San Antonio;
- (5) University of Texas Health Center at Tyler;
- (6) University of Texas M.D. Anderson Cancer Center;
- (7) Texas A&M University College of Medicine;
- (8) Texas Tech University School of Medicine;
- (9) Baylor College of Medicine; or
- (10) University of North Texas Health Science Center at Fort Worth.

(e) The provisions of subsections (a) and (d) of this section relating to the number of physician assistants authorized to be supervised shall not be interpreted to change or modify rules or statutes relating to the number of physician assistants to whom prescriptive authority may be delegated.

§185.17. Grounds for Denial of Licensure and for Disciplinary Action.

The board may refuse to issue a license to any person and may, following notice of hearing and a hearing as provided for in the Administrative Procedure Act, take disciplinary action against any physician assistant who:

- (1) fraudulently or deceptively obtains or attempts to obtain a license;
- (2) fraudulently or deceptively uses a license;
- (3) violates the Physician Assistant Licensing Act, or any rules relating to the practice of a physician assistant;
- (4) is convicted of a felony, or has imposition of deferred adjudication or pre-trial diversion;

(5) habitually uses drugs or intoxicating liquors to the extent that, in the opinion of the board, the person cannot safely perform as a physician assistant;

(6) has been adjudicated as mentally incompetent or has a mental or physical condition that renders the person unable to safely perform as a physician assistant;

(7) has committed an act of moral turpitude. An act involving moral turpitude shall be defined as an act involving baseness, vileness, or depravity in the private and social duties one owes to others or to society in general, or an act committed with knowing disregard for justice, honesty, principles, or good morals;

(8) represents that the person is a physician;

(9) has acted in an unprofessional or dishonorable manner which is likely to deceive, defraud, or injure any member of the public;

(10) has failed to practice as a physician assistant in an acceptable manner consistent with public health and welfare;

(11) has committed any act that is in violation of the laws of the State of Texas if the act is connected with practice as a physician assistant; a complaint, indictment, or conviction of a law violation is not necessary for the enforcement of this provision; proof of the commission of the act while in practice as a physician assistant or under the guise of practice as a physician assistant is sufficient for action by the board under this section;

(12) has had the person's license or other authorization to practice as a physician assistant suspended, revoked, or restricted or who has had other disciplinary action taken by another state regarding practice as a physician assistant or had disciplinary action taken by the uniformed services of the United States. A certified copy of the record of the state or uniformed services of the United States taking the action is conclusive evidence of it;

(13) fails to keep complete and accurate records of purchases and disposal of drugs listed in Chapter 483, Health and Safety Code, as required by Chapter 483, Health and Safety Code, or any subsequent rules. A failure to keep the records for a reasonable time is grounds for disciplinary action against the license of a physician assistant. The board or its representative may enter and inspect a physician assistant's place of practice during reasonable business hours for the purpose of verifying the correctness of these records and of taking inventory of the drugs on hand;

(14) writes a false or fictitious prescription or a dangerous drug as defined by Chapter 483, Health and Safety Code;

(15) prescribes, dispenses, or administers a drug or treatment that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is prescribed, dispensed, or administered;

(16) unlawfully advertises in a false, misleading, or deceptive manner. Advertisements shall be defined as false, misleading, or deceptive consistent with §101.201 of the Texas Occupations Code;

(17) alters, with fraudulent intent, any physician assistant license, certificate, or diploma;

(18) uses any physician assistant license, certificate, or diploma that has been fraudulently purchased, issued, or counterfeited or that has been materially altered;

(19) aids or abets, directly or indirectly, the practice as a physician assistant by any person not duly licensed to practice as a physician assistant by the board;

(20) is removed or suspended or has disciplinary action taken by his peers in any professional association or society, whether

the association or society is local, regional, state, or national in scope, or is being disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of privileges, or other disciplinary action, if that action, in the opinion of the board, was based on unprofessional conduct or professional incompetence that was likely to harm the public. This action does not constitute state action on the part of the association, society, or hospital medical staff;

(21) has repeated or recurring meritorious health care liability claims that in the opinion of the board evidence professional incompetence likely to harm the public; or

(22) through his practice as a physician assistant sexually abuses or exploits another person.

§185.18. Discipline of Physician Assistants.

(a) The board, upon finding a physician assistant has committed any of the acts set forth in §185.18 of this title (relating to Grounds for Denial of Licensure and for Disciplinary Action), shall enter an order imposing one or more of the allowable actions set forth under §204.301 of the Act.

(b) Disciplinary Guidelines.

(1) Chapter 190 of this title (relating to Disciplinary Guidelines) shall apply to physician assistants regulated under this chapter to be used as guidelines for the following areas as they relate to the denial of licensure or disciplinary action of a licensee:

(A) practice inconsistent with public health and welfare;

(B) unprofessional and dishonorable conduct;

(C) disciplinary actions by state boards and peer groups;

(D) repeated and recurring meritorious health care liability claims; and

(E) aggravating and mitigating factors.

(2) If the provisions of Chapter 190 conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

§185.19. Administrative Penalties.

(a) The board by order may impose an administrative penalty, subject to the provisions of the Administrative Procedure Act, against a person licensed or regulated under the Physician Assistant Licensing Act who violates the Act or a rule or order adopted under the Act.

(b) The penalty for a violation may be in an amount not to exceed \$5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on factors set forth under §204.351(c) of the Act, and Chapter 190 of this title (relating to Disciplinary Guidelines).

§185.20. Complaint Procedure Notification.

Chapter 188 of this title (relating to Complaint Procedure Notification) shall govern physician assistants with regard to methods of notification for filing complaints with the agency. If the provisions of Chapter 188 conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

§185.21. Investigations.

(a) Confidentiality. All complaints, adverse reports, investigation files, other investigation reports, and other investigative information in the possession of, or received, or gathered by the board or its

employees or agents relating to a licensee, an application for license, or a criminal investigation or proceeding are privileged and confidential and are not subject to discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in licensee discipline.

(b) Patient identity. In any disciplinary investigation or proceeding regarding a physician assistant conducted under or pursuant to the Act, the board shall protect the identity of any patient whose medical records are examined and utilized in a public proceeding except for those patients who testify in the public proceeding or who submit a written release in regard to their records or identity.

(c) Permitted disclosure of investigative information. Investigative information in the possession of the board or its employees or agents which relates to licensee discipline and information contained in such files may not be disclosed except in the following circumstances:

(1) to the appropriate licensing or regulatory authorities in other states or the District of Columbia or a territory or country where the physician assistant is licensed, registered, or certified or has applied for a license or to a peer review committee reviewing an application for privileges or the qualifications of the licensee with respect to retaining privileges;

(2) to appropriate law enforcement agencies if the investigative information indicates a crime may have been committed and the board shall cooperate with and assist all law enforcement agencies conducting criminal investigations of licensees by providing information relevant to the criminal investigation to the investigating agency and any information disclosed by the board to an investigative agency shall remain confidential and shall not be disclosed by the investigating agency except as necessary to further the investigation;

(3) to a health-care entity upon receipt of written request. Disclosures by the board to a health-care entity shall include only information about a complaint filed against a physician assistant that was resolved after investigation by a disciplinary order of the board or by an agreed settlement, and the basis and current status of any complaint under active investigation; and

(4) to other persons if required during the investigation.

(d) Complaints. The board shall keep information on file about each complaint filed with the board, consistent with the Act. If a written complaint is filed with the board that the board has the authority to resolve relating to a person licensed by the board, the board, at least as frequently as quarterly and until final determination of the action to be taken relative to the complaint, shall notify in a manner consistent with the Act, the parties to the complaint of the status of the complaint unless the notice would jeopardize an active investigation.

(e) Renewal of licenses. A licensee shall furnish a written explanation of his or her answer to any question asked on the application for license renewal, if requested by the board. This explanation shall include all details as the board may request and shall be furnished within 14 days of the date of the board's request.

§185.22. Impaired Physician Assistants.

(a) Mental or physical examination requirement.

(1) The board may require a licensee to submit to a mental and/or physical examination by a physician or physicians designated by the board if the board has probable cause to believe that the licensee is impaired. Impairment is present if one appears to be unable to practice with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material; or as a result of any mental or physical condition.

(2) Probable cause may include, but is not limited to, any one of the following:

(A) sworn statements from two people, willing to testify before the board, the medical board, or the State Office of Administrative Hearings that a certain licensee is impaired;

(B) a sworn statement from an official representative of the Texas Academy of Physician Assistants stating that the representative is willing to testify before the board that a certain licensee is impaired;

(C) evidence that a licensee left a treatment program for alcohol or chemical dependency before completion of that program;

(D) evidence that a licensee is guilty of intemperate use of drugs or alcohol;

(E) evidence of repeated arrests of a licensee for intoxication;

(F) evidence of recurring temporary commitments of a licensee to a mental institution; or

(G) medical records indicating that a licensee has an illness or condition which results in the inability to function properly in his or her practice.

(b) Rehabilitation Orders.

(1) The board, through an agreed order or after a contested proceeding, may impose a nondisciplinary rehabilitation order on any licensee or, as a prerequisite for issuing a license, on any licensure applicant. Chapter 180 of this title (relating to Rehabilitation Orders) shall govern procedures relating to physician assistants who are found eligible for a rehabilitation order. If the provisions of Chapter 180 conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

(2) A rehabilitation order entered pursuant to this section may impose a revocation, cancellation, suspension, period of probation or restriction, or any other terms and conditions authorized under this Act or as otherwise agreed to by the board and the individual subject to the order.

(3) Violation of a rehabilitation order entered pursuant to this section may result in disciplinary action under the provisions of this Act for contested matters or pursuant to the terms of the agreed order. A violation of a rehabilitation order may be grounds for disciplinary action based on unprofessional or dishonorable conduct or on any of the provisions of this Act which may apply to the misconduct which resulted in violation of the rehabilitation order.

(4) The rehabilitation orders entered pursuant to this section shall be kept in a confidential file which shall be subject to an independent audit by state auditors or private auditors contracted with by the board to perform such an audit. Audits may be performed at any time at the direction of the board but shall be performed at least once every three years. The audit results shall be reported in a manner that maintains the confidentiality of all licensees who are subject to rehabilitation orders and shall be a public record. The audit shall be for the purposes of ensuring that only qualified licensees are subject to rehabilitation orders.

§185.23. Third Party Reports to the Board.

(a) Any medical peer review committee in this state, any physician assistant licensed to practice in this state, any physician assistant student, or any physician licensed to practice medicine or otherwise lawfully practicing medicine in this state shall report relevant information to the board related to the acts of any physician assistant in this state if, in the opinion of the medical peer review committee, physician

assistant, physician assistant student, or a physician, a physician assistant poses a continuing threat to the public welfare through his practice as a physician assistant. The duty to report under this section shall not be nullified through contract.

(b) Professional Review Actions. A written report of a professional review action taken by a peer review committee or a health-care entity provided to the board must contain the results and circumstances of the professional review action. Such results and circumstances shall include:

(1) the specific basis for the professional review action, whether or not such action was directly related to the care of individual patients; and

(2) the specific limitations imposed upon the physician assistant's clinical privileges, upon membership in the professional society or association, and the duration of such limitations.

(c) Reporting a Physician Assistant's Continuing Threat to the Public.

(1) Relevant information shall be reported to the board indicating that a physician assistant's practice poses a continuing threat to the public welfare and shall include a narrative statement describing the time, date, and place of the acts or omissions on which the report is based.

(2) A report that a physician assistant's practice constitutes a continuing threat to the public welfare shall be made to the board as soon as possible after the peer review committee or the physician involved reaches that conclusion and is able to assemble the relevant information.

(d) Reporting Professional Liability Claims.

(1) Reporting responsibilities. The reporting form must be completed and forwarded to the board for each defendant physician assistant against whom a professional liability claim or complaint has been filed. The information is to be reported by insurers or other entities providing professional liability insurance for a physician assistant. If a nonadmitted insurance carrier does not report or if the physician assistant has no insurance carrier, reporting shall be the responsibility of the physician assistant.

(2) Separate reports required and identifying information. One separate report shall be filed for each defendant physician assistant insured. When Part II is filed, it shall be accompanied by the completed Part I or other identifying information as described in paragraph (4)(A) of this subsection.

(3) Time frames and attachments. The information in Part I of the form must be provided within 30 days of receipt of the claim or suit. A copy of the claim letter or petition must be attached. The information in Part II must be reported within 105 days after disposition of the claim. Disposed claims shall be defined as those claims where a court order has been entered, a settlement agreement has been reached, or the complaint has been dropped or dismissed.

(4) Alternate reporting formats. The information may be reported either on the form provided or in any other legible format which contains at least the requested data.

(A) If the reporter elects to use a reporting format other than the board's form for data required in Part II, there must be enough identification data available to staff to match the closure report to the original file. The data required to accomplish this include:

(i) name and license number of defendant physician assistant(s); and

(ii) name of plaintiff.

(B) A court order or a copy of the settlement agreement is an acceptable alternative submission for Part II. An order or settlement agreement should contain the necessary information to match the closure information to the original file. If the order or agreement is lacking some of the required data, the additional information may be legibly written on the order or agreement.

(5) Penalty. Failure by a licensed insurer to report under this section shall be referred to the State Board of Insurance.

(6) Definition. For the purposes of this subsection a professional liability claim or complaint shall be defined as a cause of action against a physician assistant for treatment, lack of treatment, or other claimed departure from accepted standards of health care or safety which proximately results in injury to or death of the patient, whether the patient's claim or cause of action sounds in tort or contract.

(7) Claims not required to be reported. Examples of claims that are not required to be reported under this chapter but which may be reported include, but are not limited to, the following:

(A) product liability claims (i.e. where a physician assistant invented a device which may have injured a patient but the physician assistant has had no personal physician assistant-patient relationship with the specific patient claiming injury by the device);

(B) antitrust allegations;

(C) allegations involving improper peer review activities;

(D) civil rights violations; or

(8) Voluntary Reporting. Claims that are not required to be reported under this chapter may, however, be voluntarily reported.

(9) Reporting Form. The reporting form shall be as follows:

Figure: 22 TAC §185.23(d) (9)

(10) Professional Liability Suits and Claims. Following receipt of a notice of claim letter or a complaint filed in court against a licensee that is reported to the board, the licensee shall furnish to the board the following information within 14 days of the date of receipt of the board's request for said information:

(A) a completed questionnaire to provide summary information concerning the suit or claim;

(B) a completed questionnaire to provide information deemed necessary in assessing the licensee's competency;

(C) information on the status of any suit or claim previously reported to either the board or the medical board.

(e) Immunity and Reporting Requirements. A person, health care entity, medical peer review committee, or other entity that without malice furnishes records, information, or assistance to the board is immune from any civil liability arising from such act.

§185.24. Procedure.

Chapter 187 of this title (relating to Procedural Rules) shall govern procedures relating to physician assistants where applicable. If the provisions of Chapter 187 conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

§185.25. Compliance.

Chapter 189 of this title (relating to Compliance) shall be applied to physician assistants who are under board orders. If the provisions of

Chapter 189 conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

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 August 19, 2002.

TRD-200205433

Donald W. Patrick, MD, JD

Executive Director

Texas State Board of Medical Examiners

Earliest possible date of adoption: September 29, 2002

For further information, please call: (512) 305-7016



22 TAC §§185.8 - 185.30

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

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

The following is affected by the proposed repeals: Texas Occupations Code, Chapter 204.

§185.8. *Schedule of Fees.*

§185.9. *Inactive License.*

§185.10. *Reinstatement of License Following Cancellation for Cause.*

§185.11. *Physician Assistant Scope of Practice.*

§185.12. *Tasks Not Permitted To Be Delegated of a Physician Assistant.*

§185.13. *Identification Requirements.*

§185.14. *Notification of Intent to Practice and Supervise.*

§185.15. *Physician Supervision.*

§185.16. *Supervising Physician.*

§185.17. *Employment Guidelines.*

§185.18. *Grounds for Denial of Licensure and for Disciplinary Action.*

§185.19. *Discipline of Physician Assistants.*

§185.20. *Administrative Penalty.*

§185.21. *Complaint Procedure Notification.*

§185.22. *Investigations.*

§185.23. *Procedure - General.*

§185.24. *Procedure - Prehearing.*

§185.25. *Procedure - Hearing.*

§185.26. *Procedure - Posthearing.*

§185.27. *Medical Board Review and Approval.*

§185.28. *Construction.*

§185.29. *Temporary Suspensions.*

§185.30. *Recusals.*

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

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Donald W. Patrick, MD, JD

Executive Director

Texas State Board of Medical Examiners

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For further information, please call: (512) 305-7016



CHAPTER 187. PROCEDURAL RULES

The Texas State Board of Medical Examiners proposes an amendment to §187.25(d), repeal of §187.41 and new §§187.55-187.62, concerning procedural rules. These changes are regarding temporary suspension procedures.

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

Ms. Shackelford also has determined that for each year of the first five years the amendment, repeal and new sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be updated temporary suspension procedures. There will be no effect on small or micro businesses.

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

SUBCHAPTER C. FORMAL PROCEEDINGS

AT SOAH

22 TAC §187.25

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

The following is affected by the proposed amendment: Texas Occupations Code, Chapter 164.

§187.25. *Notice of Formal Adjudicative Proceedings.*

(a) Notice. Before revoking or suspending any license, denying an application for a license, or reprimanding any licensee, the board will afford all parties an opportunity for an adjudicative hearing after reasonable notice of not less than ten days, except as otherwise provided by board rule or the Act.

(b) Content.

(1) In accordance with §2001.052 of the APA, notice of adjudicative hearing shall include:

(A) a statement of time, place, and nature of the hearing;

(B) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(C) a reference to the particular sections of the statutes and rules involved;

(D) a short and plain statement of the matters asserted; and

(E) notice that failure to appear may result in a default judgment as specified in §187.27 of this title (relating to Default Judgments).

(2) A copy of the original pleading filed with the board may be substituted for subsection (b)(1), subparagraphs (B)-(E) of this section if it contains all required information.

(c) Service. The notice of adjudicative hearing shall be served as specified in §187.26 of this title (relating to Service in SOAH Proceedings).

~~{(d) Temporary suspensions. Notice is not required for temporary suspension hearings as specified in §187.41 of this title (relating to Temporary Suspensions); provided institution of proceedings for a hearing before the board is initiated simultaneously with the temporary suspension and a hearing is held as soon as can be accomplished under the APA and the Act.}~~

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

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Donald W. Patrick, MD, JD

Executive Director

Texas State Board of Medical Examiners

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SUBCHAPTER D. FORMAL BOARD PROCEEDINGS

22 TAC §187.41

(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 following is affected by the proposed repeal: Texas Occupations Code, Chapter 164.

§187.41. *Temporary Suspensions.*

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

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Donald W. Patrick, MD, JD

Executive Director

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SUBCHAPTER F. TEMPORARY SUSPENSION PROCEEDINGS

22 TAC §§187.55 - 187.62

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

The following is affected by the proposed new sections: Texas Occupations Code, Chapter 164.

§187.55. *Purpose.*

The purpose of a temporary suspension proceeding is to provide procedures by which the board will determine whether a person's license to practice medicine should be temporarily suspended in accordance with the Act, §164.059.

§187.56. *Convening a Disciplinary Panel.*

(a) The President of the board is hereby granted approval to appoint a three-member disciplinary panel at the direction of or with the approval of any committee chair, any member of the Executive Committee, or any informal show compliance proceeding panel conveyed either verbally or in writing to the executive director or general counsel of the board.

(b) The disciplinary panel shall be composed of three members of the board, at least one of which must be a physician. The President of the board shall name a chair of the disciplinary panel.

(c) In the event of the recusal of a disciplinary panel member or the inability of a panel member to attend a temporary suspension proceeding, an alternate board member may serve on the disciplinary panel upon appointment by the president or presiding officer of the board.

(d) Notwithstanding the Public Information Act, Chapter 551, TEX. GOV'T CODE, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and the convening at one location of the disciplinary panel is inconvenient for any member of the disciplinary panel.

(e) A hearing before a disciplinary panel shall constitute a hearing before the board.

§187.57. *Charge of the Disciplinary Panel.*

(a) The disciplinary panel shall determine from the evidence or information presented to it whether a person's continuation in practice constitutes a continuing threat to the public welfare.

(b) If the disciplinary panel determines that a person's continuation in practice would constitute a continuing threat to the public welfare, the disciplinary panel shall temporarily suspend the license of that person.

(c) In accordance with the Act, §151.002(a)(2), "continuing threat to the public welfare," means a real and present danger to the health of a physician's patients caused through the physician's lack of competence, impaired status, or failure to care adequately for the physician's patients. A real and present danger exists if patients have an exposure to or risk of injury that is not merely abstract, hypothetical or remote and is based on actual actions or inactions of the physician. Information that the physician has committed similar actions or inactions in the past shall be considered by the disciplinary panel in determining whether the physician poses a continuing threat to commit such actions or inactions in the future.

§187.58. *Procedures before the Disciplinary Panel.*

(a) In accordance with the Act, §164.004, an ISC is not required to be held prior to a hearing on temporary suspension. §164.004

further exempts a temporary suspension proceeding from the requirements of §2001.054(c), TEX. GOV'T CODE.

(b) To the extent practicable, in the discretion of the chair of the disciplinary panel, the sequence of events will be as follows:

- (1) Call to Order;
- (2) Roll Call;
- (3) Calling of the Case;
- (4) Recusal Statement;
- (5) Introductions/Appearances on the Record;
- (6) Opening Statements by Board Staff and Respondent;
- (7) Presentation of evidence and information by Board Staff;
- (8) Presentation of evidence and information on behalf of Respondent;
- (9) Rebuttal by Board Staff and Respondent;
- (10) Closing Arguments:
 - (A) Argument by board Staff;
 - (B) Argument by Respondent;
 - (C) Final Argument by board Staff;
- (11) Deliberations;
- (12) Announcement of Decision;
- (13) Adjournment.

§187.59. Evidence.

(a) In accordance with the Act, §164.059, the determination of the disciplinary panel may be based not only on evidence admissible under the Texas Rules of Evidence, but may be based on information of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs.

(b) Presentations by the parties may be based on evidence or information and shall not be excluded on objection of a party unless determined by the chair that the evidence or information is clearly irrelevant or unduly inflammatory in nature; however, objections by a party may be noted for the record.

(c) Witnesses may provide sworn statements in writing or verbally and may choose to provide statements that are not sworn; however, whether a statement is sworn may be a factor to be considered by the disciplinary panel in evaluating the weight to be given to the statement.

(d) Questioning of witnesses by the parties or panel members shall be under the control of the chair of the disciplinary panel with due consideration being given to the need to obtain accurate information and prevent the harassment or undue embarrassment of witnesses.

(e) In receiving information on which to base its determination of a continuing threat to the public welfare, the disciplinary panel may accept the testimony of witnesses by telephone.

§187.60. Temporary Suspension Without Notice or Hearing.

(a) In accordance with the Act, §164.059(c), a license may be suspended without notice or hearing, provided institution of proceedings for a hearing before the board is initiated simultaneously with the temporary suspension and provided that a hearing is held as soon as possible under the APA and the Act.

(b) "Institution of proceedings for a hearing before the board is initiated simultaneously with the temporary suspension" means setting a date for a temporary suspension hearing before a disciplinary panel simultaneously with the entry of a temporary suspension order. Every temporary suspension order entered without notice or hearing shall include an order setting a date certain for hearing on the temporary suspension.

(c) "Provided that a hearing is held as soon as possible under the APA and the Act" means that a temporary suspension hearing before a disciplinary panel is held no later than 20 days after the date of the temporary suspension order.

(d) The licensee shall be given not less than 10 days notice of the hearing.

§187.61. Ancillary Proceeding.

(a) A temporary suspension proceeding is ancillary to a disciplinary proceeding concerning the licensee's alleged violation(s) of the Act.

(b) A temporary suspension order is effective immediately on the date entered and shall remain in effect until a final or further order of the board is entered in the disciplinary proceeding.

(c) Upon the entry of a temporary suspension order, an ISC shall be scheduled as soon as practicable in the disciplinary proceeding in accordance with Section 164.004 of the Act, and section 2001.054(c), TEX. GOV'T CODE. A second ISC is not required, however, if an ISC has previously been held in the disciplinary proceeding.

(d) If the matter is not resolved by an Agreed Order through the ISC, a formal complaint shall be filed in the disciplinary proceeding at the State Office of Administrative Hearings in accordance with Section 164.005 of the Act as soon as practicable after the ISC.

§187.62. Continuing Threat Constitutes A Danger to the Public.

Section 164.011(c) of the Act provides that the board's decision to suspend a license may not be enjoined if the license holder's continued practice presents a danger to the public. The board's determination that a licensee's continuation in practice would constitute a continuing threat to the public welfare shall be deemed to be a finding that the license holder's continued practice presents a danger to the public.

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

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Donald W. Patrick, MD, JD

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◆ ◆ ◆
TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 9. REFUGEE SOCIAL SERVICES

The Texas Department of Human Services (DHS) proposes to repeal Subchapter A, concerning client information, §§9.101-9.109; Subchapter B, concerning contractor requirements, §§9.201-9.213; and Subchapter C, concerning service requirements, §§9.301-9.309; and proposes new Subchapter A, concerning purpose and scope, §§9.101-9.104; Subchapter B, concerning contractor requirements, §§9.201, 9.203, 9.205, 9.207, 9.209, 9.211, 9.213, 9.215, 9.217, 9.219, 9.221, 9.223, 9.225, 9.227, 9.229, 9.231, 9.233, 9.235, 9.237; Subchapter C, concerning general program administration, §§9.301, 9.303, 9.305, 9.307, 9.309, 9.311, 9.313, 9.315, 9.317, 9.319, 9.321, 9.323, 9.325, 9.327, 9.329, 9.331, 9.333; Subchapter D, concerning employment services: Refugee Social Services (RSS), §§9.401, 9.403, 9.405, 9.407, 9.409, 9.411, 9.413, 9.415, 9.417, 9.419, 9.421, 9.423, 9.425, 9.427; Subchapter E, concerning employment services: Refugee Cash Assistance (RCA), §§9.501, 9.503, 9.505, 9.507, 9.509, 9.511, 9.513, 9.515, 9.517, 9.519; Subchapter F, concerning English as a Second Language (ESL) services, §9.601 and §9.602; Subchapter G, concerning other employability services, §§9.701, 9.703, 9.705, 9.707, 9.709, 9.711, 9.713, 9.715, 9.717, 9.719, 9.721; Subchapter H, concerning Targeted Assistance Grant (TAG) services, §§9.801-9.806; Subchapter I, concerning unaccompanied refugee minor (URM) program, §§9.901-9.907, in its Refugee Social Services chapter. The purpose of the repeals and new sections is to rewrite the chapter in question and answer format to make the sections easier to understand. The new sections also add, in accordance with federal regulations, provisions regarding limited English proficiency, accounting requirements for contractors, a requirement that contractors have a conflict of interest policy, clarification of asylee eligibility, and provisions concerning unaccompanied refugee minors.

James R. Hine, Commissioner, has determined that, for the first five-year period the proposed sections will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Hine also has determined that, for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be to have rules that the public and contractors can more easily understand. The new sections clarify provider responsibilities and available services, which will better equip providers to offer refugees opportunities to attain self-sufficiency. There will be no adverse economic effect on small or micro businesses as a result of enforcing or administering the sections, because the sections affect only contracted providers for refugee social services, which generally are non-profit or faith-based organizations and not businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections. There is no anticipated effect on local employment in geographic areas affected by these sections.

Questions about the content of this proposal may be directed to Caitriona Lyons at (512) 438-3526 in DHS's Office of Immigration and Refugee Affairs. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-253, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

SUBCHAPTER A. CLIENT INFORMATION

40 TAC §§9.101 - 9.109

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

The repeals are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes DHS to administer public assistance programs, and under Government Code, Chapter 752, which creates the Office of Immigration and Refugee Affairs in DHS.

The repeals implement the Human Resources Code, §§22.001-22.036 and the Government Code, Chapter 752.

§9.101. *Eligibility.*

§9.102. *Required Registration.*

§9.103. *Time Frame.*

§9.104. *Residency.*

§9.105. *Right to Hearing.*

§9.106. *Acceptance of Services.*

§9.107. *Inability To Communicate in English.*

§9.108. *Claim of Adverse Effects.*

§9.109. *Confidentiality.*

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

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Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

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For further information, please call: (512) 438-3734



SUBCHAPTER A. PURPOSE AND SCOPE

40 TAC §§9.101 - 9.104

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes DHS to administer public assistance programs, and under Government Code, Chapter 752, which creates the Office of Immigration and Refugee Affairs in DHS.

The new sections implement the Human Resources Code, §§22.001-22.036 and the Government Code, Chapter 752.

§9.101 *What is the basis of this chapter?*

(a) In the Refugee Act of 1980 (the Act), Pub. Law No. 96-212, Congress codified and strengthened the United States' historic policy of aiding individuals fleeing persecution in their homelands. The Act provided a formal definition of "refugee," which is found in the Immigration and Nationality Act (INA). In addition, the Act provided the foundation for today's asylum adjudication process and the development of an Office of Refugee Resettlement (ORR) within the U.S. Department of Health and Human Services. ORR provides grants to states to help refugees and other special populations, as outlined in ORR regulations, in becoming economically and socially self-sufficient in their new homes in the United States.

(b) The Texas Department of Human Services, through its Office of Immigration and Refugee Affairs, is the state agency designated

to fund and facilitate a variety of programs through grant contracts with state and community agencies in Texas. The programs include but are not limited to cash and medical assistance, employment preparation and job placement, skills training, English language training, and social adjustment services.

§9.102. *What is the purpose of this chapter?*

This chapter outlines the provisions of Refugee Social Services and Targeted Assistance Grant programs to assure compliance with the Code of Federal Regulations (CFR), Title 45, parts 400 and 401, issued by the Office of Refugee Resettlement in the U.S. Department of Health and Human Services. The Texas Department of Human Services manages contracts to provide refugee social services in accordance with the provisions of this chapter.

§9.103. *How are the terms in this chapter defined?*

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

- (1) Adult--An individual 18 years of age or older.
- (2) Applicant--An individual who has applied for refugee social services and is waiting on an eligibility determination.
- (3) Asylee--An individual who has been granted asylum under section 208 of the Immigration and Nationality Act (INA).
- (4) Asylee applicant--an individual who has applied for but has not been granted status under section 208 of the INA.
- (5) Case management services--Assessment, planning, and determining referrals for services and monitoring the refugee's participation in these services.
- (6) Cash assistance--Financial assistance to refugees, including Temporary Assistance for Needy Families (TANF), Social Security Income, Refugee Cash Assistance, and, if available, general state assistance.
- (7) Contractor--An organization that has a contract to provide refugee social services with the Texas Department of Human Services (DHS).
- (8) CFR--Code of Federal Regulations.
- (9) CHIP--Texas Children's Health Insurance Program.
- (10) DHS--Texas Department of Human Services.
- (11) Discretionary grants--Grants targeted at specific refugee populations at the discretion of the director of the Office of Refugee Resettlement.
- (12) DOJ--Department of Justice.
- (13) DOS--Department of State
- (14) Economic self-sufficiency--Earning a total family income at a level that enables a family unit to support itself without receiving a cash assistance grant.
- (15) Employability plan--An employment plan designed to lead to the earliest possible employment in the shortest time period.
- (16) Family unit--Individual adult, married individuals without children, or parents, or custodial relatives with a minor children who are ineligible for TANF, who live in the same household.
- (17) Fund accounting--A system of accounting that requires separate records and allocations for each grant or source of funding.
- (18) INA--Immigration and Nationality Act.

- (19) Incentive payment--A one-time payment for early employment.
- (20) INS--Immigration and Naturalization Service.
- (21) LEP--Limited English Proficiency.
- (22) MAA--Mutual Assistance Agency, a nonprofit corporation that has not less than 51% of the Board of Directors or governing board comprised of refugees or former refugees, including both refugee men and women.
- (23) MNIL--Medically Needy Income Limit.
- (24) Nepotism--Hiring family or friends when that relationship could be perceived as a conflict of interest in providing services to refugees.
- (25) OIRA--Office of Immigration and Refugee Affairs under DHS.
- (26) ORR--Office of Refugee Resettlement.
- (27) P-3--Public/Private Partnership, a state-administered option for the provision of refugee cash assistance through contracts or grants with local resettlement agencies.
- (28) Participant--A person who has been determined eligible for refugee social services.
- (29) Refugee--An individual admitted to the United States under section 207 of the INA.
- (30) Refugee Cash Assistance (RCA)--A time-limited cash assistance program available to eligible refugees who are ineligible for TANF.
- (31) Refugee Medical Assistance (RMA)--A time-limited medical assistance program provided to eligible refugees who are ineligible for Medicaid.
- (32) RSS--Refugee Social Services Grant.
- (33) TAC--Texas Administrative Code.
- (34) TAG--Targeted Assistance Grant.
- (35) TANF--Temporary Assistance for Needy Families.
- (36) Texas Department of Protective and Regulatory Services (PRS)--State agency approved under state law to provide child welfare services to children of the state.
- (37) Title IV-B plan--State plan for providing child welfare services to children in the state under part B of Title IV of the Social Security Act.
- (38) UNHCR--United Nations High Commissioner for Refugees.
- (39) Unaccompanied Refugee Minor (URM)--a person under 18 years old:
 - (A) who entered the United States unaccompanied by and not destined to a parent or close non-parental adult relative or adult with a clear and court-verifiable claim to custody of the minor;
 - (B) who has no parents in the United States; and
 - (C) who has been identified by the INS as an unaccompanied minor.
- (40) Vendor payment--Payment made on behalf of a RCA participant for rent or utilities.

(41) Victim of a severe form of trafficking--An adult individual certified by the U.S. Department of Health and Human Services as a victim of a severe form of trafficking.

(42) VOLAG--Voluntary Resettlement Agency.

§9.104. Is the term "refugee" used throughout this chapter to designate all those eligible for refugee social services?

Yes. The term "refugee" includes all persons eligible for refugee social services as defined in §9.307 of this chapter (relating to Who is eligible for refugee social services?).

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

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Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

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SUBCHAPTER B. CONTRACTOR REQUIREMENTS

40 TAC §§9.201 - 9.213

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

The repeals are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes DHS to administer public assistance programs, and under Government Code, Chapter 752, which creates the Office of Immigration and Refugee Affairs in DHS.

The repeals implement the Human Resources Code, §§22.001-22.036 and the Government Code, Chapter 752.

§9.201. *Coordinated Services.*

§9.202. *Priority Groups.*

§9.203. *Opportunity To Apply.*

§9.204. *Equal Opportunity.*

§9.205. *Required Records.*

§9.206. *Time Period for Records.*

§9.207. *Federal Reporting.*

§9.208. *Procedures and Requirements.*

§9.209. *Staff Requirements.*

§9.210. *Scheduling of Services.*

§9.211. *Individual Employability Plan.*

§9.212. *Notice to the Texas Department of Human Services (DHS)*

§9.213. *Compliance with Federal Definitions.*

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

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40 TAC §§9.201, 9.203, 9.205, 9.207, 9.209, 9.211, 9.213, 9.215, 9.217, 9.219, 9.221, 9.223, 9.225, 9.227, 9.229, 9.231, 9.233, 9.235, 9.237

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes DHS to administer public assistance programs, and under Government Code, Chapter 752, which creates the Office of Immigration and Refugee Affairs in DHS.

The new sections implement the Human Resources Code, §§22.001-22.036 and the Government Code, Chapter 752.

§9.201. What is the purpose of this subchapter?

This subchapter identifies the minimum requirements for contracting with the Texas Department of Human Services to provide refugee social services under Refugee Social Services and Targeted Assistance grants.

§9.203. Who can apply for a refugee social services contract?

(a) Any public or private organization may apply for a contract if:

(1) it can provide services that are culturally and linguistically compatible with a refugee's language and cultural background;

(2) it is incorporated as either a nonprofit or a for-profit organization and can produce the following documents to the Texas Department of Human Services (DHS) upon request:

(A) articles of incorporation;

(B) by-laws;

(C) tax-exemption certification, if applicable;

(D) board minutes;

(E) financial statements;

(F) informational materials related to providing refugee services;

(G) case records; and

(H) other relevant material as described by DHS.

(b) Organizations applying for Refugee Cash Assistance (RCA) contracts must meet the requirements in §7.203 of this title (relating to Who can apply for a RCA contract?).

§9.205. How are refugee social services contracts awarded?

The Texas Department of Human Services awards refugee social service contracts on a competitive basis to applicants who demonstrate the greatest ability to effectively provide the requested services to the targeted populations.

§9.207. What is the financial responsibility of the contractor's board of directors?

When an organization contracts with the Texas Department of Human Services, the contractor's board of directors must ensure financial accountability of all funds the organization receives and spends. The board of directors or its finance committee must regularly review actual income and expenses and compare them to approved budgets and year-to-date costs.

§9.209. What accounting requirements must the contractor meet?

Each contractor must:

(1) maintain an accounting system that records revenues and expenditures using generally accepted accounting principles as recognized by the American Institute of Certified Public Accountants;

(2) follow Texas Department of Human Services (DHS) financial management policies and procedures for maintaining fiscal records, including:

(A) maintain a chart of accounts that includes all accounts using an assigned number;

(B) maintain a general ledger;

(C) maintain supporting documentation of expenses, including but not limited to:

(i) receipts or vouchers for incoming cash;

(ii) bank statements;

(iii) canceled checks (if provided by bank);

(iv) deposit slips;

(v) approved invoices;

(vi) receipts or vouchers for purchases;

(vii) leases;

(viii) contracts;

(ix) time sheets;

(x) inventory;

(xi) written cost allocation methodology; and

(xii) cost allocation worksheets; and

(D) identify all funding sources and expenditures by separate fund type.

§9.211. Does the Texas Department of Human Services (DHS) require contractors to have a fidelity bond?

Yes. Each contractor must have a fidelity bond. DHS determines the minimum value annually.

§9.213. What are the confidentiality requirements of a contractor?

Contractors must keep confidential all information about or obtained from a participant. Contractors may release participant information as long as it does not identify a participant in any way. The following exceptions apply:

(1) Information can be released with written consent of the participant.

(2) In the case of minors, information can be released with written consent of the parent or legal guardian.

(3) Information can be released if the Texas Department of Human Services (DHS) or anyone DHS designates requests the information, as long as it benefits the refugee.

§9.215. Are contractors responsible for having a nepotism policy?

Yes. Each contractor must have a written and board-approved nepotism policy.

§9.217. Are contractors responsible for having a conflict of interest policy?

Yes. Each contractor must have a written and board-approved conflict of interest policy.

§9.219. What issues must the conflict of interest policy address?

The conflict of interest policy must address situations in which board members or employees have a direct or indirect interest, financial or otherwise, of any nature that is in substantial conflict with the proper discharge of their duty to the organization.

§9.221. Are contractors required to comply with the Limited English Proficiency provisions of Title VI of the Civil Rights Act?

Yes. During the time it receives grant funding, a contractor must comply with the provisions of Title VI of the Civil Rights Act as it affects persons with limited English language proficiency.

§9.223. With what Limited English Proficiency (LEP) provisions is a contractor required to comply?

Requirements include implementing a LEP plan that provides for regular assessments of language needs, a written LEP policy that includes implementation plans, and regular staff training on LEP compliance.

§9.225. What are the staffing requirements for contractors?

Contractors must employ or contract with staff who speak native languages of refugee arrivals and who are from the same background or know the culture of the refugee populations served.

§9.227. Are there requirements for hiring bilingual or bicultural women?

Yes. The contractor must provide services to the fullest extent possible in a manner that includes the use of bilingual or bicultural women on service agency staff.

§9.229. What are the record keeping requirements of the contract?

Contractors must keep all records that are needed for federal and state monitoring of the Refugee Social Services Program. Needed records include:

(1) identification of participants;

(2) statistical and programmatic records on services provided;

(3) eligibility determination materials;

(4) required case file records; and

(5) other records required by 45 CFR §400.25.

§9.231. How long are contractors required to keep records?

Contractors must keep all records for three years and 90 days after the end of the contract or until an open audit or litigation is resolved.

§9.233. What are the reporting requirements for contractors?

Contractors must comply with reporting requirements as detailed in 45 CFR §400.28 (b).

§9.235. If a refugee is receiving services under another program funded by the Office of Refugee Resettlement, can similar services be provided under a contract funded by a Refugee Social Services Grant (RSS) or a Targeted Assistance Grant (TAG)?

No. Services under 45 CFR §400.154 and §400.155, including reception, placement, and match grant services, must be coordinated and not duplicated with other resettlement services. Services not offered under other resettlement services can be provided under RSS or TAG programs.

§9.237. Can a contractor subcontract services?

Yes. A contractor may subcontract services with the following provisions:

(1) The Texas Department of Human Services (DHS) must approve the subcontract.

(2) The contractor must agree to be responsible for the satisfactory performance of its subcontractor(s) and routinely monitor the subcontractor(s) for fiscal and programmatic compliance.

(3) All subcontractors are subject to the same requirements as the contractor.

(4) DHS must give prior approval for all subcontractors.

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

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Texas Department of Human Services

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SUBCHAPTER C. SERVICE REQUIREMENTS

40 TAC §§9.301 - 9.309

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

The repeals are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes DHS to administer public assistance programs, and under Government Code, Chapter 752, which creates the Office of Immigration and Refugee Affairs in DHS.

The repeals implement the Human Resources Code, §§22.001-22.036 and the Government Code, Chapter 752.

§9.301. *Federal Regulations.*

§9.302. *Employment Services.*

§9.303. *Employability Services.*

§9.304. *Long-term Training.*

§9.305. *English Language Instruction and Vocational Training.*

§9.306. *Compatibility.*

§9.307. *Bilingual/Bicultural Women.*

§9.308. *Child Care.*

§9.309. *Restrictions.*

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Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

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SUBCHAPTER C. GENERAL PROGRAM ADMINISTRATION

40 TAC §§9.301, 9.303, 9.305, 9.307, 9.309, 9.311, 9.313, 9.315, 9.317, 9.319, 9.321, 9.323, 9.325, 9.327, 9.329, 9.331, 9.333

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes DHS to administer public assistance programs, and under Government Code, Chapter 752, which creates the Office of Immigration and Refugee Affairs in DHS.

The new sections implement the Human Resources Code, §§22.001-22.036 and the Government Code, Chapter 752.

§9.301. *What is the purpose of this subchapter?*

This subchapter outlines refugee social services programs and details contractor responsibilities in providing contracted services.

§9.303. *What services may be provided to assist refugees with employability skills?*

Texas Department of Human Services-funded contractors may provide the following employability services:

- (1) employment services;
- (2) employability assessment services;
- (3) on-the-job training;
- (4) English language instruction;
- (5) vocational training;
- (6) skills re-certification;
- (7) day care for children;
- (8) transportation;
- (9) translation and interpretation services;
- (10) information and referral services;
- (11) social adjustment services;
- (12) outreach services;
- (13) citizenship and naturalization preparation services;

and

(14) case-management services to help refugees become employed within one year after enrollment in the Refugee Social Services Program.

§9.305. *Can additional services be provided?*

Yes. Other services may be provided if the service is not available from any other resource. Requests to provide additional services must be submitted through the Texas Department of Human Services for the approval of the director of the Office of Refugee Resettlement (ORR). The ORR director must approve services before they are delivered.

§9.307. *Who is eligible for refugee social services?*

Individuals are eligible for refugee social services if they:

- (1) are at least 16 years of age and are not full-time students;
- (2) are within the eligibility period as established by the Office of Refugee Resettlement (ORR);
- (3) meet immigration status and identification requirements in 45 CFR part 400, subpart D; and

(4) can provide documentation of one of the following statuses from the Immigration and Naturalization Service:

(A) paroled as a refugee or asylee under Section 212(d) of the Immigration and Nationality Act (INA);

(B) admitted as a refugee under Section 207 of the INA;

(C) granted asylum under Section 208 of the INA;

(D) admitted as a Cuban or Haitian entrant in accordance with requirements in 45 CFR part 401;

(E) admitted as an Amerasian from Vietnam pursuant to Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in Section 101(e) of Public Law 100-202 and amended by the 9th proviso under Migration and Refugee Assistance in Title II of the Foreign Operation, Export, Financing, and Related Programs Appropriations Acts, 1989 (Public Law 100-461 as amended));

(F) victim of a severe form of trafficking;

(G) designated as eligible by the director of ORR; or

(H) designated as a permanent resident and who previously held any of the statuses in subparagraphs (A)-(G) of this paragraph and has not yet acquired U.S. citizenship.

§9.309. Are individuals applying for asylum through the Immigration and Naturalization Service eligible for refugee social services assistance?

No. Asylee status must be granted fully before refugee social services assistance can be provided.

§9.311. Can refugees younger than 16 years of age receive refugee social services?

No. All employment and training services and English language instruction services are restricted to refugees who are 16 years of age or older and who are not full-time students in elementary or secondary school. Help can be provided to students to find part-time or summer jobs.

§9.313. Who determines a refugee's eligibility for refugee social services benefits?

Contractors determine if the applicant meets the eligibility requirements to become a participant and must keep all eligibility determination information in the participant's file.

§9.315. Are there equal opportunity requirements for refugee women?

Yes. Refugee women must be given the same opportunities as men to participate in all services, including employment services.

§9.317. How long can a participant receive refugee social services?

The maximum time period a participant may receive benefits is specified by the director of the Office of Refugee Resettlement. The current time period is up to 60 months (five years) from the beginning date of eligibility, as indicated in 45 CFR §400.152, except for citizenship, outreach and referral, and interpretation and translation services. Citizenship, outreach and referral services, and interpretation and translation services may be provided until United States citizenship is attained.

§9.319. Can employability services be provided after a refugee finds a job?

Yes. All services that help a refugee maintain or move to a better job are allowed after a refugee finds a job.

§9.321. How does a contractor determine eligibility for a refugee who has moved to Texas from another state?

The contractor determines eligibility on the same basis as for a refugee whose first placement was in Texas, with the following exceptions:

(1) The contractor must verify with the original sponsoring resettlement agency that the refugee has not voluntarily quit employment within the past 30 days.

(2) The contractor must verify with the sponsoring resettlement agency and/or state public benefits office at the original placement site whether the refugee has received an assistance payment for the month of application in Texas.

§9.323. Is coordination with other refugee providers required?

Yes. Contractors must coordinate with state and local service providers, including mutual assistance associations, voluntary resettlement agencies, and other refugee service representatives to ensure that services:

(1) are appropriate to the linguistic and cultural needs of the incoming populations;

(2) are coordinated with the longer term resettlement services frequently provided by ethnic community organizations; and

(3) do not duplicate services provided under reception and placement services.

§9.325. Can participants who do not speak English participate in employment services?

Yes. Inability to communicate in English does not keep a refugee from participating in employment services or accepting employment.

§9.327. Are contractors required to report changes in a participant's income or address to the Texas Department of Human Services (DHS)?

Yes. Contractors must report changes in a participant's income or address within 10 days of the change to designated DHS staff.

§9.329. What information and materials must a contractor provide to the participant upon or during intake for services?

Contractors must explain and give the participant notice of all participant rights and responsibilities, as well as the right to have a fair hearing.

§9.331. Can an applicant or recipient appeal an adverse determination by a contractor?

Yes. Applicants for and recipients of services may appeal any adverse determination by the contractor according to hearing procedures specified in 45 CFR §205.10(a) and in Chapter 79 of this title (relating to Legal Services).

§9.333. What should the contractor know about applicant or participant appeals?

(a) An applicant or participant may appeal a decision by the following methods:

(1) An applicant or participant may follow the internal appeal procedures of the contractor.

(2) An applicant or participant may appeal to the Texas Department of Human Services (DHS), at which time an in-person hearing will take place. The applicant or participant must request a hearing within 10 days of the contractor's decision. DHS must take final administrative action within 60 days of the date of request for the hearing.

(b) A participant may appeal to DHS for a hearing and attempt resolution simultaneously.

(c) If the appeal is based on the date of entry into the United States, the contractor must resolve the dispute promptly by examining the individual's documentation issued by the Immigration and Naturalization Services (INS) or information obtained from INS.

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SUBCHAPTER D. EMPLOYMENT SERVICES: REFUGEE SOCIAL SERVICES (RSS)

40 TAC §§9.401, 9.403, 9.405, 9.407, 9.409, 9.411, 9.413, 9.415, 9.417, 9.419, 9.421, 9.423, 9.425, 9.427

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes DHS to administer public assistance programs, and under Government Code, Chapter 752, which creates the Office of Immigration and Refugee Affairs in DHS.

The new sections implement the Human Resources Code, §§22.001-22.036 and the Government Code, Chapter 752.

§9.401. What is the purpose of this subchapter?

This subchapter includes the specific refugee social services employment requirements.

§9.403. What criteria should be followed when providing refugee employment services?

Services for employment must meet the following criteria:

- (1) All assignments must be within the scope of the individual's employability plan.
- (2) Services or employment must be within the capability of the individual to perform the task on a regular basis.
- (3) The total daily commuting time to and from home to the service or employment site normally must not exceed two hours.
- (4) The service or work site must not be in violation of applicable federal, state, or local health and safety standards.
- (5) Assignments must not be discriminatory in terms of sex, creed, color, or national origin.
- (6) Appropriate work may be temporary, part-time, full-time, or seasonal work.
- (7) Wages must meet or exceed the federal or state minimum wage law.
- (8) The daily and weekly hours of work must not exceed those usual to the position.

§9.405. How are refugees prioritized for employment services under Refugee Social Services (RSS) grants?

Services under RSS grant funding must be provided to refugees in the following priority order:

- (1) all newly arriving refugees within their first year in the United States who apply for services;
- (2) refugees who are receiving cash assistance;
- (3) unemployed refugees who are not receiving cash assistance; and
- (4) employed refugees in need of services to keep employment or to gain economic self-sufficiency.

§9.407. How must Refugee Social Services (RSS) employment services be designed?

(a) All RSS employment services must be designed to meet the specific needs of refugees in keeping with the rules and objectives of the refugee program.

(b) Vocational training, job skills training, and on-the-job training can be provided through programs available in the community. These training programs do not have to be designed specifically for refugees as long as they meet the standard state requirements.

§9.409. What types of services are appropriate employment services?

Appropriate employment services include the development of a family self-sufficiency plan and an individual employability plan, job orientation, job clubs and workshops, job development, job referrals, job search and job placement, and follow-up designed to help a refugee find employment within one year of enrollment in the program.

§9.411. Can a contractor consider participants as a family unit if they do not live together?

No. Participants must live together to be considered a family unit.

§9.413. If two or more unrelated participants live together, are they considered a family unit?

No. The contractor must consider unrelated participants who live together individually under the Family Self-Sufficiency Plan.

§9.415. Is a Family Self-Sufficiency Plan (FSSP) required for all employable participants?

Yes. The family and contractor must develop a FSSP for each eligible family unit that addresses the family's need from the time of arrival until they become economically independent. The FSSP must address employment-related services and other social service needs and must:

- (1) determine the income level needed for the family to attain self-sufficiency;
- (2) establish a strategy and timetable for obtaining the level of family income needed;
- (3) include an employability plan for every member of the family who is employable; and
- (4) include a plan to address the social needs that may be barriers to self-sufficiency.

§9.417. What does an Individual Employability Plan include and how is it developed?

An individual and contractor must develop an employability plan as part of the Family Self Sufficiency plan and design it to:

- (1) include strategies that will lead to the refugee's earliest possible employment;
- (2) be structured in a way that encourages early employment;
- (3) include a definite employment goal, attainable in the shortest time period consistent with the employability of the refugee; and
- (4) address job search requirements, if appropriate.

§9.419. Are refugees required to accept job offers?

Refugees must accept appropriate job offers even if it interrupts planned program services unless:

- (1) the refugee is currently participating in a program that is in progress of on-the-job training or vocational training as part of an approved employability plan;

(2) the position offered is vacant due to strike, lockout, or other verifiable labor dispute; or

(3) the individual would be required to work for an employer against the conditions of an existing union membership agreement.

§9.421. What criteria must employment training services meet?

The employment training must meet local employer requirements, help the individual to be competitive in the local job market, and lead to employment within one year of enrollment.

§9.423. Can employment training be provided beyond one year?

No. All training programs should be completed and lead to employment within one year of enrollment.

§9.425. Do participants in vocational employment training programs have to work while receiving training?

Yes. Vocational training should be provided to the greatest extent possible outside normal working hours to allow for employment.

§9.427. Can a contractor enroll a refugee in a professional recertification program?

Yes. If an individual is a professional in need of professional refresher training and other recertification services in order to qualify to practice his or her profession in the United States, the training may consist of full-time attendance at a college or professional training program provided that the training:

- (1) is approved as part of the employability plan;
- (2) does not exceed 1 year;
- (3) is expected to result in relicensing upon completion;

and

- (4) is made available only to employed individuals.

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SUBCHAPTER E. EMPLOYMENT SERVICES: REFUGEE CASH ASSISTANCE (RCA)

40 TAC §§9.501, 9.503, 9.505, 9.507, 9.509, 9.511, 9.513, 9.515, 9.517, 9.519

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes DHS to administer public assistance programs, and under Government Code, Chapter 752, which creates the Office of Immigration and Refugee Affairs in DHS.

The new sections implement the Human Resources Code, §§22.001-22.036 and the Government Code, Chapter 752.

§9.501. What is the purpose of this subchapter?

This subchapter includes the specific requirements for providing Refugee Cash Assistance employment services.

§9.503. What regulations govern the Refugee Cash Assistance (RCA) program?

Regulations governing the RCA program are found in Chapter 7 of this title (relating to Refugee Cash Assistance and Medical Assistance Programs).

§9.505. What are the employment requirements for participants in the Refugee Cash Assistance (RCA) program?

Participants in the RCA program must meet all requirements for employment established by federal regulations, which include:

(1) registering for work with a Refugee Social Services or Targeted Assistance contractor providing employment services, if available in the community, and

(2) participating in employability services within 30 days of enrollment, including:

- (A) language services;
- (B) participating in job search or employment services;
- (C) going to all job interviews; and
- (D) accepting appropriate offers of employment.

§9.507. Can an applicant for refugee cash assistance claim adverse effects of accepting employment?

Yes. However, all claims that services or employment would cause adverse mental or physical effects must be based on adequate medical testimony from a physician or licensed certified psychologist who indicates that participation would affect the individual's physical or mental health. If approved by the provider, the applicant is not be required to participate in employment activities.

§9.509. What are the employment requirements for Refugee Cash Assistance participants living outside of refugee resettlement areas?

If a refugee-funded employment program is not available in the area in which the refugee resides, the refugee must participate in other appropriate employment services that are available in the area.

§9.511. When must Refugee Cash Assistance (RCA) participants register for employment services?

All non-exempt RCA recipients must register and participate in employment services within 30 days of enrollment.

§9.513. Do contractors need to schedule and provide services for Refugee Cash Assistance (RCA) recipients?

Yes. Contractors must schedule and provide employment services for all non-exempt RCA recipients to enable the recipients to meet the 30-day participation requirement.

§9.515. What are the requirements for Refugee Cash Assistance (RCA) recipients who are employed fewer than 30 hours per week?

All non-exempt RCA recipients who are employed fewer than 30 hours per week must accept part-time employability services as long as these services do not interfere with the recipient's job.

§9.517. Are there coordination requirements between employment services and Refugee Cash Assistance (RCA) providers?

Yes. RCA providers, Refugee Social Services, and Targeted Assistance Grant employment providers must coordinate services for all RCA recipients.

§9.519. What procedures must a contractor follow when authorizing or denying an applicant benefits?

Contractors must follow procedures established by federal regulations under 45 CFR §400.54 as applicable for a public/private administered

program when authorizing or denying services. This includes giving the participant a written notice that clearly states:

- (1) the action;
- (2) the reason(s) for the action; and
- (3) the right to a hearing in the case of denial.

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SUBCHAPTER F. ENGLISH AS A SECOND LANGUAGE (ESL) SERVICES

40 TAC §9.601, §9.602

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes DHS to administer public assistance programs, and under Government Code, Chapter 752, which creates the Office of Immigration and Refugee Affairs in DHS.

The new sections implement the Human Resources Code, §§22.001-22.036 and the Government Code, Chapter 752.

§9.601. What is the purpose of this subchapter?

This subchapter includes the specific requirements for the English as a Second Language component of refugee social services.

§9.602. Can English as a Second Language (ESL) be provided as a stand-alone service?

No. ESL must be provided at the same time as other employability services or employment. To avoid interference with employment, ESL must be provided outside normal working hours to the greatest extent possible.

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SUBCHAPTER G. OTHER EMPLOYABILITY SERVICES

40 TAC §§9.701, 9.703, 9.705, 9.707, 9.709, 9.711, 9.713, 9.715, 9.717, 9.719, 9.721

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes DHS to administer public assistance programs, and under Government Code, Chapter 752, which creates the Office of Immigration and Refugee Affairs in DHS.

The new sections implement the Human Resources Code, §§22.001-22.036 and the Government Code, Chapter 752.

§9.701. What is the purpose of this subchapter?

This subchapter includes the requirements for other allowable employability services under refugee social services.

§9.703. What other employability services may be provided under Refugee Social Services and Targeted Assistance grant-funded programs?

Contractors may provide the following additional employability services in an effort to help participants find work and become self-sufficient:

- (1) information and referral; and
- (2) outreach and social adjustment services, including:
 - (A) emergency services;
 - (B) health-related services;
 - (C) home management services;
 - (D) day care for children;
 - (E) transportation;
 - (F) translation and interpreter services;
 - (G) case management services; and
 - (H) assistance with acquiring citizenship and naturalization services and adjustment of immigration status.

§9.705. What are outreach services?

Outreach services include activities designed to familiarize refugees with available community services and to help them access these services as needed.

§9.707. What are emergency services?

Emergency services provide assessment and short-term counseling to individuals or families in crisis and provide appropriate referrals to available resources.

§9.709. What are health services?

Health services include:

- (1) information and referral to community resources;
- (2) assistance in scheduling appointments and obtaining services; and
- (3) counseling to assist individuals or families to understand and identify physical and mental health needs.

§9.711. What are home management services?

Home management services include instruction on managing household budgets, home maintenance, nutrition, housing standards and tenant's rights, and other consumer education services.

§9.713. When can child day care services be provided?

Child day care services can be provided if it is necessary for participation in employment services.

§9.715. What standards must child day care meet?

Child day care must meet the standards normally required by the state in Temporary Assistance for Needy Family programs. Licensing standards for day care facilities are established by the Texas Department of

Protective and Regulatory Services. Payment for child day care may also be made to certain relatives, including grandparents, aunts and uncles, and siblings over the age of 18 who do not live in the same household.

§9.717. When can transportation services be provided?

Transportation services defined in the Refugee Social Services Provider Manual can be provided if the service is needed to help find or keep employment.

§9.719. What are citizenship and naturalization services?

Citizenship and naturalization services include:

(1) English-language training and civics instruction to prepare for citizenship application or adjustment of status;

(2) assistance to disabled refugees in obtaining disability waivers from English and civics requirements for naturalization; and

(3) interpreter and translation assistance for the citizenship interview.

§9.721. Can immigration fee payments be made under Refugee Social Services (RSS) contracts?

No. Immigration fee payments are not allowed under RSS or Targeted Assistance grant funding.

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SUBCHAPTER H. TARGETED ASSISTANCE GRANT (TAG) SERVICES

40 TAC §§9.801 - 9.806

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes DHS to administer public assistance programs, and under Government Code, Chapter 752, which creates the Office of Immigration and Refugee Affairs in DHS.

The new sections implement the Human Resources Code, §§22.001-22.036 and the Government Code, Chapter 752.

§9.801. What is the purpose of this subchapter?

This subchapter provides the specific requirements for Targeted Assistance Grant (TAG) programs.

§9.802. What is a Targeted Assistance Grant (TAG)?

TAG provides funding to states in which, because of factors such as large refugee populations (over 3,000 within a five-year time period) and/or high use of public assistance by refugees, there is a demonstrated need to supplement available resources for refugees.

§9.803. Are Targeted Assistance Grant (TAG) programs subject to the same regulations as other Refugee Social Services (RSS) programs?

Yes. TAG programs must follow the same regulations as other RSS programs.

§9.804. What services are allowable under Targeted Assistance Grant (TAG) programs?

Allowable services under TAG programs include the scope of services under §9.302 of this title (relating to What services may be provided to assist refugees with employability skills?)

§9.805. Which refugee groups receive priority for services under Targeted Assistance Grant (TAG) programs?

Services under TAG programs must be provided to refugees in the following order of priority:

(1) cash assistance recipients;

(2) unemployed refugees who are not receiving cash assistance; and

(3) employed refugees in need of services to retain or improve employment.

§9.806. Can Targeted Assistance Grant (TAG) and Refugee Social Services (RSS) assistance be provided to a refugee at the same time?

Yes. RSS and TAG services can be provided at the same time to a refugee as long as the services are different.

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SUBCHAPTER I. UNACCOMPANIED REFUGEE MINOR (URM) PROGRAM

40 TAC §§9.901 - 9.907

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes DHS to administer public assistance programs, and under Government Code, Chapter 752, which creates the Office of Immigration and Refugee Affairs in DHS.

The new sections implement the Human Resources Code, §§22.001-22.036 and the Government Code, Chapter 752.

§9.901. What is the purpose of this subchapter?

This subchapter outlines the requirements for providing child welfare services to unaccompanied refugee minors.

§9.902. Who provides care and services for unaccompanied refugee minors (URM)?

The Texas Department of Protective and Regulatory Services may provide care to an unaccompanied minor directly or through arrangements with public or private child welfare agencies approved and licensed under state law.

§9.903. What services are available to unaccompanied refugee minors?

Unaccompanied refugee minors are eligible for the same range of child welfare benefits and services that are available to other children in the state. The contractor must develop a plan to ensure that the child is

placed in a foster home or other setting approved by the legally responsible agency and also provide the following services according to the individual need of the child:

- (1) case planning;
 - (2) family reunification;
 - (3) health screening and treatment;
 - (4) orientation and preparation for participation in American society;
 - (5) English as a Second Language instruction;
 - (6) occupational and cultural training;
 - (7) preservation of the child's ethnic and religious heritage;
- and
- (8) regular monitoring and review of the child's living arrangements.

§9.904. How long can an unaccompanied refugee minor (URM) receive services?

The URM is eligible for benefits until the minor:

- (1) is reunited with a parent;
- (2) is united with a non-parental adult (relative or nonrelative) who can take care of the child and who has been granted custody and/or guardianship by the state; or
- (3) reaches 18 years of age.

§9.905. How are services provided to unaccompanied refugee minors (URM) who move to or from another state?

After the initial placement of a minor, the same procedures that govern the movement of non-refugee foster cases to other states apply to the URM.

§9.906. Are unaccompanied refugee minors (URM) eligible for adoption?

URMs are generally not eligible for adoption, since family reunification is the objective of the program. In certain rare circumstances, a state court might rule that adoption is in the best interest of the child.

§9.907. How is adult legal responsibility for an unaccompanied refugee minor established?

Legal responsibility is established in accordance with applicable state laws and federal requirements in 45 CFR §400.115. In establishing legal responsibility, however, the contractor should not contact the minor's natural parents in their native country, because contact could be dangerous to the parents.

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CHAPTER 54. FAMILY VIOLENCE PROGRAM

The Texas Department of Human Services (DHS) proposes to repeal §§54.101; 54.201-54.207; 54.301-54.313; 54.401-54.414; 54.501-54.527; 54.601-54.610; 54.701-54.718; 54.801-54.813; 54.901-54.904; 54.1001-54.1008; 54.1101-54.1114; 54.1201-54.1207; 54.1301-54.1303; 54.1401-54.1414; 54.1501-54.1503; 54.1701-54.1707; 54.1801-54.1812; 54.1901-54.1914; 54.2001-54.2027; 54.3001-54.3003; 54.4001-54.4019; and 54.5001-54.5010.

DHS proposes new rules in Chapter 54, Family Violence Program, consisting of Subchapter A, Definitions, §54.1; Subchapter B, Shelter Centers, Division 1, Board of Directors, §§54.101-54.110; Division 2, Contract Standards, §§54.201-54.224; Division 3, Fiscal Management, §§54.301-54.316; Division 4, Personnel, §§54.401-54.418; Division 5, Facility, Safety, and Health Requirements, §§54.501-54.512; Division 6, Program Administration, §§54.601-54.642; Division 7, Service Delivery, §§54.701-54.726; Subchapter C, Special Nonresidential Projects, Division 1, Board of Directors, §§54.801-54.804; Division 2, Contract Standards, §§54.901-54.917; Division 3, Fiscal Management, §§54.1001-54.1015; Division 4, Personnel, §§54.1101-54.1108; Division 5, Facility, Safety, and Health Requirements, §§54.1201-54.1209; Division 6, Program Administration, §§54.1301-54.1326; Division 7, Service Delivery, §§54.1401-54.1410; Subchapter D, Nonresidential Centers, Division 1, Board of Directors, §§54.1501-54.1510; Division 2, Contract Standards, §§54.1601-54.1622; Division 3, Fiscal Management, §§54.1701-54.1716; Division 4, Personnel, §§54.1801-54.1818; Division 5, Facility, Safety, and Health Requirements, §§54.1901-54.1909; Division 6, Program Administration, §§54.2001-54.2037; and Division 7, Service Delivery, §§54.2101-54.2121. The purpose of the repeals and new sections is to update the content of some rules in response to legislation, improve clarity and client services based on recommendations by service providers and DHS staff, and to state the Family Violence Program rules in language that is easier for the public to understand. Subchapters have been reorganized and divisions introduced to improve usability. Proposed rules address board, fiscal, contract, personnel, facility, administration, and service standards for shelter centers, special nonresidential projects, and nonresidential centers.

The proposal implements Chapter 51 of the Human Resources Code, which was amended by Senate Bill (SB) 47, 77th Legislature. The following paragraphs in proposed §54.1 reflect changes based on that legislation: (11), (12), (15), (20), (21), and (25). Paragraphs (4), (7), (8)-(10), (14), (16)-(18), (22), and (24) in proposed §54.1 incorporate recommendations by service providers and DHS staff.

Contract standards in proposed Division 2 of Subchapters B, C, and D, concerning contractor eligibility and factors in awarding contracts, also implement SB 47. Contract standards concerning the application process, reapplication after contract termination, variance or waiver requests, and multiple DHS contracts, reflect recommendations by service providers and DHS staff.

Personnel issues in proposed Division 4 of Subchapters B, C, and D, concerning applicable personnel laws, program training for employees, and compliance with the Americans with Disabilities Act, implement staff and service provider recommendations. Facility, safety, and health requirements in proposed Division 5 of Subchapters B, C, and D, concerning disruption

in operations, food preparation and service, and health and hygiene procedures, reflect staff and service provider recommendations. Program administration guidelines in proposed Division 6 of Subchapters B, C, and D, concerning required services, eligibility, denial of services, limited English proficiency, confidentiality policy, and volunteer recruitment, implement staff and service provider recommendations. Service delivery requirements in proposed Division 7 of Subchapters B, C, and D, concerning legal assistance and termination of services, reflect staff and service provider recommendations.

James R. Hine, Commissioner, has determined that, for the first five-year period the proposed sections will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Hine also has determined that, for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be rules that are more clearly understood by contractors who use them, which will improve client services. The proposed changes clarify language for potential contractors who consider seeking DHS funding, and also make the rules more easily understood by the general public. There will be no effect on small or micro businesses as a result of enforcing or administering the sections, because the rules only affect Family Violence Program contracted service providers, which are required to be nonprofit organizations. There is no anticipated economic cost to people who are required to comply with the proposed sections. There is no anticipated effect on local employment in geographic areas affected by these sections.

Questions about the content of this proposal may be directed to Terri St. Arnauld at (512) 438-3397 in DHS's Family Violence Program. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-236, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

SUBCHAPTER A. DEFINITIONS

40 TAC §54.1

The new section is proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The new section implements the Human Resources Code, §§51.001-51.011.

§54.1. What do certain words and terms in the chapter mean?

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

(1) Civil justice system--A network of courts and legal processes that enforce, restore, or protect private and personal rights.

(2) Community education--The efforts or activities performed to increase public awareness about family violence and the availability of services for victims of family violence.

(3) Cooperation with criminal justice officials--Making efforts on behalf of victims of family violence to:

(A) establish ongoing working relationships with the local criminal justice system, including but not limited to law enforcement, prosecutors, the courts, and probation and parole departments; and

(B) educate the local criminal justice system about family violence and the need for policies that ensure safety for victims of family violence and hold batterers accountable.

(4) Cooperative living agreement--An agreement between the shelter and residents that promotes health, safety, and daily shelter operations.

(5) Criminal justice system--A network of court and legal processes that deals with the enforcement of criminal laws. A crime is an action or omission in violation of law and is an offense against the state.

(6) Crisis call hotline--A telephone number answered 24 hours a day, every day of the year by trained family violence center or special nonresidential project volunteers, employees, or Texas Department of Human Services (DHS)-approved services contractors who provide immediate intervention through safety planning, including assessing for danger; understanding and support; and information, education, and referrals to victims of family violence.

(7) Direct service--A face-to-face DHS-contracted service provided by an employee or volunteer of the family violence center or special nonresidential project or by a DHS-approved subcontractor.

(8) Education arrangements for children--Direct services that result in a resident, nonresident, or program participant child complying with the compulsory attendance requirements found in the Texas Education Code. It does not include transportation.

(9) Emergency medical care--Assistance in responding to any urgent medical situation for a resident, nonresident, program participant, or victim of family violence being considered for acceptance to or accessing family violence services.

(10) Emergency transportation--Providing or arranging transportation:

(A) to and from emergency medical facilities for a resident, nonresident, program participant, or victim of family violence being considered for acceptance;

(B) from a safe place to the shelter for people being considered for acceptance as residents of the shelter and who are located within the shelter's service area; or

(C) from a safe place to a shelter for program participants located within the nonresidential center's service area.

(11) Family violence--An act by a member of a family or household against another member of the family or household that is:

(A) intended to result in physical harm, bodily injury, or assault;

(B) a threat that reasonably places the member in fear of imminent physical harm, bodily injury, or assault, but does not include defensive measures to protect oneself; or

(C) intended to inflict emotional harm, including an act of emotional abuse.

(12) Intervention services--Direct services for a resident, nonresident, or program participant child or adult victim of family violence that provide:

(A) safety planning;

- (B) understanding and support;
- (C) advocacy;
- (D) case management;
- (E) information and education; and
- (F) resource assistance.

(13) Legal assistance--Direct services to the resident, non-resident, or program participant that include:

- (A) identifying individual legal needs;
- (B) explaining legal rights and options;
- (C) providing support and accompaniment in the pursuit of those options;
- (D) assisting in safety planning; and
- (E) providing advocacy.

(14) Nonresident--An adult or child victim of family violence who receives services from a shelter center without receiving shelter.

(15) Nonresidential center--A DHS-funded program that:

- (A) is operated by a public or private nonprofit organization; and
- (B) provides comprehensive nonresidential services to victims of family violence as described in the Service Delivery section of the DHS Family Violence Program Nonresidential Center Provider Manual.

(16) Program participant--An adult or child victim of family violence who receives services from a nonresidential center or special nonresidential project.

(17) Referral system to existing community services--An organized process for providing information and referring residents, nonresidents, or program participants to existing community resources, including but not limited to:

- (A) medical care;
- (B) legal representation;
- (C) protective services for abuse of:
 - (i) children;
 - (ii) the elderly; and
 - (iii) people with disabilities;
- (D) resource assistance;
- (E) public assistance;
- (F) counseling and treatment services;
- (G) children's services; and
- (H) other appropriate family violence services.

(18) Resident--An adult or child victim of family violence who is admitted to the shelter.

(19) Satellite shelter--An additional shelter operated by a shelter center, located in a different city, that meets the criteria stated in these sections.

(20) Shelter center--A DHS-funded program that:

- (A) is operated by a public or private nonprofit organization; and

(B) provides comprehensive residential and nonresidential services to victims of family violence as described in the Service Delivery section of the DHS Family Violence Program Shelter Center Provider Manual.

(21) Special nonresidential project--A project that:

(A) is operated by a public or private nonprofit organization; and

(B) provides at least one specialized family violence service in addition to all required core services as described in the Service Delivery section of the DHS Family Violence Special Nonresidential Project Provider Manual.

(22) Standards--The minimum DHS requirements as stated in this chapter.

(23) Training and employment information--Providing information and referrals to residents, nonresidents, or program participants about employment training and employment opportunities, either directly or through formal arrangements with other organizations.

(24) Twenty-four-hour-a-day shelter--A DHS-funded shelter center facility that provides access, admittance, and temporary emergency residence for victims of family violence 24 hours a day, every day of the year.

(25) Victim of family violence--Includes:

(A) an adult member of a family or household who is subjected to an act of family violence;

(B) a member of the household of the adult described in subparagraph (A) of this paragraph, other than the member of the household who commits the act of family violence, including an act of emotional abuse;

(C) those people not directly served by a DHS family violence provider; and

(D) a member of the family or household who may have been subjected to sexual abuse by a batterer.

(26) Volunteer recruitment and training program--A process for soliciting a diverse group of people from the community to work as non-paid staff and providing them with information about family violence and services for victims of family violence through a structured orientation.

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

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Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

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40 TAC §54.101

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

The repeal is proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The repeal implements the Human Resources Code, §§51.001-51.011.

§54.101. *Definitions.*

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

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General Counsel, Legal Services

Texas Department of Human Services

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SUBCHAPTER B. BOARD OF DIRECTORS

40 TAC §§54.201 - 54.207

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

The repeals are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The repeals implement the Human Resources Code, §§51.001-51.011.

§54.201. *Financial Responsibility.*

§54.202. *Functional Responsibilities.*

§54.203. *Board Composition.*

§54.204. *Orientation.*

§54.205. *In-Service Training.*

§54.206. *Confidentiality.*

§54.207. *Record Retention.*

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

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SUBCHAPTER C. CONTRACT STANDARDS

40 TAC §§54.301 - 54.313

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of

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

The repeals are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The repeals implement the Human Resources Code, §§51.001-51.011.

§54.301. *Eligibility To Contract.*

§54.302. *Eligibility for Satellite Shelter Centers.*

§54.303. *Contract Procurement.*

§54.304. *Funding.*

§54.305. *Level of Funding Scale.*

§54.306. *Waiver.*

§54.307. *Contract Application.*

§54.308. *New Contractors.*

§54.309. *Current Contractors.*

§54.310. *Review of the Purchase of Services Budget and Plan of Operation.*

§54.311. *Contractor's Records.*

§54.312. *Contract Amendments.*

§54.313. *Change in Corporate Control.*

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

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Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

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SUBCHAPTER D. FISCAL MANAGEMENT

40 TAC §§54.401 - 54.414

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The repeals are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The repeals implement the Human Resources Code, §§51.001-51.011.

§54.401. *Accounting System Requirements.*

§54.402. *Budget.*

§54.403. *Contributions.*

§54.404. *Cash/In-Kind Match.*

§54.405. *Local Matching Funds.*

§54.406. *General Management and Overhead Costs.*

§54.407. *Monthly Reporting and Billing.*

§54.408. *Required Quarterly Reports.*

§54.409. *Required Annual Report.*

§54.410. *Audit Requirements.*

§54.411. *Fiscal and Program Monitoring and Evaluation.*

- §54.412. *Contract Monitoring.*
- §54.413. *Shelter Responses to Monitoring Reports.*
- §54.414. *Internal Monitoring System.*

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

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SUBCHAPTER E. SHELTER PERSONNEL

40 TAC §§54.501 - 54.527

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

The repeals are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The repeals implement the Human Resources Code, §§51.001-51.011.

- §54.501. *Fair Employment Law.*
- §54.502. *Personnel Policies and Procedures.*
- §54.503. *Personnel Files.*
- §54.504. *Maintenance of Personnel Files.*
- §54.505. *Fair Labor Standards Act of 1938 Requirements.*
- §54.506. *Contract Labor.*
- §54.507. *Disabilities in the Workforce.*
- §54.508. *Sexual Harassment.*
- §54.509. *Conflict of Interest.*
- §54.510. *Nepotism.*
- §54.511. *Recruitment Procedures.*
- §54.512. *Interview and Hiring Procedures.*
- §54.513. *Job Descriptions.*
- §54.514. *Reference Checking.*
- §54.515. *Rules of Conduct.*
- §54.516. *Leave.*
- §54.517. *Staff Entitlement and Procedures.*
- §54.518. *Staff Orientation and Training.*
- §54.519. *Initial Training.*
- §54.520. *Staff Development.*
- §54.521. *Confidentiality of Staff Records.*
- §54.522. *Performance Evaluation.*
- §54.523. *Probationary Period.*
- §54.524. *Termination Procedures.*
- §54.525. *Grievance Procedures.*

- §54.526. *Domestic Violence in the Workplace.*
- §54.527. *Record Retention.*

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

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SUBCHAPTER F. FACILITY SAFETY AND HEALTH

40 TAC §§54.601 - 54.610

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

The repeals are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The repeals implement the Human Resources Code, §§51.001-51.011.

- §54.601. *Physical Plant.*
- §54.602. *Food Preparation and Serving Areas.*
- §54.603. *Clothing.*
- §54.604. *24-Hour-a-Day Shelter--Resident's Belongings.*
- §54.605. *Safety and Security.*
- §54.606. *24-Hour-a-Day Shelter--Safety and Security.*
- §54.607. *Health and Hygiene.*
- §54.608. *24-Hour-a-Day Shelter: Personal Hygiene Items.*
- §54.609. *Communicable Disease.*
- §54.610. *Immunizations.*

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

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SUBCHAPTER G. PROGRAM ADMINISTRATION

40 TAC §§54.701 - 54.718

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

The repeals are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The repeals implement the Human Resources Code, §§51.001-51.011.

- §54.701. *Services Provided.*
- §54.702. *Client Eligibility State and Federal Laws.*
- §54.703. *Client Eligibility and Minors.*
- §54.704. *Client Eligibility Policies and Procedures.*
- §54.705. *Confidentiality Policy and Procedures.*
- §54.706. *Confidentiality Agreement.*
- §54.707. *Confidentiality Policies and Procedures Training.*
- §54.708. *Content of Case Files.*
- §54.709. *Access to Case Files.*
- §54.710. *Release of Information.*
- §54.711. *Court Orders.*
- §54.712. *Report of Abuse.*
- §54.713. *Retention and Destruction of Records.*
- §54.714. *24-Hour-a-Day Shelter Services.*
- §54.715. *Counseling Services.*
- §54.716. *Cooperation with Criminal Justice Officials.*
- §54.717. *Community Education.*
- §54.718. *Volunteer Recruitment and Training 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.

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SUBCHAPTER H. SERVICE DELIVERY

40 TAC §§54.801 - 54.813

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

The repeals are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The repeals implement the Human Resources Code, §§51.001-51.011.

- §54.801. *Crisis Call Hotline Procedures.*
- §54.802. *Emergency Transportation Procedures.*
- §54.803. *Non-Emergency Transportation.*
- §54.804. *Initial Delivery of Direct Services.*
- §54.805. *24-Hour-a-Day Shelter: Cooperative Living Agreements.*

§54.806. *24-Hour-a-Day Shelter: Voluntary and Involuntary Termination of Services.*

§54.807. *Emergency Medical Care.*

§54.808. *Non-Emergency Medical Care.*

§54.809. *Legal Assistance in the Civil and Criminal Justice Systems.*

§54.810. *Counseling Services.*

§54.811. *Educational Arrangement for Children.*

§54.812. *Referral System to Existing Community Services.*

§54.813. *Information about Training and Seeking Employment.*

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

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Paul Leche

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SUBCHAPTER I. BOARD OF DIRECTORS

40 TAC §§54.901 - 54.904

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

The repeals are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The repeals implement the Human Resources Code, §§51.001-51.011.

§54.901. *Nonprofit Corporation Act.*

§54.902. *Financial and Oversight Responsibilities.*

§54.903. *Confidentiality.*

§54.904. *Record Retention.*

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

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SUBCHAPTER J. CONTRACT AND FISCAL STANDARDS

40 TAC §§54.1001 - 54.1008

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

The repeals are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The repeals implement the Human Resources Code, §§51.001-51.011.

- §54.1001. *Eligibility to Contract.*
- §54.1002. *New Contractors.*
- §54.1003. *Current Contractors.*
- §54.1004. *Review of the Purchase of Services Budget and Plan of Operation.*
- §54.1005. *Contractor's Records.*
- §54.1006. *Contract Amendments.*
- §54.1007. *Subcontracts.*
- §54.1008. *Change in Corporate Control.*

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

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SUBCHAPTER K. FISCAL MANAGEMENT

40 TAC §§54.1101 - 54.1114

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

The repeals are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The repeals implement the Human Resources Code, §§51.001-51.011.

- §54.1101. *Accounting System Requirements.*
- §54.1102. *Operating Budget for Contractors.*
- §54.1103. *Contributions.*
- §54.1104. *Cash/In-Kind Match.*
- §54.1105. *Local Matching Funds.*
- §54.1106. *General Management and Overhead Costs.*
- §54.1107. *Monthly Reporting and Billing.*
- §54.1108. *Required Quarterly Reports.*
- §54.1109. *Required Annual Report.*
- §54.1110. *Audit Requirements.*
- §54.1111. *Fiscal and Program Monitoring and Evaluation.*
- §54.1112. *Contract Monitoring.*
- §54.1113. *Special Nonresidential Project Responses to Monitoring Reports.*
- §54.1114. *Internal Monitoring System.*

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

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SUBCHAPTER L. PERSONNEL

40 TAC §§54.1201 - 54.1207

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

The repeals are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The repeals implement the Human Resources Code, §§51.001-51.011.

- §54.1201. *Fair Employment Law.*
- §54.1202. *Fair Labor Standards Act of 1938 Requirements.*
- §54.1203. *Disabilities in the Workforce.*
- §54.1204. *Job Descriptions.*
- §54.1205. *Leave.*
- §54.1206. *Initial Training.*
- §54.1207. *Record Retention.*

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

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SUBCHAPTER M. FACILITY SAFETY AND HEALTH

40 TAC §§54.1301 - 54.1303

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

The repeals are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The repeals implement the Human Resources Code, §§51.001-51.011.

- §54.1301. *Physical Plant.*
- §54.1302. *Safety and Security.*
- §54.1303. *Health and Hygiene for Children's Services.*

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SUBCHAPTER N. PROGRAM ADMINISTRATION STANDARDS

40 TAC §§54.1401 - 54.1414

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The repeals are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The repeals implement the Human Resources Code, §§51.001-51.011.

§54.1401. *Client Eligibility State and Federal Laws.*

§54.1402. *Client Eligibility and Minors.*

§54.1403. *Client Eligibility Policies and Procedures.*

§54.1404. *Confidentiality Policy and Procedures.*

§54.1405. *Confidentiality Agreement.*

§54.1406. *Confidentiality Policies and Procedures Training.*

§54.1407. *Content of Case Files.*

§54.1408. *Verification of Client Services.*

§54.1409. *Access to Case Files.*

§54.1410. *Release of Information.*

§54.1411. *Court Orders.*

§54.1412. *Report of Abuse.*

§54.1413. *Counseling Services.*

§54.1414. *Retention and Destruction of Records.*

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SUBCHAPTER O. SERVICE DELIVERY

40 TAC §§54.1501 - 54.1503

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The repeals are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The repeals implement the Human Resources Code, §§51.001-51.011.

§54.1501. *Required Core Services.*

§54.1502. *Initial Delivery of Direct Services.*

§54.1503. *Voluntary and Involuntary Termination of Services.*

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SUBCHAPTER P. NONRESIDENTIAL CENTER BOARD OF DIRECTORS

40 TAC §§54.1701 - 54.1707

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

The repeals are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The repeals implement the Human Resources Code, §§51.001-51.011.

§54.1701. *Nonresidential Center Financial Responsibility.*

§54.1702. *Nonresidential Center Functional Responsibilities.*

§54.1703. *Nonresidential Center Board Composition.*

§54.1704. *Nonresidential Center Board Orientation.*

§54.1705. *Nonresidential Center Board Inservice Training.*

§54.1706. *Nonresidential Center Confidentiality.*

§54.1707. *Nonresidential Center Record Retention.*

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

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SUBCHAPTER Q. NONRESIDENTIAL CENTER CONTRACT AND FISCAL STANDARDS

40 TAC §§54.1801 - 54.1812

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The repeals are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The repeals implement the Human Resources Code, §§51.001-51.011.

- §54.1801. *Nonresidential Center Eligibility to Contract.*
- §54.1802. *Nonresidential Center Contract Procurement.*
- §54.1803. *Nonresidential Center Level of Funding Scale.*
- §54.1804. *Nonresidential Center Waiver.*
- §54.1805. *Nonresidential Center Contract Application.*
- §54.1806. *Nonresidential Center New Contractors.*
- §54.1807. *Nonresidential Center Current Contractors.*
- §54.1808. *Nonresidential Center Review of the Purchase of Services Budget and Plan of Operation.*
- §54.1809. *Nonresidential Center Contractor's Records.*
- §54.1810. *Nonresidential Center Contract Amendments.*
- §54.1811. *Nonresidential Center Subcontracts.*
- §54.1812. *Nonresidential Center Change in Corporate Control.*

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SUBCHAPTER R. NONRESIDENTIAL CENTER FISCAL MANAGEMENT

40 TAC §§54.1901 - 54.1914

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

The repeals are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The repeals implement the Human Resources Code, §§51.001-51.011.

- §54.1901. *Nonresidential Center Accounting System Requirements.*
- §54.1902. *Nonresidential Center Budget.*
- §54.1903. *Nonresidential Center Contributions.*
- §54.1904. *Nonresidential Center Cash/In-Kind Match.*

- §54.1905. *Nonresidential Center Local Matching Funds.*
- §54.1906. *Nonresidential Center General Management and Overhead Costs.*
- §54.1907. *Nonresidential Center Monthly Reporting and Billing.*
- §54.1908. *Nonresidential Center Required Quarterly Reports.*
- §54.1909. *Nonresidential Center Required Annual Report.*
- §54.1910. *Nonresidential Center Audit Requirements.*
- §54.1911. *Nonresidential Center Fiscal and Program Monitoring and Evaluation.*
- §54.1912. *Nonresidential Center Contract Monitoring.*
- §54.1913. *Nonresidential Center Responses to Monitoring Reports.*
- §54.1914. *Nonresidential Center Internal Monitoring System.*

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SUBCHAPTER S. NONRESIDENTIAL CENTER PERSONNEL

40 TAC §§54.2001 - 54.2027

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The repeals are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The repeals implement the Human Resources Code, §§51.001-51.011.

- §54.2001. *Fair Employment Law.*
- §54.2002. *Personnel Policies and Procedures.*
- §54.2003. *Personnel Files.*
- §54.2004. *Maintenance of Personnel Files.*
- §54.2005. *Fair Labor Standards Act of 1938 Requirements.*
- §54.2006. *Contract Labor.*
- §54.2007. *Disabilities in the Workforce.*
- §54.2008. *Sexual Harassment.*
- §54.2009. *Conflict of Interest.*
- §54.2010. *Nepotism.*
- §54.2011. *Recruitment Procedures.*
- §54.2012. *Interview and Hiring Procedures.*
- §54.2013. *Job Descriptions.*
- §54.2014. *Reference Checking.*
- §54.2015. *Rules of Conduct.*
- §54.2016. *Leave.*

- §54.2017. *Staff Entitlement and Procedures.*
- §54.2018. *Staff Orientation and Training.*
- §54.2019. *Initial Training.*
- §54.2020. *Staff Development.*
- §54.2021. *Confidentiality of Staff Records.*
- §54.2022. *Performance Evaluation.*
- §54.2023. *Probationary Period.*
- §54.2024. *Termination Procedures.*
- §54.2025. *Grievance Procedures.*
- §54.2026. *Domestic Violence in the Workplace.*
- §54.2027. *Record Retention.*

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SUBCHAPTER T. NONRESIDENTIAL CENTER FACILITY SAFETY

40 TAC §§54.3001 - 54.3003

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The repeals are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The repeals implement the Human Resources Code, §§51.001-51.011.

§54.3001. *Physical Plant.*

§54.3002. *Safety and Security.*

§54.3003. *Health and Hygiene for Children's Services.*

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SUBCHAPTER U. NONRESIDENTIAL CENTER PROGRAM ADMINISTRATION STANDARDS

40 TAC §§54.4001 - 54.4019

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The repeals are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The repeals implement the Human Resources Code, §§51.001-51.011.

§54.4001. *Services Provided.*

§54.4002. *Client Eligibility State and Federal Laws.*

§54.4003. *Client Eligibility and Minors.*

§54.4004. *Client Eligibility Policies and Procedures.*

§54.4005. *Confidentiality Policy and Procedures.*

§54.4006. *Confidentiality Agreement.*

§54.4007. *Confidentiality Policies and Procedures Training.*

§54.4008. *Content of Case Files.*

§54.4009. *Verification of Texas Department of Human Services (DHS) Client Services.*

§54.4010. *Access to Case Files.*

§54.4011. *Release of Information.*

§54.4012. *Court Orders.*

§54.4013. *Report of Abuse.*

§54.4014. *Retention and Destruction of Records.*

§54.4015. *Basic Elements of Nonresidential Centers.*

§54.4016. *Client Rights.*

§54.4017. *Cooperation with Criminal Justice Officials.*

§54.4018. *Community Education.*

§54.4019. *Volunteer Recruitment and Training Program.*

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SUBCHAPTER V. NONRESIDENTIAL CENTER SERVICE DELIVERY

40 TAC §§54.5001 - 54.5010

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

The repeals are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The repeals implement the Human Resources Code, §§51.001-51.011.

- §54.5001. *Crisis Call Hotline Procedures.*
- §54.5002. *Emergency Transportation.*
- §54.5003. *Initial Delivery of Direct Services.*
- §54.5004. *Voluntary and Involuntary Termination of Services.*
- §54.5005. *Emergency Medical Care.*
- §54.5006. *Non-Emergency Medical Care.*
- §54.5007. *Legal Assistance in the Civil and Criminal Justice Systems.*
- §54.5008. *Intervention Services.*
- §54.5009. *Referral System to Existing Community Services.*
- §54.5010. *Information About Training for and Seeking Employment.*

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SUBCHAPTER B. SHELTER CENTERS

DIVISION 1. BOARD OF DIRECTORS

40 TAC §§54.101 - 54.110

The new sections are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The new sections implement the Human Resources Code, §§51.001-51.011.

§54.101. What is the stewardship function of the shelter center's board of directors?

The board is required to ensure fiscal accountability of all funds received and spent by the agency.

§54.102. What are the responsibilities of the shelter center's board of directors?

The board must:

(1) ensure that the center operates in a manner that keeps the organization's mission and purpose focused, without becoming involved in day-to-day operations;

(2) employ the executive director and conduct a performance review of the executive director at least annually;

(3) as a whole, or the center's finance committee, regularly review actual revenue and expenditures and compare them with budgeted revenue and estimated costs;

(4) review and approve programs and budgets; and

(5) review and approve policies for the organization's operation.

§54.103. What documents must the shelter center's board of directors maintain?

The board must assure that the center maintains all documentation required by the Texas Department of Human Services (DHS) contract, including:

(1) articles of incorporation and letter granting 501(c)(3) status;

(2) a board handbook that contains all required materials;

(3) fidelity bond and insurance policies;

(4) organization's bylaws;

(5) organization's policies that include, but are not limited to:

(A) confidentiality;

(B) personnel;

(C) financial; and

(D) travel;

(6) current operating budget, amendments, and copies of budget summaries and audits for all past years;

(7) list of donors;

(8) minutes of board meetings; and

(9) any other documents required by DHS as listed in Divisions 2 and 3 of this subchapter (relating to Contract Standards; and Fiscal Management).

§54.104. What must the shelter center's bylaws contain?

The bylaws must have a statement of the organization's purpose and address the following:

(1) board size, terms of office, term limits, rotation policy, and election procedures;

(2) specifications for regular and special meetings, meeting notices, attendance requirements, removal for cause, and filling interim vacancies;

(3) officer's terms of office, responsibilities, and election procedures;

(4) standing committees, their charges, size, and composition;

(5) quorums for board meetings; and

(6) bylaw amendment process.

§54.105. What must the shelter center board include in its recruitment procedures?

The board's recruitment procedures must encourage a diverse representation of members in terms of ethnicity, age, profession, or life experience, reflecting the community served.

§54.106. What information does the shelter center need to provide to new board members?

New board members must receive:

(1) a board handbook;

(2) access to a copy of the Texas Non-Profit Corporation Act; and

(3) access to a copy of the Texas Department of Human Services Family Violence Program Shelter Center Provider Manual.

§54.107. What must the shelter center's board handbook include?

The board handbook must have at a minimum:

(1) board member job description;

(2) current list of board members with mailing addresses and telephone numbers;

- (3) organization's mission statement;
- (4) organization's bylaws and a copy of the letter granting 501(c)(3) status;
- (5) list of all committees, including appointed board members and assigned staff;
- (6) committee descriptions;
- (7) the organization policies;
- (8) organizational chart;
- (9) history of the organization;
- (10) list of program services and a brief description of each program;
- (11) current budget, including funding sources and subcontractors;
- (12) brief description of contract provisions with attorneys, auditors, or other professionals;
- (13) basic information about family violence;
- (14) brief history of the Texas Battered Women's Movement; and
- (15) brief summary of how Texas laws that address family violence issues are enacted.

§54.108. How often should the shelter center board of directors receive training?

Along with the executive director, the board must plan and conduct annual board training. In lieu of a single annual training session, the center may conduct a series of trainings or use portions of the general board meetings to accomplish the annual training requirements.

§54.109. What training must the shelter center's board of directors receive?

The board must receive training at least annually on the following:

- (1) an explanation of the center's mission, philosophy, and a brief history;
- (2) an explanation of the dynamics of family violence that includes its causes and effects;
- (3) a description of the organization's current programs, provided by program staff;
- (4) a review of the organization's policies and clarification of any changes made during the year;
- (5) an explanation of how the center is funded and future funding projections;
- (6) a discussion, presented by the board chair or a member of the executive committee, of the following:
 - (A) the board's role and responsibilities related to legal and fiscal accountability;
 - (B) meetings and attendance requirements;
 - (C) committee duties, structure, and assignments; and
 - (D) fund-raising and public relations responsibilities;
- (7) an explanation of the organization's insurance coverage, including director's and officers' liability insurance or notification of inability to obtain insurance;

(8) an explanation of the working relationship between the board and staff, including but not limited to which staff member is contacted regarding questions or requests and which staff members contact board members routinely; and

(9) an update on any changes made in the Texas Non-Profit Corporation Act.

§54.110. What responsibilities do board members have regarding confidentiality?

Each board member must:

- (1) be familiar with the Texas Department of Human Services rules and the center's policies related to confidentiality; and
- (2) provide written assurance to the center that she or he will not use the position to obtain or access confidential resident or nonresident information.

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DIVISION 2. CONTRACT STANDARDS

40 TAC §§54.201 - 54.224

The new sections are proposed under the Human Resources Code, Title 2, Chapter 51, which provides the Texas Department of Human Services with the authority to administer family violence programs.

The new sections implement the Human Resources Code, §§51.001-51.011.

§54.201. Who is eligible to apply for a shelter center contract?

To be eligible, an organization must:

- (1) be a public or private nonprofit organization;
- (2) have been in actual operation offering shelter services 24 hours a day with a capacity for not less than five people for at least one year before the date on which the contract is awarded;
- (3) provide, as its primary purpose, direct delivery of services to adult victims of family violence; and
- (4) demonstrate that the center, through the services it provides, addresses a need in the community consistent with the Texas Department of Human Services plan for family violence services.

§54.202. What factors will the Texas Department of Human Services (DHS) consider in awarding contracts?

DHS will consider the following factors:

- (1) the center's eligibility for and use of funds from the federal government, philanthropic organizations, and voluntary sources;
- (2) community support for the center, as evidenced by financial contributions from civic organizations, local governments, and individuals;

(3) evidence that the center provides services that encourage self-sufficiency and uses community resources effectively;

(4) evidence of involvement with local law enforcement officials; and

(5) support for the center through volunteer work, especially volunteer effort by people who have been victims of family violence.

§54.203. How does an organization apply for funding as a Texas Department of Human Services (DHS)-contracted shelter center?

To apply for funding, the organization must:

(1) contact DHS to request contract eligibility information;

(2) submit contract application information as prescribed by DHS; and

(3) meet the eligibility standards as specified in this subchapter.

§54.204. Can an organization reapply for funding if the shelter center contract has been terminated for failure to perform the obligations?

If the Texas Department of Human Services terminates the contract because the center failed to perform the obligations under the contract, the center will not be eligible to reapply for any family violence funding for two years following the termination date of the previous contract.

§54.205. Can the shelter center apply for a special nonresidential project contract?

The center may apply; however, the proposed services cannot be the same as those for the shelter center contract.

§54.206. How can the shelter center qualify for satellite shelter funding?

The center must:

(1) be a current Texas Department of Human Services contractor in good standing;

(2) designate at least one permanent seat on the board of directors for the local community representatives of the satellite shelter;

(3) develop and implement written policies and procedures that describe the relationship between the center and the satellite shelter; and

(4) ensure the satellite shelter meets all the requirements.

§54.207. What are the requirements of the satellite shelter?

The satellite shelter must:

(1) be in compliance with all Texas Department of Human Services family violence contract requirements;

(2) have a freestanding shelter building in which residents are sheltered;

(3) serve nonresidents from the satellite service area;

(4) be in an area that prohibits resident and nonresident access to center services because of difficulty or distance;

(5) provide the same services as a 24-hour-a-day shelter;

(6) not be located in the same city as the center;

(7) have local community representation on the center's board of directors;

(8) have local funding and local volunteer support; and

(9) have been in operation for at least one year preceding the fiscal year for which funding is requested.

§54.208. What is the process to renew the shelter center contract?

The center must return a completed contract renewal packet annually to the Texas Department of Human Services by the date specified in the packet. Renewals are contingent on legislative authorization and available funding.

§54.209. What types of documentation must the shelter center maintain?

The center must maintain in an accessible location:

(1) financial and supporting documents;

(2) statistical records;

(3) any other records pertinent to the services for which a claim or cost report is submitted to the Texas Department of Human Services (DHS) or its agent; and

(4) the following DHS contract documents:

(A) a copy of the contract, including approved budget and plan of operation;

(B) contract amendments, budget revisions, and other correspondence with DHS;

(C) copies of all monthly billing and other DHS forms as required;

(D) copies of contractor's audit reports and related correspondence;

(E) copies of DHS's monitoring and evaluation reports, documentation of corrective actions, and related correspondence;

(F) the center's operating policies and procedures;

(G) the personnel manual and personnel files;

(H) applications, screening, and interview materials;

(I) the fiscal manual and accounting records that support DHS expenditures; and

(J) resident and nonresident files, including DHS service forms.

§54.210. How long must the shelter center keep the documents?

Any records or documents that pertain to the contract must be kept in a readily accessible location for a minimum of three years and 90 days after the end of the contract period. If any litigation, claim, or audit involving these records or documents begins before that time, the center must keep the records and documents for not less than three years and 90 days after all litigation, claims, or audit findings are resolved.

§54.211. Who may inspect, monitor, or evaluate the shelter center's resident and nonresident records, financial books, and supporting documents that pertain to services provided?

As a Texas Department of Human Services (DHS) Family Violence Program contractor, the center must allow DHS and all appropriate federal and state agencies or their representatives to inspect, monitor, or evaluate client records, books, and supporting documents that pertain to services provided.

§54.212. What documents should the shelter center have available for a monitoring visit?

All financial, resident, and nonresident records of the contractor and any subcontractors must be readily available and provided upon request for the monitoring, which may occur through:

(1) official audits;

(2) on-site reviews;

- (3) case reading; or
- (4) other record reviews.

§54.213. What should the shelter center do after it receives a Texas Department of Human Services (DHS) monitoring report?

(a) The center must submit a written response to DHS within 30 calendar days from the date of the report explaining the actions the center took to address any findings.

(b) If the center's response proposes acceptable action(s) to address the finding(s), DHS will issue a letter closing the report and no further action is required.

(c) If the center's response is unacceptable, or verification of an action is needed, the center must provide additional documentation of action as required by DHS correspondence.

§54.214. Does the shelter center need to have an internal monitoring system?

The center must have a written internal monitoring system to evaluate:

- (1) the quality of the center's required client services;
- (2) the accuracy of the fiscal and programmatic documentation; and
- (3) compliance with the policies and procedures specified in the contract.

§54.215. Does the shelter center have to maintain a copy of the Texas Department of Human Services Family Violence Program Shelter Center Provider Manual?

The center must maintain access to the manual at all separate locations where contracted services are performed or administered. The manual must be available for reference by all employees and volunteers of the shelter.

§54.216. How much of the shelter center's funding can the Texas Department of Human Services (DHS) provide?

(a) DHS funding must not exceed the following prescribed percentages of the center's annual operating costs: Figure: 40 TAC §54.216(a)

(b) If the first contract with the center is not for a full 12-month period, DHS's level of participation must not exceed 75% for the combined partial year and the following 12-month contract period.

§54.217. Is it possible to obtain a waiver to the Texas Department of Human Services (DHS)-prescribed percentage of the shelter center's operating budget?

DHS may waive the applicable percentage when all of the following conditions are met:

- (1) the center's anticipated income for the contract year is expected to increase or decrease by more than 10% relative to the actual income received during the previous contract year;
- (2) the change in the center's budget has resulted from:
 - (A) an increase in the state appropriation for center services; or
 - (B) a decrease in funding from other sources that cannot be attributed to a failure or deficiency on the center's part; and
- (3) the center agrees to receive fund-development technical assistance to increase its non-state funding resources.

§54.218. How can the shelter center request a variance or waiver?

(a) To request a waiver from the maximum prescribed funding percentage, the center must:

(1) submit a written request and appropriate documentation to the Texas Department of Human Services (DHS) state office demonstrating the center's efforts to raise funds compared to its budget; and

(2) agree in writing to receive technical assistance as designated by DHS.

(b) To request a variance to or waiver from any other requirement in this subchapter, the board must submit a written request to DHS on forms prescribed by DHS and must document compelling reasons the requirement cannot be met.

§54.219. Can the shelter center receive a funding percentage waiver more than once?

A center may not receive more than two funding waivers in consecutive contract terms.

§54.220. What is the process to amend the shelter center contract?

(a) The center must submit any request for a contract amendment in writing to the Texas Department of Human Services (DHS) for review; and

(b) the amendment must be approved by DHS before implementation by the center.

§54.221. What is the process to revise the shelter center budget?

(a) A budget revision can be made only for allowable expenses and if it does not contradict other rules or policies or indicate a change in the scope of the contract.

(b) If the total amount of the revision is less than 5.0% of the contract amount or \$5,000, or a prorated portion if the contract term is less than one year, whichever is lower, the revision must be reported to DHS in a letter within 30 days of implementation.

(c) If the total amount of the revision is more than 5.0% of the contract amount or \$5,000, or a prorated portion if the contract term is less than one year, whichever is lower, the proposed revision must be submitted in writing on prescribed forms for DHS approval before implementation.

§54.222. What is the responsibility of the shelter center with regard to subcontracts?

The center is responsible for:

- (1) meeting the contract outcomes, which includes ensuring all subcontractors meet the subcontracted outcomes; and
- (2) all fiscal, administrative, and program monitoring of the subcontractor.

§54.223. What must a shelter center do if there is a change in corporate control?

At least 30 days before transfer of a center from one nonprofit organization to another, the center must give written notice to the Texas Department of Human Services (DHS). Before the transfer occurs, the old organization and the new organization must enter into an assignment of contract. DHS will determine the new organization's eligibility to contract and approve the assignment of contract. Within 90 days after the transfer, DHS will evaluate the new organization's ability to continue the provision of contracted services. If DHS determines the new organization is not able to provide the contracted services, it will give written notice of contract termination and the contractor's right to appeal.

§54.224. What can happen if the shelter center does not comply with the rules?

If the center fails to comply with the rules in this subchapter, in either a repeated or substantial manner, DHS may cancel the center's contract by written notice of contract termination and the center's right to appeal.

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Paul Leche

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DIVISION 3. FISCAL MANAGEMENT

40 TAC §§54.301 - 54.316

The new sections are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The new sections implement the Human Resources Code, §§51.001-51.011.

§54.301. What are the accounting system requirements for the shelter center?

The center must maintain an accounting system that:

(1) records revenue and expenditures using generally accepted accounting principles;

(2) includes a chart of accounts that lists all accounts by an assigned number;

(3) contains a general ledger and subsidiary ledgers;

(4) maintains supporting documentation for all revenue and expenditures, including but not limited to:

(A) receipts or vouchers for revenue;

(B) bank statements;

(C) canceled checks;

(D) deposit slips;

(E) approved invoices;

(F) receipts;

(G) leases;

(H) contracts;

(I) time sheets;

(J) inventory; and

(K) cost allocation worksheets;

(5) identifies all funding sources and expenditures by separate fund type; and

(6) uses a double-entry system, either cash, accrual, or modified accrual.

§54.302. Is the shelter center required to have a fidelity bond?

The center must have a fidelity bond in an amount at least equal to 1/12 of the Texas Department of Human Services contract.

§54.303. What must be included in the Texas Department of Human Services (DHS) purchase of services contract budget?

The center uses its board-approved annual operating budget to complete the DHS purchase of service contract budget. The budget submitted to DHS must specify all costs and revenue associated with providing services to family violence victims and their dependents under this program. The contractor is not required to specify the costs of other programs operated by the same organization.

§54.304. How should the shelter center handle in-kind contributions?

The center must establish and follow written policies and procedures for in-kind contributions that include:

(1) a method of establishing the market value of donated goods and services;

(2) rates for volunteer services that are consistent with those paid for similar work in other activities of the community; and

(3) a method for documenting in-kind contributions.

§54.305. How should the shelter center handle cash contributions?

The center must establish and follow written internal policies and procedures for the consistent and reasonable treatment of cash contributions that include a method of recording all such contributions.

§54.306. How should the shelter center document required cash/in-kind match?

The center must develop written internal policies and procedures to accurately document the cash/in-kind match required by funding sources.

§54.307. How does the shelter center allocate overhead costs to its Texas Department of Human Services contract?

The organization must have a documented allocation methodology to distribute overhead and shared costs, such as administrative salaries, rent, and utilities, between the organization's funding sources.

§54.308. What must the shelter center do in order to receive payment from the Texas Department of Human Services (DHS)?

DHS reimburses the contracting center monthly, if:

(1) statistical reporting requirements are in compliance;

(2) monitoring report responses are in compliance; and

(3) all other required documents have been submitted.

§54.309. What costs are eligible for reimbursement under the shelter center contract?

Eligible costs are costs that have been:

(1) approved in the contract;

(2) incurred within the contract term; and

(3) paid by the center or owed by the last day of the contract term in accordance with the organization's method of accounting.

§54.310. Can the shelter center's funds and expenses be combined with the contractor's other Texas Department of Human Services (DHS) contract(s)?

If the center provides services under multiple contracts with DHS, it must maintain an accounting system that separates expenditures by contract to ensure appropriate expense allocation and contract billing.

§54.311. What is the quarterly report?

It is the financial report submitted to the Texas Department of Human Services that states the shelter center's:

(1) approved contract budget;

(2) actual year-to-date expenditures for each cost category;
and

- (3) balance for each category.

§54.312. When is the quarterly report due?

The Texas Department of Human Services must receive the shelter center's quarterly reports by:
Figure: 40 TAC §54.312

§54.313. What is the annual report?

It is the financial report submitted to the Texas Department of Human Services that states the shelter center's:

- (1) actual expenditures for the contract year in each cost category;
- (2) cash and in-kind resources for the program; and
- (3) source(s) of the contract match.

§54.314. When is the annual report due?

The Texas Department of Human Services must receive the shelter center's annual report by October 15.

§54.315. What are the shelter center's audit requirements?

If the organization spends \$300,000 or more in federal funds, it must comply with the Single Audit Act requirements as specified in the Office of Management and Budget (OMB) Circular A-133.

§54.316. When is the shelter center audit due?

According to the Office of Management and Budget (OMB) Circular A-133, the audit must be submitted to the Texas Department of Human Services and other funders within nine months of the end of the organization's fiscal year.

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Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

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DIVISION 4. PERSONNEL

40 TAC §§54.401 - 54.418

The new sections are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The new sections implement the Human Resources Code, §§51.001-51.011.

§54.401. Must the shelter center comply with federal personnel laws?

The center must comply with all federal laws that apply to the center. Additionally, the center must develop written policies and procedures for its personnel handbook to address, at a minimum, the following federal laws that apply to it:

- (1) fair employment laws, including the:
 - (A) Civil Rights Act of 1964;
 - (B) Age Discrimination in Employment Act of 1967;
 - (C) Americans with Disabilities Act of 1990; and
 - (D) Equal Pay Act of 1963;

- (2) the Fair Labor Standards Act of 1938;
- (3) the Family Medical Leave Act of 1993;
- (4) the Drug-Free Workplace Act of 1988; and
- (5) all other applicable employment laws.

§54.402. What additional personnel policies and procedures must the shelter center have?

The center must develop written personnel policies and procedures for its personnel handbook that standardize the everyday actions and conduct of all employees and address at a minimum the following:

- (1) contract labor;
- (2) equal opportunity employment;
- (3) disabilities in the workplace policy, including but not limited to:
 - (A) human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS); and
 - (B) reasonable accommodations for applicants and employees with disabilities;
- (4) sexual harassment if the center is under the jurisdiction of Title VII of the Civil Rights Act of 1964;
- (5) conflict of interest;
- (6) domestic violence in the workplace;
- (7) nepotism;
- (8) recruitment, interviewing, and hiring, including but not limited to:
 - (A) job posting;
 - (B) job descriptions with essential job functions;
 - (C) interviewing systems; and
 - (D) reference checking and responding to reference checking;
- (9) rules of conduct;
- (10) work hours, including breaks;
- (11) employee benefits and entitlements, including leave;
- (12) employees' right to access their personnel files;
- (13) written and oral employee orientation, initial training, and employee development;
- (14) confidentiality requirements of employee records;
- (15) employee evaluation;
- (16) probationary period;
- (17) termination, including:
 - (A) involuntary termination;
 - (B) reduction in force;
 - (C) reorganization; and
- (18) grievances.

§54.403. Who needs a copy of the shelter center's personnel handbook?

All employees must have ongoing access to the center's current personnel policies and procedures handbook. Employees must be notified of new or changed personnel policies.

§54.404. Are there any requirements for the shelter center employees' personnel files?

The center must maintain a personnel file for each employee. Each file must include at least the following information:

- (1) employment application or resume;
- (2) job descriptions;
- (3) signed acknowledgment of confidentiality agreement;
- (4) signed acknowledgment of receipt of personnel policies and procedures handbook;
- (5) all performance evaluations;
- (6) documentation of orientation, initial training, and employee development;
- (7) any status or classification change;
- (8) all disciplinary actions; and
- (9) letters of praise or criticism.

§54.405. Where should the shelter center keep its employee payroll information?

All payroll information, including time sheets, tax forms, and voluntary/involuntary deductions, must be filed in the payroll information file, the personnel files, or in accordance with the center's financial policy and procedures.

§54.406. What must the shelter center do to ensure confidentiality of specific employee information?

(a) The center must develop written policies to ensure the confidentiality of:

- (1) Form I-9 (U.S. Department of Justice Employment Eligibility Verification);
- (2) all health and medical information;
- (3) complaints and investigation documents of fair employment laws; and
- (4) identifying employee information in response to Public Information Act requests.

(b) If the center is under the jurisdiction of the Americans with Disabilities Act (ADA), it must develop written policies to ensure the separate maintenance of all health and medical information.

§54.407. What should the shelter center address in its policy regarding confidentiality of employee records?

The center must develop written policies regarding:

- (1) personnel information; and
- (2) responses to requests made pursuant to the Texas Public Information Act.

§54.408. What should the shelter center address in its drug-free workplace policies?

If under the jurisdiction of the Drug-Free Workplace Act, the center must develop a written drug and alcohol policy that states at least the following:

- (1) illegal use or illegal possession of alcohol or drugs is prohibited while on duty;
- (2) a belief in a treatment and recovery approach;
- (3) a stated concern for employees;
- (4) programs and systems for assistance; and
- (5) a statement of confidentiality.

§54.409. What should the shelter center address in its recruitment policies?

If the center is under the jurisdiction of fair employment laws, it must develop written recruitment policies and procedures that ensure:

- (1) the recruitment system used does not illegally impact one protected class more than another; and
- (2) the recruitment of applicants does not exclude any potentially qualified applicants.

§54.410. What should the shelter center address in its interviewing and hiring policies?

(a) The center must develop written job-related hiring policies and procedures, including interview processes that are uniform for all candidates for a particular position.

(b) If the center is under the jurisdiction of fair employment laws, when hiring employees it must use a system that does not illegally impact one protected class more than another and that treats all candidates equally.

§54.411. Does the shelter center need written job descriptions for its employee positions?

(a) All Texas Department of Human Services-funded positions must have a written job description.

(b) If the center is under the jurisdiction of the Americans With Disabilities Act, it must develop written job descriptions for and list the essential job functions of every position.

§54.412. Should the shelter center identify its employee positions as exempt or non-exempt?

The center must identify in writing all DHS-funded positions as exempt or non-exempt.

§54.413. What are the shelter center requirements for new employee orientation?

(a) The center must provide an oral orientation about the organization for all new employees within the first two days of employment.

(b) Within two weeks of the day of employment, all new employees must receive basic oral or written information regarding:

- (1) family violence issues;
- (2) a brief history of the Texas Battered Women's Movement; and
- (3) a brief summary of current Texas laws that address family violence issues.

§54.414. Does the shelter center need to provide specific job training?

The center must provide each employee in a new position with initial training, including supervised instruction about specific job functions covered in her or his job description.

§54.415. Are there any requirements for specific program training for shelter center employees?

The center must provide initial training for direct service employees funded by the Texas Department of Human Services (DHS) and employees supervising those employees. The training must include:

- (1) hotline skills, if applicable;
- (2) basic crisis intervention techniques;
- (3) peer counseling techniques;
- (4) the dynamics of family violence, including:
 - (A) the definition of family violence;

(B) the consequences of family violence crimes to the victim, the children, and society as a whole;

(C) the need to hold batterers accountable for their actions; and

(D) the information that battering is:

(i) predominantly directed by men toward women but can occur in any type of intimate relationship; and

(ii) is most often part of a process by which the batterer maintains control and domination over the victim;

(5) the relationship between family violence and drug and alcohol abuse, sexual abuse, and child abuse;

(6) risk assessment, safety planning, and legal options for victims of family violence;

(7) confidentiality;

(8) sensitivity to cultural diversity;

(9) eligibility, including Americans with Disabilities Act accommodations;

(10) the center policies and procedures;

(11) the center mission and philosophy;

(12) all required documentation and procedures as related to resident and nonresident issues; and

(13) an overview of the DHS Family Violence Program Shelter Center Provider Manual.

§54.416. What access should the shelter center provide to the Texas Department of Human Services (DHS) Family Violence Program Provider Manual?

The center must provide access to the manual at each separate location where contracted services are performed. The center must:

(1) ensure access to the manual by all employees and volunteers; and

(2) have written procedures for the distribution and training of employees and volunteers on manual revisions and policy interpretations.

§54.417. Should the shelter center evaluate employee performance?

Yes, the

(1) center's board must evaluate the executive director annually; and

(2) executive director or designee must evaluate all Texas Department of Human Services- funded employees at least annually.

§54.418. Can the shelter center use probationary periods for its employees?

If the center chooses to use probationary periods, it must:

(1) develop written policies regarding probationary periods; and

(2) apply the policies uniformly.

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DIVISION 5. FACILITY, SAFETY, AND HEALTH REQUIREMENTS

40 TAC §§54.501 - 54.512

The new sections are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The new sections implement the Human Resources Code, §§51.001-51.011.

§54.501. What facility codes must the shelter center meet?

The center's facilities must be in adequate repair and in compliance with applicable local health, fire, electrical, and building codes.

§54.502. Must the shelter center's facilities comply with the Americans with Disabilities Act (ADA)?

Yes, the center's facilities must comply with Title II and Title III of the ADA.

§54.503. What are the additional facility requirements for the 24-hour-a-day shelter center?

The center facility must have:

(1) a kitchen and eating area;

(2) a group living area;

(3) bathroom facilities, including toilets, lavatories, and bathing facilities;

(4) sleeping facilities;

(5) a private meeting area for individual and group services;

(6) adequate safe space for children;

(7) a safe indoor play space equipped with toys in good repair, and arts and craft supplies;

(8) a safe outdoor playscape equipped with toys in good repair;

(9) basic furnishings that are clean and in good repair, including:

(A) beds and bed linens;

(B) cribs;

(C) dining room tables;

(D) chairs;

(E) highchairs; and

(F) a place to store clothes, such as drawers or closets;

(10) clearly marked exits with appropriate exit signs; and

(11) a first-aid kit in all center facilities that is accessible to employees and volunteers.

§54.504. What are the shelter center's requirements for preparing, providing, and serving food to residents?

The center must:

(1) ensure food preparation, including storage of food, serving of food, and dining areas, is adequate and safe;

(2) have written procedures to ensure residents are provided with at least three well-balanced meals or ingredients for well-balanced meals and an additional two snacks a day for children;

(3) develop written procedures that provide for alternative access to essential food and food preparation when the center's kitchen is closed;

(4) make reasonable dietary accommodations for residents who require special medical diets, as specified by their health care provider, and that comply with the Americans with Disabilities Act;

(5) not require residents to use food stamps to purchase shelter meals. If the center accepts food stamps for the purchase of meals, then written policies and procedures must be developed to ensure compliance with the Texas Department of Human Services and the U.S. Department of Agriculture food stamp regulations; and

(6) when providing meals or food items, consider the diverse needs of the population of the center's service area.

§54.505. Must the shelter center have a security system?

Yes, the center must have a security system that is operational 24 hours a day. The security system may include, but is not limited to an alarm system, special lighting, dead bolts, or agreements with local law enforcement.

§54.506. What security policies and procedures must the shelter center have?

The center must have written policies and procedures to promote the safety and security of residents, nonresidents, employees, and volunteers. These policies and procedures must address:

- (1) intruders on the property, such as a batterer;
- (2) assaults to people;
- (3) bomb threats;
- (4) threatening telephone calls;
- (5) natural disasters, such as tornados and floods; and
- (6) fires.

§54.507. What safety policies and procedures does the shelter center need to have for delivering services to children?

(a) The center must develop and endorse written nonviolent disciplinary policies and procedures regarding child residents and non-residents, including policies and procedures for adult residents and non-residents, and employees and volunteers who provide services to children.

(b) The center must have written policies and procedures to:

- (1) ensure the safety of children in its facilities; and
- (2) maintain the safety of children when employees or volunteers take children on outings.

§54.508. Should there always be employees or volunteers at the shelter?

Yes, the center must have at least one employee or volunteer on-site continuously when residents are staying in the shelter, except at a satellite shelter or safe home.

§54.509. Should there always be employees or volunteers at the satellite shelter facility?

No, but at a minimum, the satellite shelter must have:

(1) a security system that is externally monitored;

(2) written procedures to ensure 24-hour-a-day emotional support to residents; and

(3) a written emergency plan that explains how and whom residents should contact in case of an emergency.

§54.510. What health and hygiene policies and procedures must the shelter center follow?

The center must have and follow written health and hygiene policies and procedures that include but are not limited to:

(1) practices to prevent the spread of contagious diseases;

(2) hygienic practices for kitchen, bathroom, sleeping, and children's areas, including children's toys and highchairs;

(3) provision of basic written information on:

(A) schedules for immunizations;

(B) vaccine-preventable diseases;

(C) the need for immunizations; and

(D) any available government-funded health insurance programs;

(4) the provision of services to individuals with a communicable disease and procedures that comply with local, regional, or state health departments and federal regulations, including the reporting of notifiable conditions; and

(5) procedures that address the safety of the victim and ensure respectful treatment of the ill resident(s).

§54.511. What hygiene items must the shelter center provide to residents?

The center must provide residents with daily access to basic personal hygiene items. When providing personal hygiene items, the center must consider the diverse needs of the population of the shelter service area.

§54.512. What regulations regarding smoking must the shelter center follow?

The center must comply with all applicable federal, state, and city regulations regarding smoking, including but not limited to the Pro-Children Act of 1994 and the Health and Safety Code, Chapter 161.

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DIVISION 6. PROGRAM ADMINISTRATION

40 TAC §§54.601 - 54.642

The new sections are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The new sections implement the Human Resources Code, §§51.001-51.011.

§54.601. What services must the shelter center provide to victims of family violence?

At a minimum, the center must provide access to the services for victims of family violence that are outlined in the Human Resources Code, Chapter 51. The Service Delivery section of the Texas Department of Human Services Family Violence Program Shelter Center Provider Manual describes which of these services the center must provide directly or through formal arrangements with other resources.

§54.602. Can the shelter center charge or solicit contributions or donations in return for Texas Department of Human Services (DHS)-contracted services?

No, the center must provide DHS-contracted services at no charge.

§54.603. Who is eligible for services in the shelter center?

Victims of family violence as defined in the Human Resources Code, Chapter 51, and adults subjected to sexual and/or emotional abuse by their batterers are eligible for services at the center.

§54.604. When is a person less than 18 years old eligible to receive 24-hour-a-day shelter?

The center can only provide 24-hour-a-day shelter to a person less than 18 years old if:

- (1) that person is:
 - (A) accompanied by a parent or legal guardian;
 - (B) legally emancipated;
 - (C) a minor mother; or
 - (D) married or has been married; or
- (2) the shelter center is licensed to provide residential child

care.

§54.605. Can a minor receive Texas Department of Human Services (DHS)-contracted nonresidential services if the parent is not receiving services?

Yes, the center can provide DHS-contracted nonresidential services to a minor when the parent is not receiving services if the minor:

- (1) is a victim of family violence who has had the disability of minority removed, either through legal emancipation or marriage; or
- (2) says she or he resides in the same household with a victim of family violence as defined in the Human Resources Code, Chapter 51, and if the center:

(A) has parental or legal guardian consent to provide the minor with nonresidential services; or

(B) complies with the Texas Family Code, §32.004, and parental or legal guardian consent is not obtained.

§54.606. What federal and state laws must the shelter center follow when determining eligibility?

The center must comply with the following applicable state and federal laws and any amendments made to each of these laws. Policies and procedures must be written to ensure compliance with:

- (1) the Human Resources Code, Chapter 51;
- (2) the Civil Rights Act of 1964 (Public Law 88-352);
- (3) §504 of the Rehabilitation Act of 1973 (Public Law 93-112);
- (4) the Americans with Disabilities Act of 1990 (Public Law 101-336);

(5) the Age Discrimination Act;

(6) Chapter 73 of this title (relating to Civil Rights); and

(7) the Texas Health and Safety Code, §85.113.

§54.607. What criteria can the shelter center use to determine eligibility for services?

The center must develop written resident and nonresident eligibility and screening procedures that are based solely on the individual's status as a victim of family violence, without regard to:

- (1) income;
- (2) whether the individual contributes, donates, or pays for these services; and
- (3) gender and/or sexual orientation.

§54.608. Can the shelter center ever deny services to an otherwise eligible individual?

The center can deny services to an otherwise eligible victim of family violence if it has written policies that outline specific behaviors that would make a victim ineligible. These policies must:

- (1) address only behaviors that threaten the safety and security of shelter staff and residents;
- (2) apply equally to all people; and
- (3) comply with the Americans with Disabilities Act (ADA) and the Civil Rights Act.

§54.609. What should the shelter center do when its services are at capacity?

The center must have and follow written referral procedures for helping victims of family violence obtain other temporary shelter if the primary method of providing shelter is full.

§54.610. Must the shelter center provide access to services for people with limited English proficiency?

Yes, the center must:

- (1) serve people with limited English proficiency and make every reasonable effort to serve them in their own language; and
- (2) have and follow written procedures for the access and delivery of services to people with limited English proficiency.

§54.611. Is the shelter center subject to Texas Department of Protective and Regulatory Services' (PRS's) child care licensing regulations?

(a) The center is not subject to PRS child care licensing if the center provides services only to resident children and the child care is provided at the same location as the shelter.

(b) If the center provides child care directly to nonresident children, children of staff, or resident children at a location other than the shelter, it must consult with PRS to determine if it is under the jurisdiction of PRS child care licensing regulations.

(c) If it is determined that the center is under the jurisdiction of PRS child care licensing regulations, the center must have written policies and procedures to ensure compliance with those rules and regulations.

§54.612. What must the shelter center include in its general confidentiality policy?

The center must develop a written general confidentiality policy that provides:

- (1) that all information will be kept confidential, including all personal information and all communications, observations, and information made by and between or about adult and child residents and

nonresidents, employees, volunteers, student interns, and board members;

(2) a statement about the importance of confidentiality in maintaining the safety of:

- (A) victims;
- (B) victims' families;
- (C) volunteers;
- (D) employees; and
- (E) others related to the program;

(3) the parameters of what must be held confidential and by whom;

- (4) the limits of confidentiality under the law;
- (5) a designation of custodian of the records; and
- (6) procedures for:
 - (A) retention and destruction of records;
 - (B) responses to court orders;
 - (C) release of information;
 - (D) reports of abuse or suspected abuse of:

- (i) children;
- (ii) the elderly; and
- (iii) people with disabilities;

(E) requests of information under the Public Information Act;

- (F) maintenance of records; and
- (G) access to records.

§54.613. What information must the shelter center provide adult residents and nonresidents regarding confidentiality?

The center must provide in writing at least the following:

(1) the right to see their records;
(2) the kind of information recorded, why, and the methods of collection;

(3) who within the center has access to the resident's or nonresident's case files and records;

(4) the center's policy and practices on confidentiality;

(5) current confidentiality laws in Texas and the limits of confidentiality under the law, including mandatory reporting for abuse or suspected abuse of:

- (A) children;
- (B) the elderly; and
- (C) people with disabilities;

(6) the center's policy for responding to court orders and requests for information under the Public Information Act;

(7) the center's policy for release of information;

(8) when the records will be decoded or destroyed; and

(9) what kind of information will remain in the file once a resident or nonresident terminates services.

§54.614. Who needs to sign confidentiality agreements and where should the shelter center keep these agreements?

The center must have all employees, volunteers, board members, student interns, and adult residents and nonresidents who participate in group intervention services sign a confidentiality agreement. The agreement must have a provision that states that confidentiality must be maintained after an employee, volunteer, board member, student intern, resident, or nonresident leaves the center. These agreements must be placed:

(1) in the personnel files of the employees;

(2) with the corporate records of the board members; and

(3) in the individual files of volunteers, student interns, residents, and nonresidents.

§54.615. What must a current or former employee, volunteer, board member, or student intern do if she or he receives a court order regarding the shelter center?

Individuals who receive a court order regarding any program records, residents, nonresidents, shelter center activities, or personnel issues must immediately notify the executive director or, in the executive director's absence, the designated staff.

§54.616. What is required in the confidentiality training provided to employees, board members, interns and direct service volunteers?

The center must provide training on:

(1) confidentiality policies and procedures;

(2) why confidentiality is important for victims of family violence; and

(3) how information is recorded.

§54.617. What information should the shelter center keep in resident or nonresident files?

The center must limit the information kept in files to information necessary for:

(1) statistical and funding purposes;

(2) establishing goals for intervention and advocacy;

(3) documenting the need for and delivery of services; and

(4) protecting the liability of the center and its employees, volunteers, and board members.

§54.618. What policies and procedures must the shelter center have regarding entries in a resident or nonresident file?

The center must have written policies and procedures regarding entries into a resident or nonresident file that require:

(1) each entry is signed and dated by the employee or volunteer entering the information;

(2) a resident or nonresident file does not include the names of other residents or nonresidents; and

(3) if the center provides direct services for both the victim and the violent family member, at a minimum, separate case records are maintained to promote victim safety and confidentiality.

§54.619. Is the shelter center required to give a resident or nonresident access to her or his files?

The center must have written policies and procedures to ensure a resident or nonresident has access to review all of the information in her or his case file.

§54.620. What must the shelter center do if a resident or nonresident contests an entry in her or his file?

If a resident or nonresident contests a case file entry, the center must either:

- (1) remove the entry from the file; or
- (2) if the entry is not removed, note in the case file that the resident or nonresident believes the entry to be inaccurate.

§54.621. What controls must the shelter center maintain over resident and nonresident files?

The custodian of the records, designated by the executive director, is responsible for maintaining control over the resident and nonresident records, including the court's access to the records. Resident and nonresident records must be kept secure and must not be removed from the center's premises without the written permission of the custodian of the records.

§54.622. When can the shelter center release resident or nonresident information?

(a) The center may release information, orally or in writing, only if it first obtains a written release of information from the resident or nonresident.

(b) Regardless of whether a written release of information from a resident or nonresident is obtained, the center must release information in order to comply with the applicable state laws to report abuse or suspected abuse of:

- (1) children;
- (2) the elderly; and
- (3) people with disabilities.

§54.623. What must the shelter center include in its written release of resident or nonresident information document?

The release of information document must include the:

- (1) name of no more than one person or organization to which the information is being released;
- (2) specific information to be released;
- (3) beginning and ending dates the release is effective, not to exceed the resident's stay and not to exceed the nonresident's active length of services;
- (4) date and the signatures of the resident or nonresident and the employee or volunteer; and
- (5) right to revoke a release of information at any time. This revocation request must be submitted in writing.

§54.624. What written procedures must the shelter center have regarding court orders?

The center must have written procedures for responding to court orders, such as subpoenas, search warrants, or writs of attachment. The written procedures must include:

- (1) what to do when a process server arrives with a court order;
- (2) on whom court orders may be served, such as the custodian of records;
- (3) which attorney(s) should be contacted;
- (4) who will discuss the subpoena with the resident or nonresident or other victim of family violence, and at what point; and
- (5) the circumstances under which records may be released.

§54.625. Must the shelter center notify a victim of family violence when a court order affects the individual or the individual's records?

Yes, the center must:

(1) notify a resident when a court order affects the individual or the individual's records; and

(2) attempt, whenever possible, to notify a nonresident, hotline caller, or other victim of family violence when a court order affects the individual or the individual's records.

§54.626. Must the shelter center have written policies and procedures for the retention and destruction of documentation?

Yes, the center must develop written policies and procedures for the retention and destruction of all written, electronic, and digital documentation that pertains to all residents and nonresidents, including but not limited to:

- (1) case notes, case content, and case files;
- (2) staff-to-staff communications; and
- (3) documentation required by other funders.

§54.627. What types of facilities does the Texas Department of Human Services allow for a 24-hour-a-day shelter?

A 24-hour-a-day shelter can be located in the following types of facilities:

- (1) a facility that exclusively serves victims of family violence;
- (2) a series of safe homes; or
- (3) a designated section of another kind of emergency shelter.

§54.628. How can the shelter center request an exception to the allowable types of facilities for a 24-hour-a-day shelter?

(a) The center can request an exception to the allowable types of facilities for a 24-hour-a-day shelter by submitting a written waiver request that addresses the factors of safety and service delivery to the Texas Department of Human Services (DHS).

(b) A waiver will be granted if DHS approves the request.

§54.629. What additional requirements apply if the shelter center uses a series of safe homes?

If the center uses a series of safe homes for shelter, it must:

- (1) have a written policy that addresses in-depth screening of each home, including the suitability of the house and host family or individual; and
- (2) meet the same standards as a regular 24-hour-a-day shelter except:

(A) it is not required to have 24-hour employee or volunteer coverage; and

(B) any material the Texas Department of Human Services requires to be posted can instead be placed in a notebook that is clearly labeled and visibly available for residents to read.

§54.630. Can the shelter center use a motel as a type of shelter?

Motels cannot be used exclusively as a shelter facility for a 24-hour-a-day shelter but can be used for overflow or used in outlying counties.

§54.631. What must the shelter center do if it has any disruption in its ability to provide services?

(a) The center must have written policies and procedures for any disruption in the ability to provide services.

(b) Any disruption in the ability to provide services must be reported immediately to the Texas Department of Human Services (DHS).

(c) After the initial oral notification, the center must submit to DHS a written description of the disruption and how services will be or were maintained.

§54.632. Is there a maximum length of stay for shelter center residents?

(a) The Texas Department of Human Services does not impose a maximum length of stay.

(b) If the center does have a maximum length of stay, it must have a written policy explaining its necessity and the length of the maximum stay.

§54.633. What responsibility does the shelter center have to inform all residents and nonresidents of their rights?

The center must:

- (1) give written rights to all residents and nonresidents; and
- (2) post resident and nonresident rights in a visible area within all center facilities.

§54.634. Must the shelter center develop a plan regarding cooperation with criminal justice officials?

Yes, the center must develop a written plan that outlines efforts to cooperate with criminal justice officials in each county where services are provided, including:

- (1) establishing an ongoing working relationship with local criminal justice officials;
- (2) encouraging the justice system to develop policies and procedures that are responsive to the needs of battered women and enhance collaboration among justice system agencies and service providers;
- (3) pursuing opportunities to participate in the training of law enforcement officers and other criminal justice officials;
- (4) providing information and education to law enforcement and criminal justice officials about the dynamics of family violence, services available, and support needed from the criminal justice system; and
- (5) encouraging local criminal justice professionals to post signs and leave brochures in their offices about family violence and the availability of services.

§54.635. What responsibility does the shelter center have to provide community education?

The center must have a written policy about community education that:

- (1) ensures community education is provided to as many diverse groups as possible in each county where services are provided; and
- (2) focuses part of the community education on informing victims of family violence of existing family violence services.

§54.636. What methods must the shelter center use to provide community education?

The center must use:

- (1) presentations;
- (2) distribution of written materials; and
- (3) establishing and using media contacts.

§54.637. What is required for the shelter center's volunteer program?

The center must:

(1) designate an employee or volunteer to act as the volunteer coordinator; and

(2) have and follow:

(A) written procedures outlining recruitment methods that reach diverse groups of people from the communities of each county where services are provided; and

(B) written policies regarding screening, training, supervising, evaluating, and terminating volunteers.

§54.638. How much recruitment must the shelter center do for volunteers?

The center must have an ongoing recruitment program for volunteers to help with the center's programs.

§54.639. When recruiting volunteers, what laws or codes must the shelter center follow?

The center must comply with:

(1) civil rights laws that allow qualified people an opportunity to volunteer; and

(2) the Human Resources Code, Chapter 51, which states the center must find support for the center through volunteer work, especially volunteer work by people who have been victims of family violence.

§54.640. How often must the shelter center offer training for volunteers?

The center must offer training for volunteers at least twice annually.

§54.641. What training must the shelter center provide to direct service volunteers?

The center must develop training for direct service volunteers that includes, but is not limited to:

- (1) a brief history of the Texas Battered Women's Movement;
- (2) the need for and benefit of shelter services;
- (3) the dynamics of family violence, including:
 - (A) the definition of family violence;
 - (B) the consequences of family violence crimes to the victim, the children, and society as a whole;
 - (C) the need to hold batterers accountable for their actions; and
 - (D) information that battering is:
 - (i) predominantly directed by men toward women but can occur in any type of intimate relationship; and
 - (ii) is most often part of a process by which the batterer maintains control and domination over the victim;
- (4) hotline skills;
- (5) basic crisis intervention techniques;
- (6) peer counseling techniques;
- (7) shelter center policies and procedures;
- (8) the organization's mission and philosophy;
- (9) confidentiality;
- (10) legal options for victims of family violence;
- (11) sensitivity to cultural diversity;

(12) the relationship between family violence and drug and alcohol abuse, sexual abuse, and child abuse;

(13) community resources; and

(14) the need for community systems to be responsive to the needs of victims of family violence.

§54.642. What training must the shelter center provide to non-direct service volunteers?

The center must provide non-direct service volunteers with:

(1) a basic orientation of the duties they perform; and

(2) at a minimum, basic information about the organization's mission, philosophy, and policies.

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

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Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

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DIVISION 7. SERVICE DELIVERY

40 TAC §§54.701 - 54.726

The new sections are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The new sections implement the Human Resources Code, §§51.001-51.011.

§54.701. What services must the shelter center provide?

The center must provide, at a minimum, access to the following services directly, by referral, or through formal arrangements with other agencies as described in this subchapter:

(1) 24-hour-a-day shelter;

(2) a crisis call hotline available 24 hours a day;

(3) emergency medical care;

(4) intervention services;

(5) emergency transportation;

(6) legal assistance in the civil and criminal justice systems;

(7) information about educational arrangements for children ;

(8) information about training for and seeking employment; and

(9) a referral system to existing community services.

§54.702. What requirements must the shelter center meet for the crisis call hotline?

The center must:

(1) answer the hotline 24 hours a day, every day of the year, by an individual trained in crisis intervention or who has immediate access to someone who has had this training;

(2) list the hotline number in all local telephone books;

(3) ensure local telephone information services within the center's service area widely distribute or make available the hotline telephone information;

(4) provide a minimum of two hotline telephone lines;

(5) ensure the caller has direct access to a live person and that a messaging system is not used to answer the hotline;

(6) provide blocks on the center's numbers for outgoing calls to residents, nonresidents, and other victims of family violence, which may only be unblocked with permission from the resident, non-resident, or victim of family violence;

(7) ensure the screening process complies with all state and federal laws if the hotline is used to screen for eligibility for services;

(8) keep all hotline calls and any related documentation confidential;

(9) provide equal access to hearing impaired victims of family violence; and

(10) offer appropriate information and referral to battering intervention services, if violent family members call the hotline.

§54.703. What crisis call hotline procedures must the shelter center have?

The center must have written procedures to:

(1) ensure access to immediate intervention 24 hours a day every day of the year;

(2) assess the victim's safety;

(3) accept collect calls from victims of family violence;

(4) ensure the hotline does not block anonymous incoming calls; and

(5) ensure the center is able to respond appropriately to people with limited English proficiency.

§54.704. Can the shelter center use caller ID on the crisis call hotline?

If the center uses caller ID or any other technology that establishes a record of calls on the hotline, the center must:

(1) ensure there will not be a breach of confidentiality to third parties;

(2) limit access to the records generated by these devices;
and

(3) ensure staff training on all caller ID policies and procedures.

§54.705. Can the shelter center subcontract the answering of the crisis call hotline?

If the center subcontracts the answering of the hotline, it must have the subcontractor arrangement approved by the Texas Department of Human Services and must have a written policy that addresses how the subcontractor will ensure immediate access to the center's 24-hour-a-day services.

§54.706. What procedures must the shelter center have for delivery of Texas Department of Human Services-contracted services?

The center must have written procedures for:

(1) providing or arranging for emergency transportation to and from emergency medical facilities for shelter residents or victims of family violence being considered for acceptance as residents;

(2) providing or arranging for transportation from a safe place to the shelter for people who are accepted as residents and who are located within the center's service area;

(3) helping residents, nonresidents, and victims of family violence obtain emergency medical services;

(4) helping residents, nonresidents, and victims of family violence obtain non-emergency medical services, including networking with local medical professionals to encourage the provision of low-cost medical services to these individuals;

(5) providing clothing to residents and nonresidents;

(6) ensuring each adult resident and nonresident is provided an orientation orally or in writing about the center's services;

(7) ensuring the adult resident orientation is conducted within 16 hours of the resident's arrival;

(8) ensuring new child residents and/or parent residents have face-to-face contact with the designated children's staff and document this service;

(9) ensuring residents and nonresidents obtain current information about training and employment opportunities;

(10) explaining voluntary and involuntary termination of residents' and nonresidents' services and appealing terminations; and

(11) taking into consideration the safety of a victim for whom services were previously involuntarily terminated and who is currently requesting services.

§54.707. What information must the shelter center cover in the resident's orientation?

The center must ensure orientation is provided within 16 hours, is documented, and includes but is not limited to:

(1) explanation of services available;

(2) cooperative living agreement;

(3) length of stay;

(4) termination policy;

(5) residents' rights;

(6) nondiscrimination statement;

(7) grievance procedures;

(8) safety and security procedures, including medication;

(9) confidentiality and limits of confidentiality; and

(10) waivers of liability.

§54.708. What must the shelter center do to promote cooperative living in the shelter?

The center must:

(1) have a written cooperative living agreement that outlines what can be reasonably expected from the staff and residents, including the center's and residents' responsibilities;

(2) post this agreement in a visible area; and

(3) hold house management meetings regularly.

§54.709. What information must the shelter center cover in the non-resident's orientation?

The center must ensure orientation is documented and includes but is not limited to:

(1) explanation of services available;

(2) termination policy;

(3) nonresident's rights;

(4) nondiscrimination statement;

(5) grievance procedures;

(6) safety and security procedures;

(7) confidentiality and limits of confidentiality; and

(8) waivers of liability.

§54.710. What kind of intervention services must the shelter center provide to adult residents and nonresidents?

The center must provide the following intervention services to adult residents and nonresidents:

(1) safety planning, including:

(A) assessment of future violence;

(B) the need for ongoing risk assessment;

(C) developing strategies to enhance safety; and

(D) available legal options;

(2) understanding and support, including:

(A) active listening;

(B) addressing needs identified by the victim; and

(C) building self-esteem, problem solving, and recog-

nizing that:

(i) victims are responsible for their own life deci-

sions; and

(ii) batterers are responsible for the violent behavior;

(3) information, education, and available resources, includ-

ing:

(A) the dynamics of family violence;

(B) legal options;

(C) drug and alcohol abuse;

(D) parenting;

(E) acquired immune deficiency syndrome (AIDS)

awareness;

(F) opportunities for education programs; and

(G) opportunities for employment and training; and

(4) advocacy and case management, including:

(A) explaining the residents' or nonresidents' rights;

(B) assisting the resident or nonresident make choices about those rights; and

(C) assisting the resident or nonresident access the services to which she or he is entitled.

§54.711. Who can provide the shelter center intervention services?

Only employees or volunteers who have received the Texas Department of Human Services required training can provide individual intervention services to residents, nonresidents, and other victims of family violence who access the center's services.

§54.712. How often should the shelter center provide intervention services?

The center must offer residents access to intervention services daily.

§54.713. Is the shelter center allowed to incorporate religion into the intervention services?

The center must provide intervention services that do not promote any one religion and must not require residents or nonresidents to participate in religious groups or to use religious materials.

§54.714. Is the shelter center required to help each resident and non-resident develop an individual service plan?

Yes, the center must develop a written individual service plan with each resident and nonresident that reflects the resident's or nonresident's particular needs.

§54.715. What are the shelter center requirements regarding group intervention?

The center must:

- (1) not mandate attendance for groups; and
- (2) provide at least one weekly support group for adult residents and nonresidents that includes:

(A) understanding and support by:

- (i) active listening;
- (ii) addressing needs identified by the victim;
- (iii) building self-esteem;
- (iv) problem solving; and
- (v) recognizing that:

(I) victims are responsible for their own life decisions; and

(II) batterers are responsible for the violent behavior;

(B) information and education that includes:

(i) how batterers maintain control and dominance over victims;

(ii) the role of society in perpetuating violence against women;

(iii) the need to hold batterers accountable for their actions; and

(iv) the social change necessary to eliminate violence within the family, including:

- (I) sexism;
- (II) racism; and
- (III) homophobia.

§54.716. What are the requirements for the shelter center regarding delivery of children's direct services?

The center must:

(1) designate at least one staff person, either paid or volunteer, to act as a children's advocate;

(2) document in the job description that the designated staff acting as children's advocate has the following:

(A) knowledge of:

- (i) child development;
- (ii) parenting skills; and
- (iii) dynamics of family relationships;

(B) sensitivity to the needs of children;

(C) ability to respond in a constructive, supportive manner to the resident parent and child in crisis;

(D) ability to plan and implement activities for children;
and

(E) knowledge of the local network of children's services;

(3) have services available that are specific to meet the needs of children;

(4) provide transportation or make transportation arrangements for child residents who attend school;

(5) provide or arrange for school supplies and clothing for child residents;

(6) provide a support group for child residents at least weekly;

(7) provide a recreational or social group for child residents at least weekly; and

(8) offer information and referral services to nonresident children if nonresident services are offered to the child's parent.

§54.717. What kind of intervention services must the shelter center provide to children who reside at the shelter?

The center must provide intervention services that are appropriate to the child's level of understanding and provide the following:

(1) safety planning, including:

(A) assessment of future violence;

(B) the need for ongoing risk assessment; and

(C) developing strategies to enhance safety;

(2) understanding and support, including:

(A) active listening;

(B) addressing needs identified by the victim; and

(C) building self-esteem, problem solving, and recognizing that the child is not responsible for the violence; and

(3) information on:

(A) possible support systems;

(B) available resources; and

(C) education, including the dynamics of family violence.

§54.718. What is the shelter center's responsibility regarding educational services for children of adult residents?

(a) The center must inform the adult resident about educational services for her or his children.

(b) At the resident's request:

(1) help the resident make arrangements for the child's continued education;

(2) accompany the resident to school meetings regarding the child's special needs; and

(3) act as a liaison to the school regarding provisions in a protective order that may directly affect the child's safety.

(c) The center must have written policies and procedures regarding its educational services for children.

§54.719. What is the shelter center's responsibility regarding emergency medical services?

The center is not required to provide or pay for emergency medical care, but must maintain a current list of emergency medical care resources that can provide medical services for victims of family violence.

§54.720. What policies and procedures must the shelter center have regarding residents and their medications?

The center must have written policy and procedures regarding all prescribed and non-prescribed medications used by residents, including but not limited to:

- (1) self-administration of drugs and medications;
- (2) methods for safekeeping of drugs and medications; and
- (3) a system that ensures adult residents have direct or immediate access to their own and their children's medication.

§54.721. What legal assistance services must the shelter center provide?

The center must:

- (1) assure that appropriate employees, volunteers, and interns have a working knowledge of current Texas laws pertaining to family violence, as well as the local justice system's response to family violence in each county where services are provided;
- (2) maintain a current list of local criminal justice agencies and contact people in each county where services are provided;
- (3) offer support and accompaniment to residents and non-residents in their pursuit of legal options;
- (4) ensure legal advocacy services are available and specific to the needs of victims of family violence; and
- (5) encourage the justice system to respond consistently to the needs of victims of family violence and to hold batterers accountable.

§54.722. What are the requirements for the shelter center regarding legal assistance?

The shelter center must:

- (1) designate at least one staff person, either paid or volunteer, to act as a legal advocate; and
- (2) document in the job description that the designated staff acting as legal advocate:
 - (A) has a working knowledge of Texas laws pertaining to family violence, as well as the justice system's response to domestic violence;
 - (B) is familiar with legal services, resources, and procedures available to victims in each county where services are provided;
 - (C) assists adult residents and nonresidents in safety planning and re-evaluation of the safety plan as part of an individual service plan; and
 - (D) identifies legal rights and options as part of an individual service plan.

§54.723. What training and employment services must the shelter center provide?

The center must provide or arrange the following for residents and non-residents:

- (1) clothing for:
 - (A) training;

(B) interviews; and

(C) employment, except for positions that require specific uniforms;

(2) assistance preparing employment and training program applications and resumes; and

(3) information on job seeking skills.

§54.724. Must the shelter center maintain a referral system?

Yes, the center must maintain and make readily accessible to employees and volunteers a current printed referral list that includes telephone numbers of existing community resources for each county where services are provided.

§54.725. What policies must the shelter center have regarding termination of resident and nonresident services?

The center must:

(1) have written policies that outline the reasons and behaviors for which services can be terminated;

(2) apply the policies equally to all people; and

(3) comply with the Americans with Disability Act and the Civil Rights Act.

§54.726. What information about termination of services must the shelter center provide to residents and nonresidents?

The center must inform residents and nonresidents in writing of their right to appeal a termination of services to both the center and to the Texas Department of Human Services (DHS). Notice to the resident or nonresident must be provided and, if necessary, a fair hearing conducted according to DHS rules for fair hearings as specified in Chapter 79 of this title (relating to Legal Services).

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

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Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

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SUBCHAPTER C. SPECIAL NONRESIDENTIAL PROJECTS

DIVISION 1. BOARD OF DIRECTORS

40 TAC §§54.801 - 54.804

The new sections are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The new sections implement the Human Resources Code, §§51.001-51.011.

§54.801. What is the stewardship function of the special nonresidential project contractor's board of directors?

The board is required to ensure fiscal accountability of all funds received and spent by the agency.

§54.802. What process should the special nonresidential project contractor's board of directors follow to analyze the finances?

The board as a whole, or the organization's finance committee, must regularly review actual revenue and expenditures and compare them to budgeted revenue and estimated costs.

§54.803. When should the board of directors be notified about a contract award for a Texas Department of Human Services (DHS) special nonresidential project?

The executive director or designee must give the board of directors a description of the DHS contract within three months of the contract award, including program, administrative, and fiscal oversight responsibilities.

§54.804. What responsibilities do members of the special nonresidential project board of directors have regarding confidentiality?

Each board member must:

(1) know the project's policies related to confidentiality; and

(2) if the project provides direct services, provide written assurance to the project that she or he will not use the position to obtain or access confidential program participant information.

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

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DIVISION 2. CONTRACT STANDARDS

40 TAC §§54.901 - 54.917

The new sections are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The new sections implement the Human Resources Code, §§51.001-51.011.

§54.901. Who is eligible to apply for a special nonresidential project contract?

To be eligible, an organization must:

(1) provide:

(A) community education relating to family violence;

or

(B) direct delivery of services for adult victims of family violence or their children;

(2) demonstrate a system of referring victims of family violence to at least one family violence shelter center or other safe temporary lodging;

(3) demonstrate that the project, through the services it provides, addresses a need in the community consistent with the Texas Department of Human Services plan for family violence services;

(4) demonstrate that if an underserved or special population is to be served by the project, they are involved in the project's design and implementation; and

(5) be a public or private nonprofit organization.

§54.902. How does an organization apply for funding as a Texas Department of Human Services (DHS)-contracted special nonresidential project?

To apply for funding, an organization must:

(1) submit a proposal as requested in the Request for Proposals for Family Violence Special Nonresidential Projects issued by the DHS and posted in the *Texas Register*, and

(2) meet the eligibility standards as specified in this subchapter.

§54.903. Can an organization reapply for funding if the special nonresidential project contract has been terminated for failure to perform the obligations?

If the Texas Department of Human Services terminates the contract because the contractor failed to perform the obligations under the contract, the contractor will not be eligible to reapply for any family violence funding for two years following the termination date of the previous contract.

§54.904. What is the process to renew the special nonresidential project contract?

(a) During the term of the project, the contractor must return a completed contract renewal packet annually to the Texas Department of Human Services by the date specified in the packet. Renewals are contingent on legislative authorization and available funding.

(b) A competitively procured contract may be renewed for a total period not to exceed four years, without being subject to further competition.

§54.905. What types of documentation must the special nonresidential project contractor maintain and keep in an accessible location at all times?

The contractor must maintain in an accessible location:

(1) financial and supporting documents;

(2) statistical records;

(3) any other records pertinent to the services for which a claim or cost report is submitted to the Texas Department of Human Services (DHS) or its agent; and

(4) the following DHS contract documents:

(A) a copy of the contract, including approved budget and plan of operation;

(B) contract amendments, budget revisions, and other correspondence with DHS;

(C) copies of all monthly billing and other DHS forms as required;

(D) copies of contractor's audit reports and related correspondence;

(E) copies of DHS's monitoring and evaluation reports, documentation of corrective actions, and related correspondence;

(F) the contractor's operating policies and procedures;

(G) the personnel manual and personnel files;

(H) applications, screening, and interview materials;

(I) the fiscal manual and accounting records that support DHS expenditures; and

(J) program participant files, including DHS service forms.

§54.906. How long must the special nonresidential project contractor keep the documents?

Any documents that pertain to the contract must be kept for a minimum of three years and 90 days after the end of the contract period. If any litigation, claim, or audit involving these documents begins before that time, the contractor must keep the records and documents for not less than three years and 90 days or until all litigation, claims, or audit findings are resolved.

§54.907. Who may inspect, monitor, or evaluate the special nonresidential project contractor's program participant records, financial books, and supporting documents that pertain to services provided?

As a Texas Department of Human Services (DHS) Family Violence Program contractor, the project must allow DHS and all appropriate federal and state agencies or their representatives to inspect, monitor, or evaluate program participant records, books, and supporting documents that pertain to services provided.

§54.908. What documents should the special nonresidential project contractor have available for a monitoring visit?

All financial and program participant records of the contractor and any subcontractors must be readily available and provided upon request for the monitoring, which may occur through:

- (1) official audits;
- (2) on-site reviews;
- (3) case reading; or
- (4) other record reviews.

§54.909. What should the special nonresidential project contractor do after it receives a Texas Department of Human Services (DHS) monitoring report?

(a) The contractor must submit a written response to DHS within 30 calendar days from the date of the report explaining the actions the contractor took to address any findings.

(b) If the contractor's response proposes acceptable action(s) to address the finding(s), DHS will issue a letter closing the report and no further action is required.

(c) If the contractor's response is unacceptable, or verification of an action is needed, the contractor must provide additional documentation of action as required by DHS correspondence.

§54.910. Does the special nonresidential project contractor need to have an internal monitoring system?

The contractor must have a written internal monitoring system to evaluate the following:

- (1) quality of the special project's services;
- (2) accuracy of the fiscal and programmatic documentation; and
- (3) compliance with the policies and procedures specified in the contract.

§54.911. Does the special nonresidential project contractor have to maintain a copy of the Texas Department of Human Services Family Violence Special Nonresidential Project Provider Manual?

The contractor must maintain access to the manual at all separate locations where contracted services are performed or administered. The

manual must be available for reference by all employees and volunteers of the project.

§54.912. How can the special nonresidential project contractor request a variance or waiver?

To request a variance to or waiver from a specific requirement in this subchapter, the contractor's board must submit a written request to the Texas Department of Human Services (DHS) on forms prescribed by DHS and must document compelling reasons the requirement cannot be met.

§54.913. What is the process to amend the special nonresidential project contract?

(a) The contractor must submit any request for a contract amendment in writing to the Texas Department of Human Services (DHS) for review; and

(b) the amendment must be approved by DHS before implementation by the contractor.

§54.914. What is the process to revise the special nonresidential project budget?

(a) A budget revision can be made only for allowable expenses and if it does not contradict other rules or policies, or indicate a change in the scope of the contract.

(b) If the total amount of the revision is less than 5.0% of the contract amount or \$5,000, or a prorated portion if the contract term is less than one year, whichever is lower, the revision must be reported to the Texas Department of Human Services (DHS) in a letter within 30 days of implementation.

(c) If the total amount of the revision is more than 5.0% of the contract amount or \$5,000, or a prorated portion if the contract term is less than one year, whichever is lower, the proposed revision must be submitted in writing on prescribed forms for DHS approval before implementation.

§54.915. What is the responsibility of the special nonresidential project contractor with regard to subcontracts?

The contractor is responsible for:

(1) meeting the contract outcomes, which includes ensuring all subcontractors meet the subcontracted outcomes; and

(2) all fiscal, administrative, and program monitoring of the subcontractor.

§54.916. What must the special nonresidential project contractor do if there is a change in corporate control?

At least 30 days before transfer of a project from one nonprofit organization to another, the contractor must give written notice to the Texas Department of Human Services (DHS). Before the transfer occurs, the old organization and the new organization must enter into an assignment of contract. DHS will determine the new organization's eligibility to contract and approve the assignment of contract. Within 90 days before the transfer, DHS will evaluate the new organization's ability to continue the provision of contracted services. If DHS determines the new organization is not able to provide the contracted services, it will give written notice of contract termination and the contractor's right to appeal.

§54.917. What can happen if the special nonresidential project contractor does not comply with the rules?

If the contractor fails to comply with the rules in this subchapter, in either a repeated or substantial manner, DHS may cancel the project's contract by written notice of contract termination and the center's right to appeal.

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DIVISION 3. FISCAL MANAGEMENT

40 TAC §§54.1001 - 54.1015

The new sections are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The new sections implement the Human Resources Code, §§51.001-51.011.

§54.1001. What are the accounting system requirements for the special nonresidential project contractor?

The contractor must maintain an accounting system that:

- (1) records revenue and expenditures using generally accepted accounting principles;
- (2) includes a chart of accounts that lists all accounts by an assigned number;
- (3) contains a general ledger and subsidiary ledgers;
- (4) maintains supporting documentation for all revenue and expenditures, including but not limited to:
 - (A) receipts or vouchers for revenue;
 - (B) bank statements;
 - (C) canceled checks;
 - (D) deposit slips;
 - (E) approved invoices;
 - (F) receipts;
 - (G) leases;
 - (H) contracts;
 - (I) time sheets;
 - (J) inventory; and
 - (K) cost allocation worksheets;
- (5) identifies all funding sources and expenditures by separate fund type; and
- (6) uses a double-entry accounting system, either cash, accrual, or modified accrual.

§54.1002. What must be included in the Texas Department of Human Services (DHS) purchase of services contract budget?

The contractor uses its board-approved annual operating budget to complete the DHS purchase of service contract budget. The budget submitted to DHS must specify all costs for providing services to family violence victims and their dependents under this contract.

The contractor is not required to specify the costs of other programs operated by the same organization.

§54.1003. How should the special nonresidential project handle in-kind contributions?

The contractor must establish and follow written policies and procedures for in-kind contributions that include:

- (1) a method of establishing the market value of donated goods and services;
- (2) rates for volunteer services that are consistent with those paid for similar work in other activities of the community; and
- (3) a method for documenting in-kind contributions.

§54.1004. How should the special nonresidential project contractor handle cash contributions?

The contractor must establish and follow written internal policies and procedures for the consistent and reasonable treatment of cash contributions that include a method of recording all such contributions.

§54.1005. How should the special nonresidential project contractor document required cash/in-kind match?

The contractor must develop written internal policies and procedures to accurately document the cash/in-kind match required by funding sources.

§54.1006. How does the special nonresidential project contractor allocate overhead costs to its Texas Department of Human Services contract?

The contractor must have a documented allocation methodology to distribute overhead and shared costs, such as administrative salaries, rent, and utilities, between the organization's funding sources.

§54.1007. What must the special nonresidential project contractor do in order to receive payment from the Texas Department of Human Services (DHS)?

DHS reimburses the contractor monthly if:

- (1) the DHS Request for Reimbursement form is submitted;
- (2) statistical reporting requirements are in compliance;
- (3) monitoring report responses are in compliance; and
- (4) all other required documents have been submitted.

§54.1008. What costs are eligible for reimbursement under the special nonresidential project contract?

Eligible costs are costs that have been:

- (1) approved in the contract;
- (2) incurred within the contract term; and
- (3) paid by the contractor or owed by the last day of the contract term in accordance with the organization's method of accounting.

§54.1009. Can the special nonresidential project's funds and expenses be combined with the contractor's other Texas Department of Human Services (DHS) contract(s)?

If the contractor provides services under multiple contracts with DHS, it must maintain an accounting system that separates expenditures by contract to ensure appropriate expense allocation and contract billing.

§54.1010. What are the quarterly reports?

(a) The quarterly financial report states the special nonresidential project's:

- (1) approved contract budget;
 - (2) actual year-to-date expenditures for each cost category;
- and
- (3) balance for each category.

(b) The quarterly narrative report describes program activity for the period and follows a prescribed format.

§54.1011. When are the quarterly reports due?

The Texas Department of Human Services must receive the special nonresidential project's quarterly reports by:
Figure: 40 TAC §54.1011

§54.1012. What are the annual reports?

(a) The annual financial report states the special nonresidential project's:

- (1) actual expenditures for the contract year in each cost category;
- (2) cash and in-kind resources for the project; and
- (3) source(s) of the contractor's match.

(b) The annual narrative report describes program activity for the year and follows a prescribed format.

§54.1013. When are the annual reports due?

The Texas Department of Human Services must receive the special nonresidential project contractor's reports by October 15.

§54.1014. What are the special nonresidential project contractor's audit requirements?

If the organization spends \$300,000 or more in federal funds, it must comply with the Single Audit Act requirements as specified in the Office of Management and Budget (OMB) Circular A- 133.

§54.1015. When is the special nonresidential project audit due?

According to the Office of Management and Budget (OMB) Circular A-133, the audit must be submitted to the Texas Department of Human Services and other funders within nine months of the end of the organization's fiscal year.

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DIVISION 4. PERSONNEL

40 TAC §§54.1101 - 54.1108

The new sections are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The new sections implement the Human Resources Code, §§51.001-51.011.

§54.1101. Must the special nonresidential project contractor comply with federal personnel laws?

The contractor must comply with all federal laws that apply to it, including:

- (1) the fair employment laws, including the:
 - (A) Civil Rights Act of 1964;
 - (B) Age Discrimination in Employment Act of 1967;
 - (C) Americans with Disabilities Act of 1990; and
 - (D) Equal Pay Act of 1963
- (2) the Fair Labor Standards Act of 1938;
- (3) the Family Medical Leave Act of 1993;
- (4) the Drug-Free Workplace Act of 1988; and
- (5) all other applicable employment laws.

§54.1102. What should the special nonresidential project contractor address in its drug-free workplace policies?

If the organization is under the jurisdiction of the Drug-Free Workplace Act, the contractor must develop a written drug and alcohol policy that states at least the following:

- (1) illegal use or illegal possession of alcohol or drugs is prohibited while on duty;
- (2) a belief in a treatment and recovery approach;
- (3) a stated concern for employees;
- (4) programs and systems for assistance; and
- (5) a statement of confidentiality.

§54.1103. What should the special nonresidential project contractor address in its disabilities in the workplace policies?

If the organization is under the jurisdiction of the Americans with Disabilities Act (ADA), it must develop written policies and procedures to ensure:

- (1) applicants and employees with human immunodeficiency virus (HIV) or acquired immune deficiency syndrome (AIDS), or those believed to be HIV positive, are not discriminated against; and
- (2) reasonable accommodations for applicants and employees with disabilities.

§54.1104. Does the special nonresidential project contractor need written job descriptions for its employee positions?

(a) All Texas Department of Human Services-funded positions must have a written job description.

(b) If the organization is under the jurisdiction of the Americans With Disabilities Act, it must develop written job descriptions for and list the essential job functions of every position.

§54.1105. Should the special nonresidential project contractor identify its employee positions as exempt or non-exempt?

The contractor must identify in writing all Texas Department of Human Services-funded positions as exempt or non-exempt.

§54.1106. Should the special nonresidential project contractor staff receive training?

The contractor must provide training for all newly Texas Department of Human Services-funded direct service employees of the special project or employees supervising these employees within the first 30 days on the job.

§54.1107. What are the requirements for specific program training for special nonresidential project employees?

(a) The contractor must provide initial training for direct service employees funded by the Texas Department of Human Services

(DHS) or employees supervising these employees. The training must include:

- (1) hotline skills, if applicable;
- (2) basic crisis intervention techniques;
- (3) peer counseling techniques, if applicable;
- (4) the dynamics of family violence, including:
 - (A) the definition of family violence;
 - (B) consequences of family violence crimes to the victim, the children, and society as a whole;
 - (C) the need to hold batterers accountable for their actions; and
 - (D) information that battering is:
 - (i) predominantly directed by men toward women but can occur in any type of intimate relationship; and
 - (ii) is most often part of a process by which the batterer maintains control and domination over the victim;
- (5) the relationship between family violence and drug and alcohol abuse, sexual abuse, and child abuse;
- (6) risk assessments, safety planning, and legal options for victims of family violence;
- (7) confidentiality;
- (8) sensitivity to cultural diversity;
- (9) program participant eligibility, including Americans with Disabilities Act accommodations;
- (10) all required documentation and procedures related to program participant issues; and
- (11) an overview of the DHS Family Violence Program Special Nonresidential Project Provider Manual.

(b) Documentation of all initial training must be included in the employees' personnel files or, if the contractor does not maintain personnel files, in separate administrative files.

§54.1108. What access should the special nonresidential project contractor provide to the Texas Department of Human Services Family Violence Program Special Nonresidential Project Provider Manual?

The contractor must provide access to the manual at each separate location where contracted services are performed. The contractor must:

- (1) ensure access to the manual by all project employee and volunteers; and
- (2) have written procedures for the distribution and training of employees and volunteers on manual revisions and policy interpretations.

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DIVISION 5. FACILITY, SAFETY, AND HEALTH REQUIREMENTS

40 TAC §§54.1201 - 54.1209

The new sections are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The new sections implement the Human Resources Code, §§51.001-51.011.

§54.1201. What facility codes must the special nonresidential project meet?

The contractor's facilities must be in adequate repair and in compliance with applicable local health, fire, electrical, and building codes.

§54.1202. How must the special nonresidential project's facilities comply with the Americans with Disabilities Act (ADA)?

The contractor must make reasonable accommodations for accessibility that do not create a financial burden to the contractor and that comply with the ADA.

§54.1203. What are the additional facility requirements for the special nonresidential project providing direct services?

The contractor's facilities must:

- (1) have access to a private meeting area and ensure the facilities include adequate safe space for children;
- (2) maintain a first-aid kit in each facility that is accessible to employees and volunteers;
- (3) if used by the project, have exits clearly marked with appropriate exit signs; and
- (4) contain basic furnishings that are clean and in good repair.

§54.1204. What kind of security system must the special nonresidential project's facilities have?

If the special project provides direct services, the contractor must have a security system that is operational 24 hours a day. The security system may include, but is not limited to an alarm system, special lighting, dead bolts, or agreements with local law enforcement.

§54.1205. What security policies and procedures must the special nonresidential project have?

The contractor must have written policies and procedures to promote the safety and security of program participants, employees, and volunteers as appropriate for the project.

§54.1206. What are the safety policies and procedures that need to be developed if the special nonresidential project provides services to children?

(a) The contractor must develop and endorse written nonviolent disciplinary policies and procedures for program participants and for employees and volunteers who provide services to children.

(b) The project must have written policies and procedures to:

- (1) ensure the safety of children in its facilities; and
- (2) maintain the safety of children if employees or volunteers take children on outings.

§54.1207. What health and hygiene policies and procedures are required for the special nonresidential project?

The project must have written health and hygiene policies and procedures that include, but are not limited to:

- and
- (1) practices to prevent the spread of contagious diseases;
 - (2) provision of services to individuals with a communicable disease.

§54.1208. What health and hygiene policies are required for the special nonresidential project providing services to children?

In addition to basic hygienic practices, the project that provides services to children must have written health and hygiene policies and procedures that include, but are not limited to:

- (1) hygienic practices for children's areas, including children's toys; and
- (2) the provision of basic written information on:
 - (A) schedules for immunizations;
 - (B) vaccine-preventable diseases;
 - (C) the need for immunizations; and
 - (D) any available government-funded health insurance programs.

§54.1209. What are the regulations regarding smoking for the special nonresidential project?

The project must comply with all applicable federal, state, and city regulations regarding smoking, including but not limited to the Pro-Children Act of 1994 and the Health and Safety Code, Chapter 161.

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General Counsel, Legal Services

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DIVISION 6. PROGRAM ADMINISTRATION

40 TAC §§54.1301 - 54.1326

The new sections are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The new sections implement the Human Resources Code, §§51.001-51.011.

§54.1301. What services must the special nonresidential project provide to victims of family violence?

At a minimum, the contractor must provide access to the services for victims of family violence that are outlined in the Human Resources Code, Chapter 51. The Service Delivery section of the Texas Department of Human Services Family Violence Program Special Nonresidential Project Provider Manual describes which of these services the contractor must provide directly or through formal arrangements with other resources.

§54.1302. Can the special nonresidential project charge or solicit contributions or donations in return for the Texas Department of Human Services (DHS)-contracted services?

No, the contractor must provide DHS-contracted services at no charge.

§54.1303. Who is eligible for services in the special nonresidential project?

Victims of family violence as defined in the Human Resources Code, Chapter 51, including adults subjected to sexual and/or emotional abuse by their batterers, are eligible for services of the contract.

§54.1304. Can a minor receive Texas Department of Human Services (DHS)-contracted services if the parent is not receiving services?

Yes, the contractor can provide DHS-contracted services to a minor when the parent is not receiving services, if the minor:

(1) is a victim of family violence who has had the disability of minority removed, either through legal emancipation or marriage; or

(2) says that she or he resides in the same household with a victim of family violence as defined in the Human Resources Code, Chapter 51, and:

(A) the contractor has parental or legal guardian consent to provide the minor with services; or

(B) the contractor complies with the Texas Family Code, §32.004, if parental or legal guardian consent is not obtained.

§54.1305. What federal and state laws must the special nonresidential project follow when determining eligibility?

The contractor must comply with the following applicable state and federal laws and any amendments made to each of these laws. Policies and procedures must be written to ensure compliance with:

(1) the Human Resources Code, Chapter 51;

(2) the Civil Rights Act of 1964 (Public Law 88-352);

(3) §504 of the Rehabilitation Act of 1973 (Public Law 93-112);

(4) the Americans with Disabilities Act of 1990 (Public Law 101-336);

(5) the Age Discrimination Act;

(6) Chapter 73 of this title (relating to Civil Rights); and

(7) the Texas Health and Safety Code, §§85.113.

§54.1306. What criteria can the special nonresidential project use to determine eligibility for services?

The contractor must have written client eligibility and screening procedures that are based solely on the individual's status as a victim of family violence, without regard to:

(1) income;

(2) whether the individual contributes, donates, or pays for these services; and

(3) gender and/or sexual orientation.

§54.1307. Can the nonresidential special project ever deny services to an otherwise eligible individual?

The contractor can deny services to an otherwise eligible victim of family violence if it has written policies that outline specific reasons or behaviors that would make a victim ineligible. These policies must:

(1) address only behaviors that threaten the safety and security of staff and clients;

(2) apply equally to all people; and

(3) comply with the Americans with Disabilities Act and the Civil Rights Act.

§54.1308. Must the special nonresidential project provide access to services for people with limited English proficiency?

If the special nonresidential project provides direct services, the contractor must:

- (1) serve people with limited English proficiency and make every reasonable effort to serve them in their own language; and
- (2) have written procedures for the access and delivery of services to people with limited English proficiency.

§54.1309. Is the nonresidential special project contractor subject to Texas Department of Protective and Regulatory Services' (PRS's) child care licensing regulations?

(a) If the contractor provides child care directly to the children of program participants or of staff, it must consult with PRS to determine if it is under the jurisdiction of PRS's child care licensing regulations.

(b) If it is determined that the contractor is under the jurisdiction of PRS child care licensing regulations, the contractor must have written policies and procedures to ensure compliance with those rules and regulations.

§54.1310. What must the special nonresidential project include in its general confidentiality policy?

The contractor must develop a written confidentiality policy that:

- (1) demonstrates that services will be delivered in a manner that ensures program participant confidentiality regarding records and information if the special project provides direct services; and
- (2) includes a statement about the importance of confidentiality in maintaining the safety of:
 - (A) victims;
 - (B) victims' families;
 - (C) volunteers;
 - (D) employees; and
 - (E) others related to the program.

§54.1311. What information must the special nonresidential project provide to adult program participants regarding confidentiality of their records?

If direct services are provided to adult program participants, the contractor must provide these program participants with at least the following information regarding confidentiality in writing:

- (1) the right to see their records;
- (2) the kind of information recorded, why, and the methods of collection;
- (3) who within the organization has access to the program participants' records;
- (4) the organization's policy and practices on confidentiality;
- (5) current confidentiality laws in Texas and the limits of confidentiality under the law, including mandatory reporting for abuse or suspected abuse of:
 - (A) children;
 - (B) the elderly; and
 - (C) people with disabilities;
- (6) the contractor's policy for responding to court orders and requests for information under the Public Information Act;
- (7) the contractor's policy for release of information;

(8) when the records will be decoded or destroyed; and

(9) what kind of information will remain in the file once a program participant terminates services.

§54.1312. Who needs to sign confidentiality agreements and where should the special nonresidential project keep these agreements?

The contractor must have all employees, volunteers, board members, student interns, and adult clients who participate in group intervention services sign a confidentiality agreement. The agreement must have a provision that states that confidentiality must be maintained after an employee, volunteer, board member, student intern, or program participant leaves the project. These agreements must be placed:

- (1) in the personnel files of the employees;
- (2) with the corporate records of the board members; and
- (3) in the individual files of volunteers, student interns, and program participants.

§54.1313. What must a current or former employee, volunteer, board member, or student intern do if she or he receives a court order regarding the special nonresidential project?

Individuals who receive a court order regarding any program records, program participants, special nonresidential project activities, or personnel issues must immediately notify the executive director or, in the executive director's absence, the designated staff.

§54.1314. What is required in the confidentiality training provided to employees, board members, interns, and direct service volunteers?

The contractor must provide training on:

- (1) confidentiality policies and procedures;
- (2) why confidentiality is important for victims of family violence; and
- (3) how information is recorded.

§54.1315. What can the special nonresidential project contractor who has attorneys or other licensed professionals providing Texas Department of Human Services (DHS)-funded services do to allow DHS to monitor their services?

If attorneys and other licensed professionals prohibited by Texas law or regulations to release program participant records to DHS are allowed to provide DHS-funded services, the contractor must submit an alternative method for verifying DHS program participant services for DHS approval.

§54.1316. What information should the special nonresidential project keep in program participant files?

The contractor must limit the information kept in files to information necessary for:

- (1) statistical and funding purposes;
- (2) establishing goals for intervention and advocacy;
- (3) documenting the need for and delivery of services; and
- (4) protecting the liability of the contractor and its employees, volunteers, and board members.

§54.1317. What policies and procedures must the special nonresidential project have regarding entries in a program participant file?

The contractor must have written policies and procedures regarding entries into a program participant file that ensure:

- (1) each entry is signed and dated by the employee or volunteer entering the information;

(2) a program participant file does not include the names of other program participants; and

(3) if the contractor provides direct services for both the victim and the violent family member, at a minimum, separate case records are maintained to promote victim safety and confidentiality.

§54.1318. Is the special nonresidential project required to give a program participant access to her or his files?

If the special project provides direct services, the contractor must have written policies and procedures to ensure a special project program participant has access to review all information in her or his case file.

§54.1319. What must the special nonresidential project do if a program participant contests an entry in her or his file?

If a program participant contests a case file entry in her or his file, the contractor must either:

(1) remove the entry from the file; or

(2) if the entry is not removed, note in the case file that the client believes the entry to be inaccurate.

§54.1320. What controls must the special nonresidential project contractor maintain over program participant files?

The custodian of the records, designated by the executive director, is responsible for maintaining control over the records, including the court's access to the records. Program participant records must be kept secure and must not be removed from the contractor's premises without the written permission of the custodian of the records.

§54.1321. When can the special nonresidential project release program participant information?

(a) The contractor may release information orally or in writing only if it first obtains a written release of information from the program participant.

(b) The contractor, regardless of whether a written release of information from a program participant is obtained, must release information in order to comply with the applicable state laws to report abuse or suspected abuse of:

(1) children;

(2) the elderly; and

(3) people with disabilities.

§54.1322. What must the special nonresidential project include in its written release of program participant information document?

The release of information document must include the:

(1) name of no more than one person or organization to which the information is being released;

(2) specific information to be released;

(3) beginning and ending dates the release is effective, not to exceed the program participant's active length of services;

(4) date and the signatures of the program participant and the employee or volunteer; and

(5) right to revoke a release of information at any time. This revocation request must be submitted in writing.

§54.1323. What written procedures must the special nonresidential project have regarding court orders?

The project must have written procedures for responding to court orders, such as subpoenas, search warrants, or writs of attachment. The written procedures must include:

(1) what to do when a process server arrives with a court order;

(2) on whom court orders may be served, such as the custodian of records;

(3) which attorney(s) should be contacted;

(4) who will discuss the subpoena with the client or other victim of family violence, and at what point; and

(5) the circumstances under which records might be released.

§54.1324. Must the special nonresidential project notify the victim of family violence when a court order affects the individual's or the individual's records?

Yes, the contractor must attempt whenever possible to notify the program participant, hotline caller, or other victim of family violence when a court order affects that individual or that individual's records.

§54.1325. Must the special nonresidential project have written policies and procedures for the retention and destruction of documentation?

The contractor must develop written policies and procedures for the retention and destruction of all written, electronic, and digital documentation that pertains to program participants, including but not limited to:

(1) case notes, case content, and case files;

(2) staff-to-staff communications; and

(3) documentation required by funders.

§54.1326. Must the special nonresidential project contractor provide project staff with telephone access?

Yes, the contractor must provide telephone access for the special nonresidential project employees or volunteers during regular business hours.

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DIVISION 7. SERVICE DELIVERY

40 TAC §§54.1401 - 54.1410

The new sections are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The new sections implement the Human Resources Code, §§51.001-51.011.

§54.1401. What services must the special nonresidential project contractor provide?

The contractor must provide:

(1) at least one specialized family violence service, which can be either:

(A) community education relating to family violence;

or

(B) direct delivery of services for adult victims of family violence or their children;

(2) at a minimum, the following services to victims of family violence:

(A) safety planning, including:

- (i) ongoing assessment of risk of violence; and
- (ii) development of strategies to enhance safety;

(B) appropriate family violence information regarding hotlines;

(C) information about the victim's legal rights and options, and referral to legal resources; and

(D) information about the dynamics of family violence;

(3) information about and referral to existing community resources, including but not limited to:

(A) medical care;

(B) legal assistance;

(C) protective services for abuse of:

- (i) children;
- (ii) the elderly; and
- (iii) people with disabilities;

(D) public assistance;

(E) counseling and treatment services;

(F) children's services; and

(G) other appropriate family violence services;

(4) understanding and support of victims, including:

(A) active listening;

(B) addressing the needs identified by the individual;

(C) problem solving; and

(D) recognizing that:

(i) victims are responsible for their own life decisions; and

(ii) batterers are responsible for the violent behavior; and

(5) if providing direct services, advocacy, including:

(A) explaining the program participant's rights;

(B) assisting the program participant make choices about those rights; and

(C) assisting the program participant access the services to which she or he is entitled.

§54.1402. Must the special nonresidential project contractor provide a crisis call hotline?

No, but if the contractor does provide a hotline and it is funded by the Texas Department of Human Services, the contractor must:

(1) answer the hotline 24 hours a day, every day of the year, by an individual trained in crisis intervention or who has immediate access to someone who has had this training;

(2) list the hotline number in all local telephone books;

(3) ensure local telephone information services within the project's service area widely distribute or make available the hotline telephone information;

(4) provide a minimum of two hotline telephone lines;

(5) ensure the caller has direct access to a live person and that a messaging system is not used to answer the hotline;

(6) provide blocks on the contractor's numbers for outgoing calls to clients and other victims of family violence, which may only be unblocked with permission from the client or victim of family violence;

(7) ensure the screening process complies with all state and federal law if the hotline is used to screen for eligibility for services;

(8) keep all hotline calls and any related documentation confidential;

(9) provide equal access to hearing impaired victims of family violence; and

(10) offer appropriate information and referral to battering intervention services, if violent family members call the hotline.

§54.1403. What crisis call hotline procedures must the special non-residential project contractor have?

The contractor must have written procedures to:

(1) ensure access to immediate intervention 24 hours a day every day of the year;

(2) assess the victim's safety;

(3) accept collect calls from victims of family violence;

(4) ensure the hotline does not block anonymous incoming calls; and

(5) ensure the contractor is able to respond appropriately to people with limited English proficiency.

§54.1404. Can the special nonresidential project contractor use caller ID on the crisis call hotline?

If the contractor uses caller ID or any other technology that establishes a record of calls on the hotline, the contractor must:

(1) ensure there will not be a breach of confidentiality to third parties;

(2) limit access to the records generated by these devices; and

(3) ensure staff training on all caller ID policies and procedures.

§54.1405. Can the special nonresidential project contractor subcontract the answering of the crisis call hotline?

If the contractor subcontracts the answering of the hotline, it must have the subcontractor arrangement approved by the Texas Department of Human Services and must have a written policy that addresses how the contractor will ensure immediate access to the project's 24-hour-a-day services.

§54.1406. What information must the special nonresidential project contractor cover in the program participant's orientation?

The contractor providing direct family violence direct services must ensure the orientation is documented and includes, but is not limited to:

(1) explanation of services available;

- (2) termination policy;
- (3) program participants' rights;
- (4) nondiscrimination statement;
- (5) grievance procedures;
- (6) safety and security procedures;
- (7) confidentiality and limits of confidentiality; and
- (8) waivers of liability.

§54.1407. Is the special nonresidential project allowed to incorporate religion into the intervention services?

If the project provides direct intervention family violence services, it must not promote any one religion and must not require clients to participate in religious groups or to use religious materials.

§54.1408. Must the special nonresidential project contractor maintain a referral system?

Yes, the contractor must maintain and make readily accessible to employees and volunteers a current printed referral list that includes telephone numbers of existing community resources for each county where services are provided.

§54.1409. What policies should the special nonresidential project contractor have regarding termination of program participant services?

If the contractor provides direct family violence services, it must:

- (1) have written policies that outline the reasons and behaviors for which services can be terminated;
- (2) apply the policies equally to all people; and
- (3) comply with the Americans with Disability Act and the Civil Rights Act.

§54.1410. What information about termination of services must the special nonresidential project contractor provide program participants?

The contractor providing direct family violence services must inform program participants in writing of their right to appeal a termination of services to both the contractor and to the Texas Department of Human Services (DHS). Notice to the program participant must be provided and, if necessary, a fair hearing conducted according to DHS rules for fair hearings as specified in Chapter 79 of this title (relating to Legal Services).

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

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**SUBCHAPTER D. NONRESIDENTIAL
CENTERS
DIVISION 1. BOARD OF DIRECTORS**

40 TAC §§54.1501 - 54.1510

The new sections are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The new sections implement the Human Resources Code, §§51.001-51.011.

§54.1501. What is the stewardship function of the nonresidential center's board of directors?

The board is required to ensure fiscal accountability of all funds received and spent by the agency.

§54.1502. What are the responsibilities of the nonresidential center's board of directors?

The board must:

- (1) assure that the center is operating in a manner that keeps the organization's mission and purpose focused, without becoming involved in day-to-day operations;
- (2) employ the executive director and conduct a performance review at least annually;
- (3) as a whole, or the center's finance committee, regularly review actual revenue and expenditures and compare them to budgeted revenue and estimated costs;
- (4) review and approve programs and budgets; and
- (5) review and approve board policies for the organization's operation.

§54.1503. What documents must the nonresidential center's board of directors maintain?

The board must ensure that the center maintains all documentation required by the Texas Department of Human Services (DHS) contract, including:

- (1) articles of incorporation and letter granting 501(c)(3) status;
- (2) a board handbook that contains all required materials;
- (3) fidelity bond and insurance policies;
- (4) organization's bylaws;
- (5) organization's policies that include, but are not limited to:

- (A) confidentiality;
- (B) personnel;
- (C) financial; and
- (D) travel;

(6) current operating budget, amendments, and copies of budget summaries and audits for all past years;

(7) list of donors;

(8) minutes of board meetings; and

(9) any other documents required by DHS as listed in Divisions 2 and 3 of this subchapter (relating to Contract Standards; and Fiscal Management).

§54.1504. What must the nonresidential center's bylaws contain?

The bylaws must have a statement of the organization's purpose and address the following:

(1) board size, terms of office, term limits, rotation policy, and election procedures;

(2) specifications for regular and special meetings, meeting notices, attendance requirements, removal for cause, and filling interim vacancies;

(3) officers' terms of office, responsibilities, and election procedures;

(4) standing committees, their charges, size, and composition;

(5) quorums for board meetings; and

(6) bylaw amendment process.

§54.1505. What must the nonresidential center board include in its recruitment procedures?

The board's recruitment procedures must encourage a diverse representation of members in terms of ethnicity, age, profession, or life experience, reflecting the community served.

§54.1506. What information does the nonresidential center need to provide to new board members?

New board members must receive:

(1) a board handbook;

(2) access to a copy of the Texas Non-Profit Corporation Act; and

(3) access to a copy of the Texas Department of Human Services Family Violence Program Nonresidential Center Provider Manual.

§54.1507. What must the nonresidential center include in its board handbook?

The handbook must have at a minimum:

(1) board member job description;

(2) current list of board members with mailing addresses and telephone numbers;

(3) organization's mission statement;

(4) organization's bylaws and a copy of the letter granting 501(c)(3) status;

(5) list of all committees, including the names of all appointed board members and assigned staff;

(6) committee descriptions;

(7) policies of the organization;

(8) organizational chart;

(9) history of the organization;

(10) list of program services and a brief description of each program;

(11) current budget, including funding sources and subcontractors;

(12) brief description of contract provisions with attorneys, auditors, or other professionals;

(13) basic information about family violence;

(14) brief history of the Texas Battered Women's Movement; and

(15) brief summary of how Texas laws that address family violence issues are enacted.

§54.1508. How often should the nonresidential center board of directors receive training?

Along with the executive director, the board must plan and conduct annual board training. In lieu of a single annual training session, the center may conduct a series of trainings or use portions of the general board meetings.

§54.1509. What training must the nonresidential center's board of directors receive?

The board must receive training at least annually on the following:

(1) an explanation of the center's mission, philosophy, and a brief history;

(2) an explanation of the dynamics of family violence that includes its causes and effects;

(3) a description of the organization's current programs, provided by program staff;

(4) a review of the organization's policies and clarification of any changes made during the year;

(5) an explanation of how the center is funded and future funding projections;

(6) a discussion, presented by the board chair or a member of the executive committee, of the following:

(A) the board's role and responsibilities related to legal and fiscal accountability;

(B) meetings and attendance requirements;

(C) committee duties, structure, and assignments; and

(D) fund-raising and public relations responsibilities;

(7) an explanation of the organization's insurance coverage, including director's and officers' liability insurance or notification of inability to obtain insurance;

(8) an explanation of the working relationship between the board and staff, including but not limited to which staff member is contacted regarding questions or requests and which staff members contact board members routinely; and

(9) an update on any changes made in the Texas Non-Profit Corporation Act.

§54.1510. What responsibilities do board members have regarding confidentiality?

Each board member must:

(1) know the center's confidentiality policies; and

(2) provide written assurance to the center that she or he will not use the position to obtain or access confidential program participant information.

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DIVISION 2. CONTRACT STANDARDS

40 TAC §§54.1601 - 54.1622

The new sections are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The new sections implement the Human Resources Code, §§51.001-51.011.

§54.1601. Who is eligible to apply for a nonresidential center contract?

To be eligible, an organization must:

- (1) be a public or private nonprofit organization;
- (2) provide, as its primary purpose, direct delivery of services to adult victims of family violence;
- (3) demonstrate a system of referring victims of family violence to at least one family violence center or other safe temporary lodging;
- (4) have operated and provided comprehensive services, including the services described in this subchapter, to victims of family violence for at least one year before the date on which the contract is awarded;
- (5) demonstrate that the center, through the services it provides, addresses a need in the community consistent with the Texas Department of Human Services plan for family violence services;
- (6) demonstrate the nonresidential center's eligibility for and use of funds from:
 - (A) the federal government;
 - (B) philanthropic organizations; and
 - (C) voluntary sources;
- (7) demonstrate community support for the center as evidenced by financial contributions from:
 - (A) civic organizations;
 - (B) local governments; and
 - (C) individuals;
- (8) provide evidence that the center provides services that encourage self-sufficiency and uses community resources effectively;
- (9) provide evidence of involvement with local law enforcement officials; and
- (10) demonstrate support for the center through volunteer work, especially volunteer effort by people who have been victims of family violence.

§54.1602. How does an organization apply for funding as a Texas Department of Human Services (DHS)-contracted nonresidential center?

To apply for funding, the organization must:

- (1) contact DHS to request contract eligibility information;
- (2) submit contract application information as prescribed by DHS; and
- (3) meet the eligibility standards as specified in this subchapter.

§54.1603. Can an organization reapply for funding if the nonresidential center contract has been terminated for failure to perform the obligations?

If the Texas Department of Human Services terminates the contract because the center failed to perform the obligations under the contract, the center will not be eligible to reapply for any family violence funding for two years following the termination date of the previous contract.

§54.1604. Can the nonresidential center target services to a particular unserved or underserved population?

If the center's purpose is to provide services to a particular population, it must have a plan for providing services to otherwise eligible victims who are not members of the targeted population. This plan may include referrals; however, if an appropriate referral cannot be made, the center must provide the requested services.

§54.1605. Can the nonresidential center apply for a special project contract?

The center may apply; however, the proposed services cannot be the same as those for the nonresidential contract.

§54.1606. What is the process to renew the nonresidential center contract?

The center must return a completed contract renewal packet annually to the Texas Department of Human Services (DHS) by the date specified in the packet. Renewals are contingent on legislative authorization and available funding.

§54.1607. What types of documentation must the nonresidential center maintain?

The center must maintain in an accessible location:

- (1) financial and supporting documents;
- (2) statistical records;
- (3) any other records pertinent to the services for which a claim or cost report is submitted to the Texas Department of Human Services (DHS) or its agent; and
- (4) the following DHS contract documents:
 - (A) a copy of the contract, including approved budget and plan of operation;
 - (B) contract amendments, budget revisions, and other correspondence with DHS;
 - (C) copies of all monthly billing and other DHS forms as required;
 - (D) copies of contractor's audit reports and related correspondence; and
 - (E) copies of DHS's monitoring and evaluation reports, documentation of corrective actions, and related correspondence;
 - (F) the center's operating policies and procedures;
 - (G) the personnel manual and personnel files;
 - (H) applications, screening, and interview materials;
 - (I) the fiscal manual and accounting records that support DHS expenditures; and
 - (J) program participant files, including DHS service forms.

§54.1608. How long must the nonresidential center keep the documents?

Any records or documents that pertain to the contract must be kept in a readily accessible location for a minimum of three years and 90 days after the end of the contract period. If any litigation, claim, or audit involving these documents begins before that time, the center must keep

the records and documents for not less than three years and 90 days or until all litigation, claims, or audit findings are resolved.

§54.1609. Who may inspect, monitor, or evaluate the nonresidential center client records, financial books, and supporting documents that pertain to services provided?

As a Texas Department of Human Services (DHS) Family Violence Program contractor, the center must allow DHS and all appropriate federal and state agencies or their representatives to inspect, monitor, or evaluate program participant records, books, and supporting documents that pertain to services provided.

§54.1610. What documents should the nonresidential center have available for a monitoring visit?

All financial and program participant records of the contractor and any subcontractors must be readily available and provided upon request for the monitoring, which may occur through:

- (1) official audits;
- (2) on-site reviews;
- (3) case reading; or
- (4) other record reviews.

§54.1611. What should the nonresidential center do after it receives a Texas Department of Human Services (DHS) monitoring report?

(a) The center must submit a written response to DHS within 30 calendar days from the date of the report explaining the actions the center took to address any findings.

(b) If the center's response proposes acceptable action(s) to address finding(s), DHS will issue a letter closing the report and no further action is required.

(c) If the center's response is unacceptable, or verification of an action is needed, the center must provide additional documentation of action as required by DHS correspondence.

§54.1612. Does the nonresidential center need to have an internal monitoring system?

The center must have a written internal monitoring system to evaluate:

- (1) quality of the center's required program participant services;
- (2) accuracy of the fiscal and programmatic documentation; and
- (3) compliance with the policies and procedures specified in the contract.

§54.1613. Does the nonresidential center have to maintain a copy of the Texas Department of Human Services Family Violence Program Nonresidential Center Provider Manual?

The center must maintain access to the manual at all separate locations where contracted services are performed or administered. The manual must be available for reference by all employees and volunteers of the center.

§54.1614. How much of the nonresidential center's funding can the Texas Department of Human Services (DHS) provide?

(a) DHS must not exceed the following prescribed percentages of the center's annual operating costs:

Figure: 40 TAC §54.1614(a)

(b) If the first contract with the center is not for a full 12-month period, DHS's level of participation must not exceed 75% for the combined partial year and the following 12-month contract period.

§54.1615. Is it possible to obtain a waiver to the prescribed percentage of the nonresidential center's operating budget?

The Texas Department of Human Services may waive the applicable percentage when all of the following conditions are met:

(1) the center's anticipated income for the contract year is expected to increase or decrease by more than 10% relative to the actual income received during the previous contract year;

(2) the change in the center's budget has resulted from:

(A) an increase in the state appropriation for center services; or

(B) a decrease in funding from other sources that cannot be attributed to a failure or deficiency on the center's part; and

(3) the center agrees to receive fund development technical assistance to increase its non-state funding resources.

§54.1616. How can the nonresidential center request a variance or waiver?

(a) To request a waiver from the maximum prescribed funding percentage, the center must:

(1) submit a written request and appropriate documentation to the Texas Department of Human Services (DHS) state office demonstrating the center's efforts to raise funds compared to its budget; and

(2) agree in writing to receive technical assistance as designated by DHS.

(b) To request a variance to or waiver from any other requirement in this subchapter, the board must submit a written request to DHS on forms prescribed by DHS and must document compelling reasons the requirement cannot be met.

§54.1617. Can the nonresidential center receive a funding percentage waiver more than once?

A center may not receive more than two funding waivers in consecutive contract terms.

§54.1618. What is the process to amend the nonresidential center contract?

(a) The center must submit any request for a contract amendment in writing to the Texas Department of Human Services (DHS) for review; and

(b) the amendment must be approved by DHS before implementation by the center.

§54.1619. What is the process to revise the nonresidential center budget?

(a) A budget revision can be made only for allowable expenses and if it does not contradict other rules or policies or indicate a change in the scope of the contract.

(b) If the total amount of the revision is less than 5.0% of the contract amount or \$5,000, or a prorated portion if the contract term is less than one year, whichever is lower, the revision must be reported to DHS in a letter within 30 days of implementation.

(c) If the total amount of the revision is more than 5.0% of the contract amount or \$5,000, or a prorated portion if the contract term is less than one year, whichever is lower, the proposed revision must be submitted in writing on prescribed forms for DHS approval before implementation.

§54.1620. What is the responsibility of the nonresidential center with regard to subcontracts?

The center is responsible for:

(1) meeting the contract outcomes, which includes ensuring all subcontractors meet the subcontracted outcomes; and

(2) all fiscal, administrative, and program monitoring of the subcontractor.

§54.1621. What must a nonresidential center do if there is a change in corporate control?

At least 30 before the transfer of a center from one nonprofit organization to another, the contractor must give written notice to the Texas Department of Human Services (DHS). Before the transfer occurs, the old organization and the new organization must enter into an assignment of contract. DHS will determine the new organization's eligibility to contract and approve the assignment of contract. Within 90 days after the transfer, DHS will evaluate the new organization's ability to continue the provision of contracted services. If DHS determines the new organization is not able to provide the contracted services, it will give written notice of contract termination and the contractor's right to appeal.

§54.1622. What can happen if the nonresidential center does not comply with the rules?

If the center fails to comply with the rules in this subchapter, in either a repeated or substantial manner, DHS may cancel the center's contract by written notice of contract termination and the center's right to appeal.

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DIVISION 3. FISCAL MANAGEMENT

40 TAC §§54.1701 - 54.1716

The new sections are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The new sections implement the Human Resources Code, §§51.001-51.011.

§54.1701. What are the accounting system requirements for the non-residential center?

The center must maintain an accounting system that:

(1) records revenue and expenditures using generally accepted accounting principles;

(2) includes a chart of accounts that lists all accounts by an assigned number;

(3) contains a general ledger and subsidiary ledgers;

(4) maintains supporting documentation for all revenue and expenditures, including but not limited to:

(A) receipts or vouchers for revenue;

(B) bank statements;

(C) canceled checks;

(D) deposit slips;

(E) approved invoices;

(F) receipts;

(G) leases;

(H) contracts;

(I) time sheets;

(J) inventory; and

(K) cost allocation worksheets;

(5) identifies all funding sources and expenditures by separate fund type; and

(6) uses a double-entry accounting system, either cash, accrual, or modified accrual.

§54.1702. Is the nonresidential center required to have a fidelity bond?

The center must have a fidelity bond in an amount at least equal to 1/12 of the Texas Department of Human Services contract.

§54.1703. What must be included in the Texas Department of Human Services (DHS) purchase of services contract budget?

The center uses its board-approved annual operating budget to complete the DHS purchase of service contract budget. The budget submitted to DHS must specify all costs and revenue for providing services to family violence victims and their dependents under this program. The contractor is not required to specify the costs of other programs operated by the same organization.

§54.1704. How should the nonresidential center handle in-kind contributions?

The center must establish and follow written policies and procedures for in-kind contributions that include:

(1) a method of establishing the market value of donated goods and services;

(2) rates for volunteer services that are consistent with those paid for similar work in other activities of the community; and

(3) a method for documenting in-kind contributions.

§54.1705. How should the nonresidential center handle cash contributions?

The center must establish and follow written internal policies and procedures for the consistent and reasonable treatment of cash contributions that include a method of recording all such contributions.

§54.1706. How should the nonresidential center document required cash/in-kind match?

The center must develop written internal policies and procedures to accurately document the cash/in-kind match required by funding sources.

§54.1707. How does the nonresidential center allocate overhead costs to its Texas Department of Human Services contract?

The center must have a documented allocation methodology to distribute overhead and shared costs, such as administrative salaries, rent, and utilities, between the organization's funding sources.

§54.1708. What must the nonresidential center do in order to receive payment from the Texas Department of Human Services (DHS)?

DHS reimburses the contracting center monthly if:

- (1) statistical reporting requirements are in compliance;
- (2) monitoring report responses are in compliance; and
- (3) all other required documents have been submitted.

§54.1709. What costs are eligible for reimbursement under the non-residential center contract?

Eligible costs are costs that have been:

- (1) approved in the contract;
- (2) incurred within the contract term; and
- (3) paid by the contractor or owed by the last day of the contract term in accordance with the organization's method of accounting.

§54.1710. Can the nonresidential center's funds and expenses be combined with the contractor's other Texas Department of Human Services (DHS) contract(s)?

If the center provides services under multiple contracts with DHS, it must maintain an accounting system that separates expenditures by contract to ensure appropriate expense allocation and contract billing.

§54.1711. What is the quarterly report?

It is the financial report submitted to the Texas Department of Human Services that states the nonresidential center's:

- (1) approved contract budget;
- (2) actual year-to-date expenditures for each cost category;

and

- (3) balance for each category.

§54.1712. When is the quarterly report due?

The Texas Department of Human Services must receive the nonresidential center's quarterly reports by:

Figure: 40 TAC §54.1712

§54.1713. What is the annual report?

It is the financial report submitted to the Texas Department of Human Services that states the nonresidential center's:

- (1) actual expenditures for the contract year in each cost category;
- (2) cash and in-kind resources for the program; and
- (3) source(s) of the center's contract match.

§54.1714. When is the annual report due?

The Texas Department of Human Services must receive the nonresidential center's report by October 15.

§54.1715. What are the nonresidential center's audit requirements?

If the organization spends \$300,000 or more in federal funds, it must comply with the Single Audit Act requirements as specified in the Office of Management and Budget (OMB) Circular A-133.

§54.1716. When is the nonresidential center audit due?

According to the Office of Management and Budget (OMB) Circular A-133, the audit must be submitted to the Texas Department of Human Services and other funders within nine months of the end of the organization's fiscal year.

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DIVISION 4. PERSONNEL

40 TAC §§54.1801 - 54.1818

The new sections are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The new sections implement the Human Resources Code, §§51.001-51.011.

§54.1801. Must the nonresidential center comply with federal personnel laws?

The center must comply with all federal laws that apply to the center. Additionally, the center must develop written policies and procedures for its personnel handbook to address, at a minimum, the following federal laws that apply to it:

- (1) fair employment laws, including the:
 - (A) Civil Rights Act of 1964;
 - (B) Age Discrimination in Employment Act of 1967;
 - (C) Americans with Disabilities Act of 1990; and
 - (D) Equal Pay Act of 1963;
- (2) the Fair Labor Standards Act of 1938;
- (3) the Family Medical Leave Act of 1993;
- (4) the Drug-Free Workplace Act of 1988; and
- (5) all other applicable employment laws.

§54.1802. What additional personnel policies and procedures must the nonresidential center have?

The center must develop written personnel policies and procedures for its personnel handbook that standardize the everyday actions and conduct of all employees and address at a minimum the following:

- (1) contract labor;
- (2) equal opportunity employment;
- (3) disabilities in the workplace policy, including but not limited to:
 - (A) human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS); and
 - (B) reasonable accommodations for applicants and employees with disabilities;
- (4) sexual harassment if the center is under the jurisdiction of Title VII of the Civil Rights Act of 1964;
- (5) conflict of interest;
- (6) domestic violence in the workplace;
- (7) nepotism;
- (8) recruitment, interviewing, and hiring, including but not limited to:

- (A) job posting;
- (B) job descriptions with essential job functions;
- (C) interviewing systems; and
- (D) reference checking and responding to reference checking;
- (9) rules of conduct;
- (10) work hours, including breaks;
- (11) employee benefits and entitlements, including holidays;
- (12) employees' right to access their personnel files;
- (13) written and oral employee orientation, initial training, and employee development;
- (14) confidentiality requirements of employee records;
- (15) employee evaluation;
- (16) probationary period;
- (17) termination policies, including:
 - (A) involuntary termination;
 - (B) reduction in force; and
 - (C) reorganization; and
- (18) grievance policies.

§54.1803. Who needs a copy of the nonresidential center's personnel handbook?

All employees must have ongoing access to the center's current personnel policies and procedures handbook. The signed acknowledgment of receipt must be maintained in the employee's personnel file. Employees must be notified of new or changed personnel policies.

§54.1804. Are there any requirements for the nonresidential center employees' personnel files?

The center must maintain a personnel file for each employee. Each file must include at least the following information:

- (1) employment application or resume;
- (2) job descriptions;
- (3) signed acknowledgment of confidentiality agreement;
- (4) signed acknowledgment of receipt of personnel policies and procedures handbook;
- (5) all performance evaluations;
- (6) documentation of orientation, initial training, and employee development;
- (7) any status or classification change;
- (8) all disciplinary actions; and
- (9) letters of praise or criticism.

§54.1805. Where should the nonresidential center keep its employee payroll information?

All payroll information, including time sheets, tax forms, and voluntary/involuntary deductions must be filed in the payroll information file, the personnel files, or in accordance with the center's financial policy and procedures.

§54.1806. What must the nonresidential center do to ensure confidentiality of specific employee information?

(a) The center must develop written policies to ensure the confidentiality of:

- (1) Form I-9 (U.S. Department of Justice Employment Eligibility Verification);
- (2) all health and medical information;
- (3) complaints and investigation documents of fair employment laws; and
- (4) identifying employee information in response to Public Information Act requests.

(b) If the center is under the jurisdiction of the Americans with Disabilities Act (ADA), it must develop written policies to ensure the separate maintenance of all health and medical information.

§54.1807. What should the nonresidential center address in its policy regarding confidentiality of employee records?

The center must develop written policies regarding:

- (1) personnel information; and
- (2) responses to requests made pursuant to the Texas Public Information Act.

§54.1808. What should the nonresidential center address in its drug-free workplace policies?

If under the jurisdiction of the Drug-Free Workplace Act, the center must develop a written drug and alcohol policy that states at least the following:

- (1) illegal use or illegal possession of alcohol or drugs is prohibited while on duty;
- (2) a belief in a treatment and recovery approach;
- (3) a stated concern for employees;
- (4) programs and systems for assistance; and
- (5) a statement of confidentiality.

§54.1809. What should the nonresidential center address in its recruitment policies?

If the center is under the jurisdiction of fair employment laws, it must develop written recruitment policies and procedures that ensure:

- (1) the recruitment system used does not illegally impact one protected class more than another; and
- (2) the recruitment of applicants does not exclude any potentially qualified applicants.

§54.1810. What should the nonresidential center address in its interviewing and hiring policies?

(a) The center must develop written job-related hiring policies and procedures, including interview processes that are uniform for all candidates for a particular position.

(b) If the center is under the jurisdiction of fair employment laws, when hiring employees it must use a system that does not illegally impact one protected class more than another and that treats all candidates equally.

§54.1811. Does the nonresidential center need written job descriptions for its employee positions?

(a) All Texas Department of Human Services-funded positions must have a written job description.

(b) If the center is under the jurisdiction of the Americans With Disabilities Act, it must develop written job descriptions for and list the essential job functions of every position.

§54.1812. Should the nonresidential center identify its employee positions as exempt or non-exempt?

The center must identify, in writing, all DHS-funded positions as exempt or non-exempt.

§54.1813. What are the nonresidential center requirements for new employee orientation?

(a) The center must provide an oral orientation for all new employees within the first two days of employment.

(b) Within two weeks of the day of employment, all new employees must receive basic oral or written information regarding:

- (1) family violence issues;
- (2) a brief history of the Texas Battered Women's Movement; and
- (3) a brief summary of current Texas laws that address family violence issues.

§54.1814. Does the nonresidential center need to provide specific job training?

The center must provide each employee in a new position with initial training, including supervised instruction about specific job functions covered in her or his job description.

§54.1815. Are there any requirements for specific program training for nonresidential center employees?

The center must provide initial training for direct service employees funded by the Texas Department of Human Services (DHS) and employees supervising those employees. The training must include:

- (1) hotline skills, if applicable;
- (2) basic crisis intervention techniques;
- (3) peer counseling techniques, if applicable;
- (4) the dynamics of family violence, including:
 - (A) the definition of family violence;
 - (B) the consequences of family violence crimes to the victim, the children, and society as a whole;
 - (C) the need to hold batterers accountable for their actions; and
 - (D) information that battering is:
 - (i) predominantly directed by men toward women but can occur in any type of intimate relationship; and
 - (ii) is most often part of a process by which the batterer maintains control and domination over the victim;
- (5) the relationship between family violence and drug and alcohol abuse, sexual abuse, and child abuse;
- (6) risk assessment, safety planning, and legal options for victims of family violence;
- (7) confidentiality;
- (8) sensitivity to cultural diversity;
- (9) program participant eligibility, including Americans with Disabilities Act accommodations;
- (10) center policies and procedures;
- (11) organization mission and philosophy;
- (12) all required documentation and procedures as related to program participant issues; and

(13) an overview of the DHS Family Violence Program Nonresidential Center Provider Manual.

§54.1816. What access should the nonresidential center provide to the Texas Department of Human Services (DHS) Family Violence Program Provider Manual?

The center must provide access to the manual at each separate location where contracted services are performed. The center must:

- (1) ensure access to the manual by all employees and volunteers; and
- (2) have written procedures for the distribution and training of employees and volunteers on manual revisions and policy interpretations.

§54.1817. Should the nonresidential center evaluate employee performance?

- (a) The center's board must evaluate the executive director annually; and
- (b) the executive director or designee must evaluate all Texas Department of Human Services-funded employees at least annually.

§54.1818. Can the nonresidential center use probationary periods for its employees?

If the center chooses to use probationary periods, it must:

- (1) develop written policies regarding probationary periods; and
- (2) apply the policies uniformly.

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

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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DIVISION 5. FACILITY, SAFETY, AND HEALTH REQUIREMENTS

40 TAC §§54.1901 - 54.1909

The new sections are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The new sections implement the Human Resources Code, §§51.001-51.011.

§54.1901. What facility codes must the nonresidential center meet?

The center's facilities must be in adequate repair and in compliance with applicable local health, fire, electrical, and building codes.

§54.1902. Must the nonresidential center's facilities comply with the Americans with Disabilities Act (ADA)?

Yes, the center must comply with Title II and Title III of the ADA.

§54.1903. What are the additional facility requirements for the non-residential center?

The center's facility must have:

- (1) a private meeting area for individual or group services;
- (2) access to bathroom facilities, including toilets and lavatories;
- (3) adequate safe space for children;
- (4) basic furnishings that are clean and in good repair;
- (5) clearly marked exits with appropriate exit signs; and
- (6) a first-aid kit in all center facilities, accessible to employees and volunteers.

§54.1904. What kind of security system must the nonresidential center have?

The center must have a security system that is operational 24 hours a day. The security system may include, but is not limited to an alarm system, special lighting, dead bolts, or agreements with local law enforcement.

§54.1905. What security policies and procedures must the nonresidential center have?

The center must have written policies and procedures to promote the safety and security of clients, employees, and volunteers. These policies and procedures must address:

- (1) an intruder on the property, such as a batterer;
- (2) assaults to people;
- (3) bomb threats;
- (4) threatening telephone calls;
- (5) natural disasters, such as tornadoes and floods; and
- (6) fires.

§54.1906. What are the safety policies and procedures that the nonresidential center needs to develop for providing services to children?

(a) The center must develop and endorse written nonviolent disciplinary policies and procedures for employees and volunteers who provide services to children.

(b) The center must have written policies and procedures to:

- (1) ensure the safety of children in its facilities; and
- (2) maintain the safety of children if employees or volunteers take children on outings.

§54.1907. What health and hygiene policies and procedures must the nonresidential center follow?

The center must have and follow written health and hygiene policies and procedures that include, but are not limited to:

- (1) practices to prevent the spread of contagious diseases that comply with local, regional, or state health departments and federal regulations; and
- (2) the provision of services to individuals with a communicable disease and procedures that comply with applicable laws and regulations.

§54.1908. What health and hygiene policies are required for the nonresidential center providing services to children?

In addition to basic hygienic practices, the center that provides services to children must have written health and hygiene policies and procedures that include, but are not limited to:

(1) hygienic practices for children's areas, including children's toys; and

(2) provision of basic written information on:

- (A) schedules for immunizations;
- (B) vaccine-preventable diseases;
- (C) the need for immunizations; and
- (D) any available government-funded health insurance programs.

§54.1909. What are the regulations regarding smoking in the nonresidential center?

The center must comply with all applicable federal, state, and city regulations regarding smoking, including but not limited to the Pro-Children Act of 1994 and the Health and Safety Code, Chapter 161.

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

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Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

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DIVISION 6. PROGRAM ADMINISTRATION

40 TAC §§54.2001 - 54.2037

The new sections are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The new sections implement the Human Resources Code, §§51.001-51.011.

§54.2001. What services must the nonresidential center provide to victims of family violence?

At a minimum, the center must provide access to the services for victims of family violence that are outlined in the Human Resources Code, Chapter 51. The Service Delivery section of the Texas Department of Human Services Family Violence Program Nonresidential Center Provider Manual describes which of these services the center must provide directly or through formal arrangements with other resources.

§54.2002. Can the nonresidential center charge or solicit contributions or donations in return for Texas Department of Human Services (DHS)-contracted services?

No, the center must provide DHS-contracted services at no charge.

§54.2003. Who is eligible for services in the nonresidential center?

Victims of family violence as defined in the Human Resource Code, Chapter 51, including adults subjected to sexual and/or emotional abuse by their batterers, are eligible for services at the center.

§54.2004. Can a minor receive Texas Department of Human Services (DHS)-contracted services if the parent is not receiving services?

Yes, the center can provide DHS-contracted services to children when the parent is not receiving services if the minor:

(1) is a victim of family violence who has had the disability of minority removed, either through legal emancipation or marriage; or

(2) says she or he resides in the same household with a victim of family violence as defined in the Human Resource Code, Chapter 51, and:

(A) the center has parental or legal guardian consent to provide the minor with services; or

(B) the center complies with the Texas Family Code, §32.004, if parental or legal guardian consent is not obtained.

§54.2005. What federal and state laws must the nonresidential center follow when determining eligibility?

The center must comply with the following applicable state and federal laws and any amendments made to each of these laws. Policies and procedures must be written to ensure compliance with:

(1) the Human Resources Code, Chapter 51;

(2) the Civil Rights Act of 1964 (Public Law 88-352);

(3) §504 of the Rehabilitation Act of 1973 (Public Law 93-112);

(4) the Americans with Disabilities Act of 1990 (Public Law 101-336);

(5) the Age Discrimination Act;

(6) Chapter 73 of this title (relating to Civil Rights); and

(7) the Texas Health and Safety Code, §85.113.

§54.2006. What criteria can the nonresidential center use to determine eligibility for services?

The center must have written program participant eligibility and screening procedures that are based solely on the individual's status as a victim of family violence, without regard to:

(1) income;

(2) whether the individual contributes, donates, or pays for these services; and

(3) gender and/or sexual orientation.

§54.2007. Can the nonresidential center ever deny services to an otherwise eligible individual?

The center can deny services to an otherwise eligible victim of family violence only if it has written policies that outline specific behaviors that would make a victim ineligible. These policies must:

(1) address only behaviors that threaten the safety and security of staff and clients;

(2) apply equally to all people; and

(3) comply with the Americans with Disabilities Act and the Civil Rights Act.

§54.2008. Must the nonresidential center provide access to services for people with limited English proficiency?

(a) The center must serve people with limited English proficiency and must make every reasonable effort to serve them in their own language.

(b) The center must have written procedures for the access and delivery of services to people with limited English proficiency.

§54.2009. Is the nonresidential center subject to Texas Department of Protective and Regulatory Services' (PRS's) child care licensing regulations?

(a) If the center provides child care directly to the children of clients or of staff, then it must consult with PRS to determine if it is under the jurisdiction of PRS child care licensing regulations.

(b) If it is determined that the center is under the jurisdiction of PRS child care licensing regulations, the center must have written policies and procedures to ensure compliance with those rules and regulations.

§54.2010. What must the nonresidential center include in its general confidentiality policy?

The center must develop a written general confidentiality policy that provides:

(1) that all information will be kept confidential, including all personal information and all communications, observations, and information made by and between or about adult and child program participants, employees, volunteers, student interns, and board members;

(2) a statement about the importance of confidentiality in maintaining the safety of:

(A) victims;

(B) victims' families;

(C) volunteers;

(D) employees; and

(E) others related to the program;

(3) the parameters of what must be held confidential and by whom;

(4) the limits of confidentiality under the law;

(5) a designation of custodian of the records; and

(6) procedures for:

(A) retention and destruction of records;

(B) responses to court orders;

(C) release of information;

(D) reports of abuse or suspected abuse of:

(i) children;

(ii) the elderly; and

(iii) people with disabilities;

(E) requests of information under the Public Information Act;

(F) maintenance of records; and

(G) access to records.

§54.2011. What information must the nonresidential center provide adult program participants regarding confidentiality?

The center must provide adult program participants, in writing, at least the following:

(1) the right to see their records;

(2) the kind of information recorded, why, and the methods of collection;

(3) who within the center has access to the program participants' records;

(4) the center's policy and practices on confidentiality;

(5) current confidentiality laws in Texas and the limits of confidentiality under the law, including mandatory reporting for abuse or suspected abuse of:

- (A) children;
- (B) the elderly; and
- (C) people with disabilities;

(6) the center's policy for responding to court orders and requests for information under the Public Information Act;

- (7) the center's policy for release of information;
- (8) when the records will be decoded or destroyed; and

(9) what kind of information will remain in the file once a program participant terminates services.

§54.2012. Who needs to sign confidentiality agreements and where should the nonresidential center keep these agreements?

The center must have all employees, volunteers, board members, student interns, and adult program participants who participate in group intervention services sign a confidentiality agreement. The agreement must have a provision that states that confidentiality must be maintained after an employee, volunteer, board member, student intern, or program participant leaves the center. These agreements must be placed:

- (1) in the personnel files of the employees;
- (2) with the corporate records of the board members; and
- (3) in the individual files of volunteers, student interns, and program participants.

§54.2013. What must a current or former employee, volunteer, board member, or student intern do if she or he receives a court order regarding the nonresidential center?

Individuals who receive a court order regarding any program records, program participants, center activities, or personnel issues must immediately notify the executive director or, in the executive director's absence, the designated staff.

§54.2014. What is required in confidentiality training provided to employees, board members, interns, and direct service volunteers?

The center must provide training on:

- (1) confidentiality policies and procedures;
- (2) why confidentiality is important for victims of family violence; and
- (3) how information is recorded.

§54.2015. What information should the nonresidential center keep in program participant files?

The center must limit the information kept in files to information necessary for:

- (1) statistical and funding purposes;
- (2) establishing goals for intervention and advocacy;
- (3) documenting the need for and delivery of services; and
- (4) protecting the liability of the center and its employees, volunteers, and board members.

§54.2016. What policies and procedures must the nonresidential center have regarding entries in a program participant file?

The center must have written policies and procedures regarding entries into a program participant file that ensure:

(1) each entry is signed and dated by the employee or volunteer entering the information;

(2) a program participant file does not include the names of other program participants; and

(3) if the center provides direct services for both the victim and the violent family member, at a minimum, separate case records are maintained to promote victim safety and confidentiality.

§54.2017. Is the nonresidential center required to give a program participant access to her or his files?

The center must have written policies and procedures to ensure a program participant has access to review all information in her or his case file.

§54.2018. What must the nonresidential center do if a program participant contests an entry in her or his file?

If a program participant contests a case file entry in her or his file, the center must either:

(1) remove the entry from the file; or

(2) note in the case file, if the entry is not removed, that the program participant believes the entry to be inaccurate.

§54.2019. What controls must the nonresidential center maintain over program participant files?

The custodian of the records, designated by the executive director, is responsible for maintaining control over the program participant records, including the court's access to the records. Program participant records must be kept secure and must not be removed from the center's premises without the written permission of the custodian of the records.

§54.2020. When can the nonresidential center release program participant information?

(a) The center may release information orally or in writing, only if it first obtains a written release of information from the program participant.

(b) Regardless of whether a written release of information from a program participant is obtained, the center must release information in order to comply with the applicable state laws to report abuse or suspected abuse of:

- (1) children;
- (2) the elderly; and
- (3) people with disabilities.

§54.2021. What must the nonresidential center include in its written release of program participant information document?

The release of information document must include the:

(1) name of no more than one person or organization to which the information is being released;

(2) specific information to be released;

(3) beginning and ending dates the release is effective, not to exceed the program participant's active length of services;

(4) date and the signatures of the program participant and the employee or volunteer; and

(5) right to revoke a release of information at any time. This revocation request must be submitted in writing.

§54.2022. What written procedures must the nonresidential center have regarding court orders?

The center must have written procedures for responding to court orders, such as subpoenas, search warrants, or writs of attachment. The written procedures must include:

- (1) what to do when a process server arrives with a court order;
- (2) on whom court orders may be served, such as the custodian of records;
- (3) which attorney(s) should be contacted;
- (4) who will discuss the subpoena with the program participant or other victim of family violence, and at what point; and
- (5) the circumstances under which records may be released.

§54.2023. Must the nonresidential center notify a victim of family violence when a court order affects the individual or the individual's records?

Yes, the center must attempt whenever possible to notify a program participant, hotline caller, or other victim of family violence when a court order affects the program participant or the program participant's records.

§54.2024. Must the nonresidential center have written policies and procedures for the retention and destruction of documentation?

The center must develop written policies and procedures for the retention and destruction of all written, electronic, and digital documentation that pertains to program participants, including but not limited to:

- (1) case notes, case content, and case files;
- (2) staff-to-staff communications; and
- (3) documentation required by funders.

§54.2025. Is there a minimum number of hours a nonresidential center must be open each week?

The center must provide services to victims of family violence a minimum of 40 hours per week with a consistent schedule of service hours that may be regular business hours or other hours as approved by the Texas Department of Human Services.

§54.2026. What are the requirements for the nonresidential center if a victim of family violence needs shelter services?

The center must have written referral procedures for helping victims of family violence obtain temporary shelter.

§54.2027. What must the nonresidential center do if it has any disruption in its ability to provide services?

- (a) The center must have written policies and procedures for disruption in services.
- (b) Any disruption in the ability to provide services must be reported immediately to the Texas Department of Human Services (DHS).
- (c) After the initial oral notification, the center must submit to DHS a written description of the disruption and how services will be or were maintained.

§54.2028. What responsibility does the nonresidential center have to inform all program participants about their rights?

The center must:

- (1) provide written rights to all program participants; and
- (2) post program participant rights in a visible area within all center facilities.

§54.2029. Must the nonresidential center develop a plan regarding cooperation with criminal justice officials?

Yes, the center must develop a written plan that outlines efforts to cooperate with criminal justice officials in each county where services are provided, including:

- (1) establishing an ongoing working relationship with local criminal justice officials;
- (2) encouraging the justice system to develop policies and procedures that are responsive to the needs of battered women and enhance collaboration among justice system agencies and service providers;
- (3) pursuing opportunities to participate in the training of law enforcement officers and other criminal justice officials;
- (4) providing information and education to law enforcement and criminal justice officials about the dynamics of family violence, services available, and support needed from the criminal justice system; and
- (5) encouraging local criminal justice professionals to post signs and leave brochures in their offices about family violence and the availability of services.

§54.2030. What responsibility does the nonresidential center have to provide community education?

The center must have a written policy about community education that:

- (1) ensures community education is provided to as many diverse groups as possible in each county where services are provided; and
- (2) focuses part of the community education on informing victims of family violence of existing family violence services.

§54.2031. What methods must the nonresidential center use when providing community education?

The center must use:

- (1) presentations;
- (2) distribution of written materials; and
- (3) establishing and using media contacts.

§54.2032. What is required for the nonresidential center's volunteer program?

The center must:

- (1) designate an employee or volunteer to act as the volunteer coordinator; and
- (2) have and follow:
 - (A) written procedures outlining recruitment methods that reach diverse groups of people from the communities of each county where services are provided; and
 - (B) written policies regarding screening, training, supervising, evaluating, and terminating volunteers.

§54.2033. How much recruitment must the nonresidential center do for volunteers?

The center must have an ongoing recruitment program for volunteers to help with the center's programs.

§54.2034. When recruiting volunteers, what laws or codes must the nonresidential center follow?

The center must comply with:

(1) civil rights laws that allow qualified people an opportunity to volunteer; and

(2) the Human Resources Code, Chapter 51, that states the center must find support for the center through volunteer work, especially volunteer work by people who have been victims of family violence.

§54.2035. How often must the nonresidential center offer training for volunteers?

The center must offer training for volunteers at least twice annually.

§54.2036. What training must the nonresidential center provide to direct service volunteers?

The center must develop training for direct service volunteers that includes, but is not limited to:

- (1) a brief history of the Battered Women's Movement;
- (2) the need for and benefit of shelter services;
- (3) the dynamics of family violence, including:
 - (A) the definition of family violence;
 - (B) the consequences of family violence crimes to the victim, the children, and society as a whole;
 - (C) the need to hold batterers accountable for their actions; and
 - (D) the information that battering is:
 - (i) predominantly directed by men toward women but can occur in any type of intimate relationship; and
 - (ii) is most often part of a process by which the batterer maintains control and domination over the victim;
- (4) hotline skills;
- (5) basic crisis intervention techniques;
- (6) peer counseling techniques;
- (7) nonresidential center policies and procedures;
- (8) the organization's mission and philosophy;
- (9) confidentiality;
- (10) legal options for victims of family violence;
- (11) sensitivity to cultural diversity;
- (12) the relationship between family violence and drug and alcohol abuse, sexual abuse, and child abuse;
- (13) community resources; and
- (14) the need for community systems to be responsive to the needs of victims of family violence.

§54.2037. What training must the nonresidential center provide to non-direct service volunteers?

The center must provide non-direct service volunteers with:

- (1) a basic orientation about the duties they perform; and
- (2) at a minimum, basic information about the organization's mission, philosophy, and policies.

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

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Paul Leche

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DIVISION 7. SERVICE DELIVERY

40 TAC §§54.2101 - 54.2121

The new sections are proposed under the Human Resources Code, Title 2, Chapter 51, which provides DHS with the authority to administer family violence programs.

The new sections implement the Human Resources Code, §§51.001-51.011.

§54.2101. What services must the nonresidential center provide?

The center must provide, at a minimum, access to the following services directly, by referral or through formal arrangements with other agencies as described in this subchapter:

- (1) 24-hour-a-day shelter;
- (2) a crisis call hotline available 24 hours a day;
- (3) emergency medical care;
- (4) intervention services;
- (5) emergency transportation;
- (6) legal assistance in the civil and criminal justice systems;
- (7) information about educational arrangements for children;
- (8) information about training for and seeking employment; and
- (9) a referral system to existing community services.

§54.2102. What requirements must the nonresidential center meet for the crisis call hotline?

(a) The center must operate a hotline and comply with Texas Department of Human Services (DHS) requirements unless another organization located in the nonresidential center's service area provides a hotline that complies with DHS requirements.

(b) If the center operates the hotline, it must:

- (1) answer the hotline 24 hours a day, every day of the year, by an individual trained in crisis intervention or who has immediate access to someone who has had this training;
- (2) list the hotline number in all local telephone books;
- (3) ensure local telephone information services within the center's service area widely distribute or make available the hotline telephone information;
- (4) provide a minimum of two hotline telephone lines;
- (5) ensure the caller has direct access to a live person and that a messaging system is not used to answer the hotline;
- (6) provide blocks on the center's numbers for outgoing calls to program participants and other victims of family violence, which may only be unblocked with permission from the program participant or victim of family violence;

(7) ensure the screening process complies with all state and federal law if the hotline is used to screen for eligibility for services;

(8) keep all hotline calls and any related documentation confidential;

(9) provide equal access to hearing impaired victims of family violence; and

(10) offer appropriate information and referral to battering intervention services, if violent family members call the hotline.

§54.2103. What crisis call hotline procedures must the nonresidential center have?

The center must have written procedures to:

(1) ensure access to immediate intervention 24 hours a day every day of the year;

(2) assess the victim's safety;

(3) accept collect calls from victims of family violence;

(4) ensure the hotline does not block anonymous incoming calls; and

(5) ensure the center is able to respond appropriately to people with limited English proficiency.

§54.2104. Can the nonresidential center use caller ID on the crisis call hotline?

If the center uses caller ID or any other technology that establishes a record of calls on the hotline, the center must:

(1) ensure there will not be a breach of confidentiality to third parties;

(2) limit access to the records generated by these devices; and

(3) ensure staff training on all caller ID policies and procedures.

§54.2105. Can the nonresidential center subcontract the answering of the crisis call hotline?

If the center subcontracts the answering of the hotline, it must have the subcontractor arrangement approved by the Texas Department of Human Services and must have a written policy that addresses how the subcontractor will ensure immediate access to the center's 24-hour-a-day services.

§54.2106. What procedures must the nonresidential center have for delivery of DHS- contracted services?

The center must have written procedures for:

(1) providing or arranging for emergency transportation to and from emergency medical facilities for program participants or victims of family violence being considered for acceptance as program participants;

(2) providing or arranging for transportation from a safe place to a shelter for program participants located within the nonresidential center's service area;

(3) helping program participants and victims of family violence obtain emergency medical services;

(4) helping program participants and victims of family violence obtain non-emergency medical services, including networking with local medical professionals to encourage the provision of low-cost medical services to program participants and victims of family violence;

(5) ensuring each adult program participant is provided an orientation orally or in writing about the center's services;

(6) ensuring victims of family violence obtain current information about training and employment opportunities;

(7) explaining voluntary and involuntary termination of program participant's services and appealing terminations; and

(8) taking into consideration the safety of a victim for whom services were previously involuntarily terminated and who is currently requesting services.

§54.2107. What information must the nonresidential center cover in the program participant's orientation?

The center must ensure the orientation is documented and includes but is not limited to:

(1) explanation of services available;

(2) termination policy;

(3) program participants' rights;

(4) nondiscrimination statement;

(5) grievance procedures;

(6) safety and security procedures;

(7) confidentiality and limits of confidentiality; and

(8) waivers of liability.

§54.2108. What kind of intervention services must the nonresidential center provide to adult program participants?

The center must provide the following intervention services to adult program participants:

(1) safety planning, including:

(A) assessment of future violence;

(B) the need for ongoing risk assessment;

(C) developing strategies to enhance safety; and

(D) available legal options;

(2) understanding and support, including:

(A) active listening;

(B) addressing needs identified by the victim; and

(C) building self-esteem, problem solving, and recognizing that:

sions; and

(i) victims are responsible for their own life decisions; and

(ii) batterers are responsible for the violent behavior;

(3) information, education, and available resources, including:

(A) the dynamics of family violence;

(B) legal options;

(C) drug and alcohol abuse;

(D) parenting;

(E) acquired immune deficiency syndrome (AIDS) awareness;

ing:

(F) opportunities for education programs; and

(G) opportunities for employment and training; and

(4) advocacy and case management, including:

(A) explaining the program participant's rights;

(B) assisting the program participant make choices about those rights; and

(C) assisting the program participant access the services to which she or he is entitled.

§54.2109. Who can provide the nonresidential center intervention services?

Only employees or volunteers who have received the Texas Department of Human Services required training can provide individual intervention services to program participants and victims of family violence accessing the center's services.

§54.2110. How often should the nonresidential center provide intervention services?

The center must offer program participants access to intervention services during the center's hours of operation, as approved by DHS.

§54.2111. Is the nonresidential center allowed to incorporate religion into the intervention services?

The center must provide intervention services that do not promote any one religion and must not require program participants to participate in religious groups or to use religious materials.

§54.2112. Is the nonresidential center required to help each program participant develop an individual service plan?

Yes, the center must develop a written individual service plan with each program participant that reflects the program participant's particular needs.

§54.2113. What are the nonresidential center's requirements regarding group intervention?

The center must:

(1) not mandate attendance for groups; and

(2) provide at least one weekly support group for adult program participants that includes:

(A) understanding and support by:

(i) active listening;

(ii) addressing needs identified by the victim;

(iii) building self-esteem;

(iv) problem solving; and

(v) recognizing that:

(I) victims are responsible for their own life decisions; and

(II) batterers are responsible for the violent behavior;

(B) information and education that includes:

(i) how batterers maintain control and dominance over victims;

(ii) the role of society in perpetuating violence against women;

(iii) the need to hold batterers accountable for their actions; and

(iv) the social change necessary to eliminate violence within the family, including:

(I) sexism;

(II) racism; and

(III) homophobia.

§54.2114. What are the requirements for the nonresidential center regarding delivery of children's direct services?

The center must:

(1) at a minimum offer social or recreational activities for children while the adult parent is receiving services; and

(2) have services available that are specific to meet the needs of children.

§54.2115. What is the nonresidential center's responsibility regarding emergency medical services?

The center is not required to provide or pay for emergency medical care, but must maintain a current list of emergency medical care resources that can provide medical services for victims of family violence.

§54.2116. What legal assistance services must the nonresidential center provide?

The center must:

(1) assure that appropriate employees, volunteers, and interns have a working knowledge of current Texas laws pertaining to family violence, as well as the local justice system's response to family violence, in each county where services are provided;

(2) maintain a current list of local criminal justice agencies and contact people in each county where services are provided;

(3) offer support and accompaniment to program participants in their pursuit of legal options;

(4) ensure legal advocacy services are available and specific to the needs of victims of family violence; and

(5) encourage the justice system to respond consistently to the needs of victims of family violence and to hold batterers accountable.

§54.2117. What are the requirements for the nonresidential center regarding legal assistance?

The center must:

(1) designate at least one staff person, either paid or volunteer, to act as a legal advocate; and

(2) document in the job description that the designated staff acting as legal advocate:

(A) has a working knowledge of Texas laws that pertain to family violence, as well as the justice system's response to domestic violence;

(B) is familiar with legal services, resources, and procedures available to victims in each county where services are provided;

(C) assists adult program participants in safety planning and re-evaluation of the safety plan as part of an individual service plan; and

(D) identifies legal rights and options as part of individual service plans.

§54.2118. What training and employment services must the nonresidential center provide?

The center must provide or arrange the following for program participants:

(1) assistance preparing employment and training program applications and resumes; and

(2) information on job seeking skills.

§54.2119. Must the nonresidential center maintain a referral system? Yes, the center must maintain and make readily accessible to employees and volunteers a current printed referral list, including telephone numbers of existing community resources for each county where services are provided.

§54.2120. What policies must the nonresidential center have regarding termination of program participant services?

The center must:

- (1) have written policies that outline the reasons and behaviors for which services can be terminated;
- (2) apply the policies equally to all people; and
- (3) comply with the Americans with Disability Act and Civil Rights Act.

§54.2121. What information about termination of services must the nonresidential center provide program participants?

The center must inform program participants in writing of their right to appeal a termination of services to both the center and to the Texas Department of Human Services (DHS). Notice to the program participant must be provided and, if necessary, a fair hearing conducted according to DHS rules for fair hearings as specified in Chapter 79 of this title (relating to Legal Services).

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

Filed with the Office of the Secretary of State on August 16, 2002.

TRD-200205383

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: September 29, 2002

For further information, please call: (512) 438-3734



PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 833. COMMUNITY DEVELOPMENT INITIATIVES

SUBCHAPTER C. TEXAS ADULT TECHNOLOGY TRAINING PILOT PROJECT

40 TAC §§833.31 - 833.33

The Texas Workforce Commission (Commission) proposes new Subchapter C. Texas Adult Technology Training Pilot Project, §§833.31-833.33, concerning the establishment and operation of the Texas Adult Technology Training Pilot Project.

The purpose of the Texas Adult Technology Training Pilot Project is to provide workers who choose to participate in the pilot project with increased opportunities to engage in bilingual technology training. The rules set out the purpose of the pilot project; the administration of the pilot project; eligibility criteria for the project as established in Texas Labor Code §301.0674; and the requirements for Board coordination with the project.

More specifically, the new Subchapter C, including §§833.31-833.33 is added for the purpose of setting forth the purpose, intent, program design, funding, and selection criteria for the Texas Adult Technology Training Pilot Project.

The pilot project is designed to meet employers' needs for skilled workers by providing limited-English proficient workers with bilingual basic computer training. The training is designed to increase access for trade affected workers to:

computer-assisted ESL/GED learning opportunities;

job search opportunities, via the Internet, throughout their training period;

technology-oriented career training such as Office Technology Assistant; and

the distance learning opportunities, once they are employed, to facilitate continuous learning and training to prepare for changes in the labor market.

The Commission has determined that the focus of the pilot project should be on trade affected workers since they are identified in the bill as an intended population to serve. Although no funds were appropriated for the implementation of the legislation, the focus of the pilot project on trade affected workers is also consistent with use of existing funding sources and a readily identifiable population for administering the pilot.

The Commission will determine an amount of funds to set aside for the pilot project from a combination of funding sources available to the Agency.

The legislation states that the pilot project "may be established to provide training in an urban community, a rural community, and a community in the region of the state that borders the United Mexican States." Because of limited funding identified for the pilot project at this time, the Commission intends to procure an entity that could serve all three communities rather than three different entities. To encourage responses to the competitive procurement, the terms, "urban" and "rural," communities are interpreted broadly.

Because the pilot project will target training for trade affected workers, it is crucial that there be referrals from the Texas Workforce Centers as defined in 40 TAC Chapter 801, Subchapter B and other sources if applicable. The Commission requires that close coordination be specified in the request for proposal and also recognizes that coordinating with the Boards could be in a number of forms, such as through memoranda of understanding regarding referral of clients or other means. The Boards are not envisioned as the direct grant recipients; however, the Boards play a critical role in the success of the pilot project as one of the primary referring entities for the eligible individuals to become aware of the option to engage in the pilot project. The response to the request for proposal shall contain proof of support by the respective Board of the entity responding to the proposed pilot project.

Randy Townsend, Chief Financial Officer, has determined that for the first five years the rule is in effect, the following statements will apply:

there are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering this rule;

there are no estimated reductions in costs to the state or to local governments expected as a result of enforcing or administering this rule;

there are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering this rule;

there are no foreseeable implications relating to costs or revenues to the state or to local governments as a result of enforcing or administering this rule; and

there are no anticipated costs to persons who are required to comply with this rule as proposed.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering this rule because this rule only clarifies what is already required in the statute, or rules governing fiscal and operational accountability of the management of the accounts. Any costs that are required for proper administration of the pilot project are in part funded with the funds awarded in response to the request for proposal.

Luis Macias, Director of Workforce Development, has determined that for each year of the first five years that this rule will be in effect, the public benefit anticipated as a result of the adoption of the proposed rule will be to assist the public in engaging in the Texas Adult Technology Training Pilot Project that will provide a more skilled workforce to meet the needs of employers by improving the technology skills of eligible individuals through bilingual training.

James Barnes, Director of Labor Market Information, has determined that there is no foreseeable negative impact upon employment conditions in this state as a result of this proposed rule.

Comments on the proposed section may be submitted to John Moore, Assistant General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 614, Austin, Texas 78778-0001; Fax Number (512) 463-1426; or E-mail to John.Moore@twc.state.tx.us. Comments must be received by the Texas Workforce Commission no later than thirty (30) days from the date this proposal is published in the *Texas Register*.

The rules are proposed under Texas Labor Code §§301.061, 301.0674, 301.068 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary relating to Texas Workforce Commission's services and activities, and particularly the technology training pilot project.

The proposed rules affect Texas Labor Code Title 4.

§833.31. Purpose and Intent.

(a) Purpose. The purpose of the Texas Adult Technology Training Pilot Project is to meet the needs of employers for a skilled and trained workforce by implementing Texas Labor Code §301.0674, and by providing eligible trade affected displaced workers with an opportunity to improve technology skills.

(b) Intent. The Commission's intent is for those entities awarded funds under this pilot project to maximize the use of public and private funds to the fullest extent feasible, and to collaborate and coordinate service strategies with any and all available resources in the pilot area to assist eligible displaced workers to develop technology skills and attain economic self-sufficiency.

§833.32. Program Design and Funding.

(a) The design for the Texas Adult Technology Training Pilot Project consists of the issuance of a request for proposals from qualifying private, public, nonprofit or for-profit organizations for the administration of the pilot project for trade affected workers as defined in this subchapter. The pilot project shall be designed to meet the needs of employers for skilled workers by providing bilingual basic computer training designed to increase workers' access to: computer-assisted learning opportunities; job search opportunities, via the Internet, throughout their training; technology-oriented career training such as Office Technology Assistant; and the distance learning opportunities once they are employed to facilitate continuous learning and training to prepare for changes in the labor market. The pilot project continues through 2005 pursuant to Texas Labor Code §301.0674.

(b) The Commission may determine the amount of funds for use in the pilot project during the annual budget process or as funds may be identified for use on the pilot project.

(c) The Commission may designate the pilot area.

(1) The pilot area shall be a definable region of the state, such as a local workforce development area or county.

(2) The pilot area may be one or more of the following communities:

(A) an urban community;

(B) a rural community; or

(C) a community in the region of the state that borders the United Mexican States (border community).

(3) Unless otherwise determined by the Commission, for the first year of the pilot project, the pilot area shall include one pilot area that has all three communities referenced in paragraph (2) of this subsection, including an urban, rural and a border community.

(d) Eligible individuals shall consist of individuals that have been determined eligible by the Agency for NAFTA-TAA or Trade Adjustment Assistance. The eligible individuals include those individuals determined eligible under the Trade Act of 1974 (19 USC 101 et seq.), as amended, and including but not limited to, the modifications as applicable under the Trade Act of 2002 signed August 6, 2002. Eligible individuals will be referred to as "trade affected workers."

(e) An eligible educational institution for providing the training under the pilot project shall include one or more of the following:

(1) an Eligible Training Provider as defined in 40 TAC Chapter 841 relating to the Workforce Investment Act;

(2) an "institution of higher education" as described in Higher Education Act of 1965 §481(a)(1) or §1201(a) (20 U.S.C.A. §1088(a)(1) or §1141(a)), as such sections were in effect on August 21, 1996;

(3) a "postsecondary vocational education school" that is an area vocational education school as defined in Carl D. Perkins Vocational and Applied Technology Education Act §521(4) subparagraph (C) or (D) (20 U.S.C.A. §2471(4)) that is in any State (as defined in 20 U.S.C.A. §2471(33), as such sections were in effect on August 21, 1996 as may be amended; or

(4) any other institute or entity able to provide training consistent with the applicable funding sources for the Adult Technology Training Pilot Project.

(f) The request for proposal shall set forth additional requirements related to the delivery of training services consistent with the pilot project design set forth in this subchapter.

(g) An entity eligible for administering the pilot project may include but shall not be limited to the following:

- (1) an employer;
- (2) an Eligible Training Provider;
- (3) a nonprofit organization that is incorporated under Internal Revenue Code §501(c)(3);
- (4) a local government entity; or
- (5) any other entity that is an eligible education institution as defined in this section.

(h) The entity for administering the pilot project shall:

- (1) submit a complete proposal in response to the requirements listed and discussed in the request for proposal package for the Texas Adult Technology Training Pilot Project;
- (2) have linkages with the applicable Board;
- (3) have or develop a procedure to ensure that referrals of eligible trade affected workers as set forth in this subchapter are made from referral entities that shall include the Texas Workforce Centers as defined in 40 TAC Chapter 801;
- (4) demonstrate other collaborative relationships and/or agreements with local support service entities and eligible training providers that would enhance the pilot; and
- (5) have or demonstrate the ability to meet the requirements, policies, and procedures that may be defined in the request for proposal.

(i) The Commission may also consider the entity's ability to leverage pilot project funds with any other public or private funds for the pilot project, as long as the uses of those funds meet the requirements of any applicable federal or state statutes and regulations and meet the requirements of the pilot project as defined in the request for proposal and subsequent agreement.

§833.33. Administration and Performance

The administrator of the pilot project shall submit reports and information to the Commission as required for appropriate monitoring and evaluation as determined by the Commission or set forth in the agreement between the Commission and the administrator of the pilot project.

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 August 13, 2002.

TRD-200205260

John Moore

Assistant General Counsel

Texas Workforce Commission

Earliest possible date of adoption: September 29, 2002

For further information, please call: (512) 463-2573



WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 26. PRACTICE AND PROCEDURE

13 TAC §26.27

The Texas Historical Commission has withdrawn from consideration the proposed repeal of §26.27 which appeared in the May 24, 2002, issue of the *Texas Register* (27 TexReg 4479).

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

TRD-200205293

F. Lawrence Oaks

Executive Director

Texas Historical Commission

Effective date: August 14, 2002

For further information, please call: (512) 463-5711



TITLE 25. HEALTH SERVICES

PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 410. VOLUNTEER SERVICES AND PUBLIC INFORMATION

SUBCHAPTER C. CAPITAL IMPROVEMENTS BY CITIZEN GROUPS

25 TAC §§410.101 - 410.122

The Texas Department of Mental Health and Mental Retardation has withdrawn from consideration the proposed repeal of §§410.101 - 410.122 which appeared in the May 10, 2002, issue of the *Texas Register* (27 TexReg 3905).

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

TRD-200205285

Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: August 14, 2002
For further information, please call: (512) 206-4516



CHAPTER 417. AGENCY AND FACILITY RESPONSIBILITIES

SUBCHAPTER D. PERMANENT IMPROVEMENTS DONATED BY INDIVIDUALS OR COMMUNITY GROUPS

25 TAC §§417.151 - 417.158

The Texas Department of Mental Health and Mental Retardation has withdrawn from consideration proposed new §§417.151 - 417.158 which appeared in the May 10, 2002, issue of the *Texas Register* (27 TexReg 3909).

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

TRD-200205284

Andrew Hardin

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Effective date: August 14, 2002

For further information, please call: (512) 206-4516



PART 5. CENTER FOR RURAL HEALTH INITIATIVES

CHAPTER 500. EXECUTIVE COMMITTEE FOR THE CENTER FOR RURAL HEALTH INITIATIVES

SUBCHAPTER I. COMMUNITY HEALTHCARE AWARENESS AND MENTORING PROGRAM

25 TAC §§500.601, 500.603, 500.605, 500.607

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed new sections, submitted by the Center for Rural Health Initiatives has been automatically withdrawn. The new sections as proposed appeared in the February 15, 2002, issue of the *Texas Register* (27 TexReg 1099).

Filed with the Office of the Secretary of State on August 20, 2002.

TRD-200205441



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 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 60. SCRAPIE

The Texas Animal Health Commission (commission) adopts amendments to Chapter 60 concerning Scrapie. This adoption repeals the current rules, §§60.1-60.3 and replaces them with adopted new §§60.1-60.7. The rules were published for comment in the April 5, 2002 issue of the *Texas Register* (27 TexReg 2634). The commission received numerous comments as well as made some less restrictive changes based on changes in the federal program. Therefore the text will be republished.

Scrapie is a fatal degenerative disease affecting the central nervous system of sheep and goats. It is a member of a family of diseases known as the transmissible spongiform encephalopathies (TSEs), which include bovine spongiform encephalopathy (mad cow disease) and chronic wasting disease (CWD) in deer and elk. It is caused by a prion protein that destroys brain tissue. Scrapie is primarily transmitted from an infected female to her offspring or to other young animals in the flock through contact with birthing tissues. Clinical signs of the disease usually appear two to five years after the animal becomes infected. The third eyelid test has been recognized by USDA as a live animal test, and is used in conjunction with genotype testing in flocks for diagnostic purposes.

Scrapie was first recognized as a disease of sheep in Great Britain and Western Europe over 250 years ago. It was first diagnosed in the United States in 1947. Since then, it has spread to flocks throughout the United States. During calendar year 2001 in Texas, two infected flocks were disclosed. The Scrapie Eradication Program began in 1952, but it was not successful. The program was modified in the early 1990s utilizing bloodlines to identify "high risk" animals. The American Sheep Institute (ASI) identified scrapie in the U.S. as a major impediment to being competitive in the marketing arena. The National Scrapie Eradication Program was implemented by the USDA, APHIS, on November 1, 2001, through the promulgation of new regulations in 9 CFR, Parts 54 and 79. These proposed rule changes in Chapter 60 are to support the federal regulations.

The adopted rule is presented in seven sections. Section 60.1 is entitled, "Definitions." This section defines terms used in the body of the rule. Section 60.2 is entitled, "Animal Identification

and Record Keeping." This section provides the premise identification requirements for animals leaving flocks. This will facilitate the tracing and identification of infected flocks when infected animals are disclosed in marketing or slaughter channels. Section 60.3 is entitled, "Interstate Movement of Sheep and Goats." These identification requirements are for animals transported into Texas. This section is intended to protect the resident population from the introduction of scrapie as well as to facilitate the tracing of infected imported animals back to their flocks of origin. Section 60.4 is entitled, "Monitoring and Surveillance." This section provides the tools for identifying infected flocks. Section 60.5 is entitled, "Restrictions of Infected and Source Flocks and Exposed, High-Risk, and Suspect Animals." This section is intended to prevent the spread of scrapie in the population. Section 60.6 is entitled, "Requirements for Flock Plans, Post-Exposure, and Monitoring Plans." This section is intended to provide the framework for the eradication of scrapie from infected flocks. Section 60.7 is entitled, "Exhibition Requirements." The purpose of this section is to prevent the transmission of the disease in exhibition channels.

The commission made some changes in response to changes in the federal standards. The federal classification will now make distinctions on the genetic risk posed by the animal. The genotype of the animal poses different levels of risk. Some animals genetic type makes them no risk, "RR", a low risk "QR" or "HR", or high risk, "QQ". In recognition that no risk or low risk animals may be not pose a need to be handled the same under the rules modifications have been made in recognition. A definition for Genetic Risk was added to the definitions as well as clarification in the definition of high risk. In Section 60.2 in clarification was added to note that the required identification is "official identification." This section was also clarified regarding when an animal needs to be retagged and who needs to maintain those records as well as further enumeration as to what information must be kept with those records. Section 60.3, regarding Interstate Movement, clarifications were made regarding what needed to be recorded on a Certificate of Veterinary Inspection for animals for breeding purposes and those animals in breeding channels. For §60.5, Management of Affected and Source Flocks, clarification was added to address destinations made on the genetic risk of the animal. Section 60.6, Requirements for a Flock Plan, was modified to reflect the distinctions in the genetic risk of the animal. Section 60.7, regarding Exhibition Requirements, clarification was added about penning the animals separately.

The commission received a number of comments. The first commenter started with §60.2 and wanted to know why commercial

goats are exempted from premise identification requirements. The commission provides that commercial goats are not currently required to be identified because it is not required in the APHIS UM&R and CFR standards and there is not a consensus of opinion on the part of the goat industry on this topic. Then the commenter asked regarding §60.7, for the purposes of exhibition, why are there restrictions placed on ewes and nannies in gestation within 30 days of pre- and postpartum? The commission responds that Scrapie can be transmitted through any discharge (which can occur as early as 30 days prior to parturition and continue for as long as 30 days after lambing or kidding) from the reproductive tract of an infected animal; therefore, precautions should be made to minimize the potential for exposure at shows and exhibitions.

The second commenter commented on §60.1, and the definition for an adjacent flock which provides for a flock of sheep or goats that share a fence or contiguous property. The Commission agrees and the definition has been changed to "flocks of sheep or goats on contiguous properties" because it is more appropriate. The commenter also noted the definition for flock plan, which provides for sheep or goats commingled with sheep, not to include goats not commingled with sheep. The Commission disagrees and provides that flock plans are for exposed or affected sheep and/or goats. However, the definition of flock has been altered, deleting the phrase "apply to purebred and commercial sheep," leaving "all animals" (referring to sheep and/or goats). The commenter also noted the definition for premise identification eartag. The commenter wants to add "(a)ll sheep and goats to be tagged when they are sold and leave the premise of origin irregardless of age or gender." The commission disagrees that the animals should not be identified with a premise eartag because there is not a consensus of opinion on this topic from the sheep and goat industry and the requirements for more stringent tagging would be contrary to USDA/APHIS's Uniform Methods & Rules (UM&R) and the Code of Federal Requirements (CFR). The commenter also noted §60.7, regarding Exhibition Requirements, and that goats not commingled with sheep are low-risk and, therefore, no separate penning is necessary. The Commission believes that commingling of goats from several flocks is unwise because the disease status of the flocks cannot be ascertained, so there is potential for exposure if an infected animal is among them.

Another comment noted §60.1, the definition for Blackface Sheep. The difference between blackfaced hair sheep and wool sheep needs to be defined. The commission agrees: The definition has been altered, inserting "wool" preceding "sheep of unknown ancestry." Also added was the statement that black or dark-faced hair sheep are in this category. The commenter also commented regarding adjacent flock and commingling by noting that animals located across the road or waterway are considered to be at risk of exposure; whereas, scrapie can be transmitted only when physical contact occurs. The Commission agrees and would note that the definition of adjacent flock has been altered to read "sheep and goats on contiguous properties." Another comment was regarding limited contact and that it should be better defined to not include contact through contaminated surgical or insemination equipment. The commission agrees and an explanation is added to include, "embryo transfer, artificial insemination equipment, and surgical tools must be sterilized between animals for these instances to be considered limited contact." Another comment was regarding §60.7, Exhibition Requirements, and stated that there was concern expressed about fairs and shows being instances of "limited contact," but

animals can be considered "exposed" if indirect contact is made in an area where an animal with a vaginal discharge has been. The commission clarifies the concept that vaginal discharge can contaminate the environment with the prion protein. That is why animals within 30 days of pre- and postpartum must be segregated at a show, and the area in which they are housed must be decontaminated before other animals are introduced into the area.

Another commenter had a comment regarding the Animal Identification Requirements and wanted to know why not require every sheep and goat sold to be tagged with a premise ID tag? The commission disagrees because requiring the premise identification of all animals before they leave the farm of origin would be contrary to APHIS UM&R, and CFR standards. Also, the commission notes that there is not a consensus of opinion by the industry on this topic.

Another commenter wanted to know for §60.2, Animal Identification Requirements, why lump dairy goats in with meat goats and sheep tagging requirements. The commission would note that the rule has made provisions for registered goats to use an alternative means of identification in the form of the registration tattoo when in the accompaniment of registration papers and thereby not limit those animals to being tagged.

The final commenter had several comments. First, he noted that regarding §60.1, the definition, for "adjacent flocks" could mean that a flock could be quarantined if their neighbor or another flock across the fence or road have been exposed to scrapie. The commission agrees and has changed the definition to read to be only applicable to flocks of sheep or goats on contiguous properties. He then noted that in the definition for "Blackface Sheep" there is a concern that the statement "except for hair sheep" in the definition is ambiguous. The commission agrees and that definition has been altered, inserting "wool" preceding "sheep of unknown ancestry." Also added was a statement that black or dark-faced hair sheep are in this category. He stated that definition for Commercial Sheep and Goats is incomplete. The commission agrees: The statement "or for human consumption" has been added after "...fiber production...." He also noted that a definition for low risk commercial sheep needs to be added. The commission agrees: The definition for low risk commercial sheep was inadvertently omitted in the original set of regulations.

4 TAC §§60.1 - 60.3

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

As a control measure, the commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination,

or another epidemiologically sound procedure before or after animals are moved. That is found in Section 161.054. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in Section 161.048. Section 161.005 provides that the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. Section 161.061 provides that if the commission determines that a disease listed in Section 161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that they are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

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 August 12, 2002.

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Gene Snelson

General Counsel

Texas Animal Health Commission

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For further information, please call: (512) 719-0714



4 TAC §§60.1- 60.7

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

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

authority is found in Section 161.048. Section 161.005 provides that the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. Section 161.061 provides that if the commission determines that a disease listed in Section 161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that they are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

§60.1. Definitions.

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

(1) Accredited Veterinarian - a veterinarian approved by the Commission and the USDA in accordance with the provisions 9 CFR Part 161.

(2) Adjacent Flock - flock of sheep or goats on contiguous property.

(3) Administrator - the administrator of APHIS or any employee of USDA to whom the Administrator has delegated to act for the Administrator.

(4) Animal - a sheep or goat.

(5) APHIS - Animal and Plant Health Inspection Service, an agency of the USDA, or employees thereof.

(6) Approved Laboratory - a diagnostic laboratory approved by the TAHC and the USDA to conduct one or more scrapie tests, or genotype tests.

(7) Approved Test - a test for the diagnosis of scrapie that is approved by the Administrator of APHIS for use in the scrapie eradication program or certification program.

(8) Blackfaced Sheep - any purebred Suffolk, Hampshire, Shropshire, or cross thereof, any non-purebred sheep known to have Suffolk, Hampshire, or Shropshire ancestors, and any non-purebred wool sheep of unknown ancestry with a black face. Hair sheep with black or dark faces are not considered to be in this category.

(9) Breed Associations and Registries - organizations that maintain the permanent records of ancestry or pedigrees of animals (including the animal's sire and dam), individual identification of animals, and/or ownership of animals.

(10) Certificate of Veterinary Inspection - a numbered interstate Certificate of Veterinary Inspection or a similar titled document that is a record of veterinary health inspection of one or more animals, issued on an official form by an accredited veterinarian from the state of origin. A Certificate of Veterinary Inspection shall be valid for 30 days following the inspection of the animals.

(11) Commercial Sheep or Goat - any animal from a flock from which animals are moved either directly to slaughter or through slaughter channels to slaughter or any animal that is raised only for meat or fiber production, or for commercial breeding purposes, and is not registered with a sheep or goat registry or used for exhibition.

(12) Commingle, Commingled or Commingling - animals grouped together having physical contact with female animal(s) during or up to 30 days after she (they) lambed, kidded, or aborted, or while visible vaginal discharge was present, including contact through a fence, but not limited contact.

(13) Consistent State - A state listed in 9 CFR 79.1, that the APHIS Administrator has determined as conducting an active State scrapie control program.

(14) Designated Scrapie Epidemiologist - A State or Federal epidemiologist with a knowledge of scrapie epidemiology, and designated by APHIS to make decisions about the use and interpretation of diagnostic tests, field investigation data and the management of scrapie affected flocks.

(15) Destroyed or Destruction - animals that are:

(A) Euthanized by a means other than slaughter and the carcass disposed of by means authorized by the Administrator; or,

(B) in the case of exposed or high-risk animals that are not known to be infected, either euthanized or disposed of by slaughter; or,

(C) moved to a quarantined research facility, if Executive Director of TAHC and Administrator has approved the movement.

(16) Direct Movement to Slaughter - animals that are transported to a facility for slaughter without stop or unloading en route, other than for food and water, during which the animals are not commingled with any other animals.

(17) Epidemiological Investigation - an investigation to determine the risks or presence of a condition affecting a population of animals or animal products.

(18) Exposed Animal:

(A) Any animal that has been in a flock at the same time as a scrapie-positive animal excluding limited contact; or,

(B) any animal born in a flock after a scrapie-positive female animal was born into that flock or lambed in that flock, unless it has been after that flock completes the requirements of a flock plan; or,

(C) any animal that was commingled with a scrapie-positive female during or up to 30 days after she lambed, kidded, or aborted, or while a visible vaginal discharge was present, including during activities such as shows and sales or while in marketing channels; or, any animal in a non-compliant flock

(19) Exposed Flock - any flock in which a scrapie-positive animal was born or lambed. Any flock that currently contains a female high-risk, or suspect animal, or that once contained a female high-risk, or suspect animal that lambed in the flock and from which tissues were not submitted for official testing and found negative. A flock that has competed a post-exposure management and monitoring plan following the exposure will no longer be an exposed flock.

(20) Flock - all animals that are maintained on a single premises and all animals under common ownership or supervision on two or more premises with animal interchange between the premises. Changes in ownership of part or all of a flock do not change the identity of the flock or the regulatory requirements applicable to the flock. The term "flock" shall be interchangeable with the term "herd." More than one flock may be maintained on a single premise if:

(A) the flocks are enrolled as separate flocks in the Scrapie Flock Certification Program.

(B) a State or APHIS representative determines, based upon examination of flock records, that:

(i) no animals have moved between flocks

(ii) the flocks never commingle and are kept at least 30 feet apart at all times or are separated by a solid wall through which contact cannot occur;

(iii) the flocks have separate flock records and identification; the flocks have separate lambing facilities, including buildings and pastures, and a pasture or building used for lambing by one flock is not used by the other flock at any time;

(iv) the flocks do not share equipment without cleaning and disinfection in accordance with the guidelines published in the Scrapie Eradication UM & R standards.

(21) Genetic Risk determined by genotype at codon 171.

(A) High Risk: QQ

(B) No Risk: RR

(C) Low Risk: QR, HR

(22) Flock of Origin - the flock in which an animal most recently resided. The determination that an animal originated in a flock must be based either on the physical presence of the animal in the flock, the presence of official identification on the animal traceable to the flock, the presence of other identification on the animal that is listed on the bill of sale, or other evidence, such as registry records.

(23) Flock Plan - a written management agreement signed by the owner of the flock, the accredited veterinarian, if one is employed by the owner, and a State or APHIS representative in which each participant agrees to undertake actions specified in the flock plan for a flock that contains high-risk or an exposed animal. As part of a flock plan, the flock owner must provide the facilities and personnel needed to carry out the requirements of the flock plan. The flock plan must include the requirements in 9 CFR 54.5.

(24) Goats - Animals of the genus *Capra*.

(25) High-Risk Animal -

(A) a sexually intact female, that has tested QQ at codon 171 or AA at codon 136.

(B) the progeny of a scrapie-positive dam; or,

(C) born in the same flock during the same lambing season as progeny of a scrapie-positive dam, unless the progeny of the scrapie-positive dam are from separate contemporary lambing groups; or,

(D) born in the same flock during the same lambing season that a scrapie-positive animal was born, or during any subsequent lambing season, if born before that flock completes the requirements of a flock plan; or,

(E) an exposed female sheep that has not tested QR, HR, or RR at codon 171; or,

(F) designated as a high-risk animal by the Designated Scrapie Epidemiologist.

(26) Infected Flock - the flock of origin of a female animal that a representative of the TAHC or USDA has determined to be:

(A) A scrapie-positive animal; or,

(B) A flock that a scrapie-positive animal has resided unless an epidemiological investigation conducted by a representative of the TAHC or USDA shows that the animal did not lamb or abort in the flock.

(C) A flock will no longer be considered an infected flock after it has completed the requirements of the Flock Plan.

(27) Interstate Commerce - trade, traffic, transportation, or other commerce between a place in a State or any place outside of that State, or between points within a State but through any place outside of that State.

(28) Limited Contact - incidental contacts between animal off the flock's premises such as:

- (A) at fairs, shows, exhibitions, and sales; or,
- (B) between ewes being inseminated, flushed, or implanted; or,
- (C) between rams at ram test or collection stations; or,
- (D) as determined by the Designated Scrapie Epidemiologist;
- (E) do not include any contact, incidental or otherwise, with an animal during or up to 30 days after she has lambed, kidded, or aborted, or when there is any visible vaginal discharge.

(F) do not include any activity where uninhibited contact occurs, such a sharing an enclosure, or residing in other flocks for breeding or other purposes, except as allowed by the Scrapie Flock Certification Program standards. Note: Embryo transfer, artificial insemination equipment, and surgical tools must be sterilized between animals for these contacts to be considered to be limited contacts.

(29) Live-Animal Screening Test - any test for the diagnosis of scrapie in a live animal that is approved by the APHIS Administrator but not necessarily definitive for diagnosing scrapie, and is conducted in an Approved Laboratory.

(30) Low-Risk Commercial Sheep - animals that are identified with an official eartag that are commercial whitefaced, whitefaced cross, or commercial hair sheep, from a flock with no known risk factors for scrapie, including any exposure to female blackfaced sheep and that are not scrapie-positive, suspect, high-risk, or exposed animals and are not animals from infected, source, or exposed flock. Low-risk commercial sheep may exist in a State where scrapie has not been diagnosed in the previous 10 years in commercial whitefaced, whitefaced cross, or hair sheep that had not commingled with female blackfaced sheep.

(31) Low-Risk Goat - A goat that is not scrapie-positive, high-risk, or exposed, and that has not been commingled with sheep, except low-risk commercial sheep, and/or that is from:

(A) A state in which scrapie has not been identified in a goat during the previous 10 years.

(B) A state in which scrapie has been identified in a goat during the previous 10 years, but the scrapie-positive goat was not born in the state and had resided in the state for less than 72 months and did not kid while in the state; or,

(C) A state in which scrapie has been identified in a goat during the previous 10 years, and the scrapie-positive goat was commingled with sheep, but flock records allowed an epidemiological investigation to be completed and all resulting infected, source, and exposed goat herds have completed flock plans and are in compliance with post-exposure monitoring plans.

(32) National Veterinary Services Laboratories (NVSL) - The National Veterinary Services Laboratories of USDA-APHIS-Veterinary Services, and its cooperating and contract laboratories.

(33) Non-Compliant Flock:

(A) Any source or infected flock whose owner declines to enter into a flock plan or post-exposure management and monitoring

plan agreement within 30 days of being so designated, or whose owner is not compliant with either agreement;

(B) Any exposed flock whose owner fails to make animals available for testing within 60 days of notification, or mutually agreed date, or whose owner fails to submit to required postmortem samples;

(C) Any flock whose owner has misrepresented, or who employs a person who has misrepresented, their scrapie status of an animal or any other information on a certificate, permit, owner statement, or other official document within the past 5 years; or,

(D) Any flock whose owner or manager has moved an animal in violation of this chapter within the past 5 years, or who employs a person who has moved an animal in violation of this chapter within the past 5 years.

(34) Official Genotype Test - Any test to determine the genotype of a live or dead animal that is conducted at an Approved Laboratory, when the animal is officially identified and the samples used for the test are collected and shipped to the laboratory by either an accredited veterinarian or a State or USDA representative.

(35) Official Identification - Identification approved by APHIS and TAHC for use in the scrapie eradication program.

(36) Official Test - Any test for the diagnosis of scrapie in a live or dead animal that is approved by the Administrator of APHIS for that use and conducted either at an approved laboratory or at the NVSL.

(37) Owner - a person, partnership, company, corporation, or any other legal entity which has legal or rightful title to animals, whether or not they are subject to a mortgage, or his or her agent.

(38) Permit - The VS Form 1-27, an official document issued in connection with interstate movement of animals, that is issued by an APHIS or TAHC representative, State representative, or an accredited veterinarian authorized to sign the permit. The permit lists:

- (A) Owner's name and address
- (B) Points of origin and destination
- (C) Number of animals in the consignment
- (D) Purpose of the movement
- (E) Statement of whether the animals are scrapie-positive, high-risk, exposed, or scrapie suspect
- (F) The license number of the transporting vehicle.
- (G) The seal number (if the shipment is under seal)
- (H) Official identification numbers (individual or premise) Note: This definition does not pertain to the movement of healthy unexposed animals.

(39) Post-Exposure Management and Monitoring Plan - A written agreement signed by the owner of the flock, an accredited veterinarian employed by the owner, and a State or APHIS representative in which each participant agrees to undertake actions specified in the agreement to monitor for the occurrence of scrapie in the flock for at least 5 years after the last high-risk or scrapie-positive animal is removed from the flock or after the last exposure of the flock to a scrapie-positive animal, unless otherwise specified by a State or APHIS representative. The flock owner must provide the facilities and personnel needed to carry out the requirements of the plan. The plan must include the requirements specified in 9 CFR 54.8.

(40) Premises Identification Eartag - An identification eartag approved by the TAHC and APHIS as being sufficiently tamper-resistant for the intended use and providing unique identification for each premise of origin (officially assigned premise identification number.

(41) Program - The cooperative State-Federal-Industry program administered by APHIS and Consistent States to control and eradicate scrapie.

(42) Scrapie - A non-febrile, transmissible insidious degenerative disease affecting the central nervous system of sheep and goats.

(43) Scrapie Control Pilot Project - A pilot project authorized by the APHIS and TAHC in writing, designed to test or improve program procedures or to facilitate research, in order to control and eradicate scrapie.

(44) Scrapie Eradication Program - The cooperative State-Federal program administered by APHIS and Consistent States to control and eradicate scrapie.

(45) Scrapie Eradication Uniform Methods and Rules (UM&R) - Cooperative procedures and standards adopted by APHIS and Consistent States for controlling and eradication scrapie.

(46) Scrapie Flock Certification Program:

(A) a voluntary State-Federal-Industry cooperative effort established and maintained to reduce the incidence and spread of scrapie, and which contributes to the eventual eradication of scrapie; and,

(B) a monitoring program to identify individual flocks that have been free of evidence of scrapie over specified time periods.

(47) Scrapie Flock Certification Program Standards - Cooperative procedures and standards adopted by State and APHIS scrapie certification boards for reducing the incidence and spread of scrapie, and to identify flocks which have not exhibited clinical signs of scrapie over specified periods of time.

(48) Scrapie-Positive Animal - An animal for which a diagnosis of scrapie has been made by the NVSL or another laboratory authorized by the Administrator to conduct official scrapie tests in accordance with 9 CFR 54, through:

(A) histopathological examination of central nervous system (CNS/brain stem) tissues from an animal with characteristic microscopic lesions of scrapie; or,

(B) the use of protease-resistant protein analysis methods including but not limited to live or dead animal for which a given method has been approved by the Administrator and TAHC on that tissue; or,

(C) bioassay (inoculation of laboratory animals for the diagnosis of infection); or,

(D) scrapie associated fibrils (SAF) detected by electron microscopy; or,

(E) any other test method approved by the Administrator in accordance with 9 CFR 54.10.

(49) Sheep - Animals of the genus *Ovis*.

(50) Slaughter Channels - Animals in slaughter channels include any animal that is sold, transferred, or moved either:

(A) Directly to a slaughter facility; or,

(B) To an individual for custom slaughter; or,

(C) For feeding for the express purpose of improving the animals' condition for movement to slaughter.

(51) Source Flock - A flock in which a TAHC or APHIS representative has determined that at least one animal was born that was diagnosed as a scrapie-positive animal at the age of 72 months or less. The determination that an animal was born in a flock must be based on either:

(A) the presence of official identification on the animal that is traceable to the flock; or,

(B) the presence of other identification on the animal that is listed on the bill of sale; or,

(C) registry records showing that the scrapie-positive animal originated from the flock

(52) State -Texas, or any of the 50 States, the District of Columbia, the Northern Mariana Island, Puerto Rico, and all territories or possessions of the United States.

(53) State Representative - An individual employed in animal health activities by the TAHC, or that is authorized by the State of Texas to perform functions related to the Program.

(54) Suspect Animal:

(A) An animal exhibiting clinical signs of scrapie and that has been determined to be suspicious for scrapie by an accredited veterinarian or a State or APHIS representative:

(i) weight loss despite retention of appetite

(ii) behavioral abnormalities

(iii) pruritis (excessive itching)

(iv) wool pulling

(v) biting at legs or flanks

(vi) lip smacking

(vii) motor abnormalities such as incoordination:

(I) high-stepping gait of forelimbs,

(II) bunny hop movement of rear legs,

(III) swaying of back end.

(viii) increased sensitivity to noise and sudden movement

(ix) tremors

(x) head pressing

(B) An animal that has tested positive for scrapie or for the prion protein associated with scrapie on the live animal screening test, or any other test, unless the animal is designated as a scrapie-positive animal.

(C) An animal that has had a suspicious or inconclusive test result on an official live-animal test for scrapie.

(55) Terminal Feedlot:

(A) A dry lot approved by a State or APHIS representative or an accredited veterinarian authorized to perform this function where the animals are separated from all other animals by at least 30 feet at all times or are separated by a solid wall through, over, or under which fluids cannot pass and contact cannot occur and from which animals are moved only to another terminal feedlot or to slaughter; or,

(B) A pasture approved by a State or APHIS representative or an accredited veterinarian in which only non-pregnant animals are permitted, where there is no direct fence-to-fence contact with another flock, and from which animals are moved only to another terminal feedlot or directly to slaughter.

(56) TAHC - Texas Animal Health Commission, or representatives thereof.

(57) USDA - United States Department of Agriculture, APHIS, ARS, or representatives thereof

§60.2. Animal Identification and Record Keeping.

(a) The following classes of sheep and goats shall be identified using official identification eartags and applied before they are moved from the farm for intrastate or interstate commerce, exhibition, or to be commingled with animals from other farms.

(1) Animals to be identified:

(A) All sheep 18 months of age and older

(B) All breeding sheep regardless of age

(C) Sexually intact show or exhibition animals

(D) All breeding goats, except low risk goats

(E) If the animals are registered, an acceptable alternative to premise identification eartag is the registration tattoo when the animal(s) are accompanied by the registration papers.

(F) All exposed, Scrapie-positive, suspect, test-positive, and high-risk animals

(2) Wethers or commercial goats that haven't had contact with sheep, are exempt from identification requirements.

(b) Animals shall be identified with premises identification prior to commingling with animals from other farms.

(c) Issuance of premises identification numbers:

(1) The TAHC will issue a premises identification number to each sheep and goat owner upon request. The premises identification will consist of the State Postal abbreviation (TX) followed by up to five alphanumeric digits.

(2) Livestock auction markets, slaughter establishments, and owner agents (such as agriculture science instructors, veterinarians, and Texas Cooperative Extension Agents representing 4 H clubs) may also request and receive premises identification.

(d) Official identification:

(1) Only USDA provided or approved tags shall be used.

(2) Premises eartags shall not be removed, and required records must be maintained (see 60.2 (e)).

(3) If the animals are registered, an acceptable alternative to an official eartag is the registration tattoo when the animal(s) are accompanied by the registration papers.

(e) Eartag application and associated record keeping is the responsibility of any person handling animals under this regulation. Animals do not need to be retagged unless previous tag is lost. Records shall be maintained on all retagged animals.

(f) Record Keeping:

(1) General Requirements:

(A) For the purpose of officially identifying animals that are changing ownership, the person acquiring the animals may act

as an agent for the person disposing of or selling these animals. Each person who buys or sells sheep or goats covered under this regulation for his or her own account, or as the agent of the buyer or seller, transports, receives for transportation, offers for sale or transportation, or otherwise handles sheep or goats must insure that the animals are identified as required and must maintain records relating to the transfer of ownership, shipment, or handling of said animals such as auction market drive-in documents, yarding receipts, sale tickets, invoices and waybills.

(B) Animals that lose their official identification may be retagged, provided that all possible flocks of origin are listed in the record describing the new identification that is applied. Persons who buy or sell animals that are required to be officially identified must identify the animals if not already officially identified and must maintain records as described in paragraph (3) of this subsection.

(C) Said records shall be maintained for a minimum of five years after transaction or transport takes place by the person(s) stipulated in (A).

(D) Said records shall be made available to State or APHIS representatives, or an authorized accredited veterinarian, upon request.

(E) Premises identification numbers on scrapie suspect, positive, exposed, and high risk animals shall be recorded on VS form 5-20, or other acceptable documents, and forwarded to the Designated Scrapie Epidemiologist.

(2) Information required of persons applying, or recording, premises identification numbers prior to movement, or sale, of animals from the premises.

(A) Date officially identified

(B) Date of movement

(C) Number of animals identified

(D) Premises number applied

(E) If born after January 1, 2002:

(i) If not already identified to the flock of birth, insert premises eartag of current owner and record the name and address of the owner of the flock of birth with the individual animal identification number on the premises identification number.

(ii) If bearing that premises identification number was applied at the flock of birth, that premises identification number, and (if known) the name and address of the flock of birth shall be recorded.

(3) Records required of persons who acquire or who sell or dispose of animals.

(A) following records:

(i) The number of animals acquired.

(ii) The date of purchase or acquisition.

(iii) The name and address of the person, or market, from whom the animals were purchased or otherwise acquired.

(iv) The species and breed or class of animal.

(B) Persons who sell or dispose of sheep or goats must maintain the following records:

(i) The number of animals sold or disposed of.

(ii) The date of sale.

(iii) The name and address of the buyer or person who acquired the animals.

(iv) The species and breed or class of animal.

(4) Records required of persons (such as accredited veterinarians, markets, dealers, or agents) who apply premises identification that is not assigned to the owner of the premises of origin must record the following information (eartags do not have to be applied in animals already bearing premises identification) and maintained for a minimum of 5 years: For animals without official identification.

(A) The date tagged.

(B) The number of sheep and the number of goats identified.

(C) The serial numbers applied.

(D) The name and address of the owner of the flock of origin.

(E) If the person who currently owns the animals is different from the owner of the flock of origin or birth, the current owner's name and address.

(F) If the owner of the flock of birth is different from the owner of the flock of origin, and if the animals were born after January 1, 2002, the name and address of the owner of the flock of birth if known.

(5) Records required of persons overseeing terminal feedlots:

(A) Must be maintained for a minimum of 5 years after the animal leaves the feedlot

(B) Shall include the name and address of the person consigning the animal to the feedlot

(C) Shall include the name and address of the slaughter establishment to which the animal is consigned

(D) These records must be made available, upon request, to a TAHC or APHIS representative.

§60.3. Interstate Movement of Sheep and Goats into Texas.

(a) General Requirements:

(1) The TAHC has the authority to deny permission to transport any animal or animal product into Texas if there is a risk of infection or transmission of disease associated with the shipment.

(2) Certificates of Veterinary Inspection, and other transportation records, shall be kept by each person who buys, sells or trades for him/herself, or as the agent of a buyer or seller, transports, receives for transportation, offers for sale or transportation, or otherwise handles the sheep and goats in interstate commerce for a period of five years after the animals entered Texas and shall be available for inspection upon request of a TAHC or APHIS representative, or authorized veterinarian. Animals in any load or part of a load may be inspected enroute or after arrival.

(3) Animals entering Texas without a valid Certificate of Veterinary Inspection, or proper premises identification of the animals, shall be placed under hold order and held at the expense of the owner, manager, and/or transporter until released by a TAHC or APHIS representative or authorized accredited veterinarian. Animals under hold order for noncompliance with interstate movement requirements will be released only after the Executive Director of TAHC is satisfied that the animals do not pose as a disease risk.

(b) Certificate of Veterinary Inspection: The Certificate of Veterinary Inspection must be issued by an accredited veterinarian who examined the animals and shall indicate that the animals in the shipment meet all Texas entry requirements.

(1) All Certificates of Veterinary Inspection are valid for 30 days after issuance.

(2) Certificate of Veterinary Inspection shall be available for inspection anytime enroute or upon arrival.

(3) Information on the Certificate of Veterinary Inspection shall include:

(A) Complete information on the consignor, consignee, and flock of origin, including the origination and destination addresses.

(B) Date of inspection

(C) Number of animals in the consignment and description of the animals (breed, gender, and other distinguishing characteristics).

(D) Premise eartag identification number or official USDA eartag number, or (if goats accompanied by registration papers) registration tattoo).

(i) Animals for Breeding Purposes or Exhibition - All premises identification numbers of official USDA eartag numbers, or registration tattoos (in the accompaniment of registration papers) shall be recorded.

(ii) Animals in Slaughter Channels - identification must be present on the animals but the numbers do not need to be recorded.

(E) Statement of the purpose for transporting the animals (for exhibition, breeding purposes, or slaughter)

(F) A statement by the accredited veterinarian issuing the Certificate that the animals are not exhibiting clinical signs associated with any infectious disease, including scrapie, at the time of examination.

(G) A statement by the accredited veterinarian issuing the Certificate indicating if the animal(s) are not from a scrapie affected, high risk, source, or exposed flock.

(c) Specific Entry Requirements:

(1) Breeding rams, 6 months of age and older, shall have a negative (ELISA) test for *Brucella ovis* within 30 days of shipment and the negative results recorded on the Certificate of Veterinary Inspection.

(2) Animals to be identified by official eartag.

(A) All breeding or exhibition animals shall have official premises, or approved USDA, eartag in place and recorded, except: Registered goats with a registration tattoo and accompanied by registration papers

(B) All animals in slaughter channels shall have official premises, or approved USDA, eartag in place, except:

(i) Sheep under 18 months of age

(ii) Goats that have not commingled with sheep

(3) Animals originating from scrapie-affected flocks, scrapie-positive, suspect, exposed, and/or high risk animals, or sheep originating from Inconsistent States, shall be granted entry into Texas on a case-by-case basis only after permission of the Executive Director of TAHC or the Designated Scrapie Epidemiologist..

(4) Animals originating from Inconsistent States (without an active scrapie surveillance and control program) may enter the State of Texas only if:

- (A) Granted an entry permit,
- (B) Consigned directly to a terminal feedlot,
- (C) Consigned directly to slaughter.

§60.4. Monitoring and Surveillance.

(a) Scrapie Flock Certification Program-Producers have the opportunity to enroll their flock in this TAHC-APHIS sponsored program through to certify their flock free of scrapie. Standards include:

(1) Flocks are monitored for a period of five years for the presence of clinical signs of scrapie, to achieve "Certified Free" status.

(2) All animals one year of age and older are officially identified with a tamper resistant premise and individual identification eartag or at less than 12 months of age if a change of ownership occurs.

(3) Flock owner shall immediately report animals displaying clinical signs suspicious of scrapie to his/her veterinarian or an APHIS or TAHC representative who will conduct an investigation. The owner shall sacrifice suspicious animals for appropriate histopathological testing when requested.

(4) Owner shall maintain records on all acquisitions, departures, movements, births, and account for all deaths in the flock.

(5) Owner shall allow breed associations, livestock markets, and slaughter facilities to disclose records to TAHC and/or APHIS representatives if necessary.

(6) Owner shall provide necessary facilities and personnel to assist in inspections and examination of the flock to:

- (A) verify animal identification; and,
- (B) check for clinical signs consistent with scrapie; and,
- (C) check records for completeness and accuracy.

(7) Owner shall report to the State Certification Board all acquisitions of sheep from flocks with lower status or from flocks not participating in the program.

(b) Farm, slaughter, and market surveillance.

(1) Disposition of suspicious animals at the market or on the farm:

(A) Clinically suspect and test-positive animals may not be moved from the premises where identified except under permit to a research facility designated by TAHC or APHIS, to a site for destruction, or, when appropriate, back to the flock of origin under hold order.

(i) An investigation will be conducted on the animal and the flock of origin.

(ii) The animal may be purchased for diagnostic purposes and necropsied, or maintained under hold order until it recovers and is released, or dies and is subjected to a postmortem examination.

(B) Clinically suspect animals identified at slaughter facilities must be condemned according to Food Safety and Inspection Service (FSIS) regulations, and samples collected for diagnosis and the carcass removed from the food chain.

(2) A random sampling of animals at slaughter will be conducted to identify scrapie-infected flocks.

(c) Live animal surveillance testing: TAHC or APHIS representatives may conduct live animal sampling on high-risk animals. Restrictions on the flock will remain until all high-risk animals have been tested negative when they die or are culled from the flock.

§60.5. Management of Affected and Source Flocks, and Exposed, High-Risk, and Suspect animals.

(a) All flocks determined to be infected (as per definition of a scrapie positive animal in 60.1) shall be placed under quarantine.

(1) All animals and the flock shall be identified.

- (A) Red tags for positive or QQ animals.
- (B) White tags for all other animals.

(2) The following options shall be offered to the owner.

- (A) Standard flock plan
- (B) Pilot project flock plan
- (C) Post-exposure, management, and monitoring flock plan

plan

(D) Complete depopulation of the flock with indemnity (while funds are available)

(E) Flocks whose owners decline the options listed in subparagraphs (A)-(D) of this paragraph will be designated as non-compliant and remain under quarantine until the requirements for quarantine release are met.

(b) All flocks containing animals suspicious of scrapie, and source flocks, will be placed under hold order and investigated pending final determination:

(1) Scrapie suspect animals and animals suspected of other neurological or chronic debilitating disease are required to be made available for destruction (depending on the decision of the Designated Scrapie Epidemiologist) so that diagnostic specimens can be collected and submitted to an APHIS approved laboratory for diagnostic purposes.

(2) The Designated Scrapie Epidemiologist for any of the following reasons may remove the suspect designation, of animals reported as positive on the live animal test:

(A) If the animal is not showing clinical signs of scrapie, is over 18 months of age, is negative on the third eyelid test, and is RR at the 171 codon on the genotype test; or,

(B) An epidemiological investigation shows the animal is not likely to be infected and the third eyelid test cannot be done due to lack of sufficient tissue; or,

(C) The animal is purchased for diagnostic purposes, is sacrificed, and is negative on the histopathological tests conducted on tissues submitted.

(3) Require removal of the following animals

- (A) Offspring of positives regardless of genotype
- (B) Suspects - i.e., animals showing clinical signs or that are positive on an unofficial test
- (C) Scrapie positive animals
- (D) Female goats

(E) QQ sheep unless exempted and maintained as described in paragraph (4)(E) of this subsection

(4) Cleanup options

(A) Full flock depopulation - they must either do full genotype plan or take full depopulation, we will allow them to pick and choose QR and RR sheep to keep.

(B) Genotype the flock.

(C) Retain RRs only. (There was some concern about paying indemnity for QR animals.) Require an enhanced basis PEMMP which would be reviewed annually.

(D) Retain RRs and QRs. Follow with enhanced basic PEMMP.

(E) Retain RRs, QRs and some QQs under the following conditions:

(i) All QQ sheep are quarantined to premise or move by VS 1-27 to slaughter only and arrangements must be made for them to be sampled for testing at slaughter, culling or death.

(ii) Keep QQ sheep only if they have negative third eyelid tests (APHIS pays for one test on each QQ sheep, owner is responsible for additional tests).

(iii) Full PEMMP as defined in 9 CFR plus the requirements listed here for 5 years after the last positive animal is removed or until all of the original QQs have been removed which ever is longer.

(iv) Use double tested RR bucks on entire flock i.e. male animals must be castrated, removed to another premises or tested twice as RR before they reach sexual maturity. Owner could use a QR ram but would be required to genotype the offspring, the first year APHIS would pay for testing, subsequent years would be at owners' expense. (This will allow producers additional time to find a RR ram.)

(v) QQ sheep will be identified with two forms of ID, one of which will be an official ear tag or APHIS assigned tattoo in the case of animals that can not retain an ear tag.

(vi) QR, HR, or RR genotype of animals sold for breeding purposes must be documented using an official ID and test document or retested at owners' expense prior to sale.

(vii) The DSEs determination, based on low scrapie prevalence in flock and adequate management and facilities, that these retained animals poses a minimal risk.

(viii) Establish separate flock with separate equipment for QQ animals.

(ix) Require proper lambing hygiene.

(c) High-risk animals in other flocks that have been traced out of source or infected flocks will be placed under quarantine until depopulated and tested or the Designated Scrapie Epidemiologist makes another determination.

(d) Exposed animals will be placed under hold order and a post-exposure management and a monitoring plan formulated. The Designated Scrapie Epidemiologist will determine the final disposition of the animals.

§60.6. Requirements for Flock Plans, Post-Exposure, Pilot Project Flock Plans and Monitoring Flock Plans.

(a) The flock owner or his or her agent shall identify all animals 1 year of age and older within the flock. All animals less than one year of age shall be identified with an approved tamper resistant premises identification eartag with individual animal identification when a change of ownership occurs, with the exception of animals under 1 year in slaughter channels.

(1) Infected or QQ animals identified with Red tags

(2) All others identified with White or Silver Tags.

(b) Upon request by TAHC or APHIS, the owner of the flock shall allow an accredited veterinarian or an APHIS or TAHC representative to collect tissues from animals for scrapie diagnostic purposes and submit them to an APHIS approved laboratory.

(c) Upon request by a TAHC or APHIS representative, the owner of the flock shall present animals in the flock, and the required records, for inspection and testing.

(d) The owner of the flock shall meet TAHC or APHIS requirements to monitor for scrapie, prevent its recurrence, and prevent its spread to other flocks. These include, but are not limited to:

(1) Utilization of a live-animal test;

(2) Restrictions on animals removed from the flock;

(3) Segregated lambing;

(4) Cleaning and disinfection of lambing facilities; and/or,

(5) Education of the flock owner, and personnel, to recognize clinical signs of scrapie and control its transmission.

(e) The flock owner shall immediately report animals exhibiting the following clinical signs to a TAHC or APHIS representative, or an accredited veterinarian, and shall not remove such animals from the flock:

(1) weight loss despite retention of an appetite

(2) pruritis (itching)

(3) motor abnormalities such as incoordination

(4) wool pulling

(5) biting at the legs or flanks

(6) lip smacking

(7) high stepping gait of forelimbs

(8) bunny hop movement of rear legs

(9) swaying of the back end

(10) increased sensitivity to noise and sudden movement

(11) tremor

(12) head pressing

(13) or, animals that have tested positive for scrapie on a live animal screening test or any other test for scrapie.

(f) The following are for flock plans only:

(1) An epidemiological investigation must be conducted to identify high-risk an exposed animals that currently reside in the flock or that previously resided in the flock, and all high-risk animals, scrapie-positive animals and suspect animals must be removed from the flock. The animals must be removed to an approved research facility, or by euthanasia and disposal of the carcasses by burial, incineration, or by other approved methods.

(2) The premises under the flock plan must be cleaned and disinfected (C & D'd) in accordance with 9 CFR 54.7.

(3) Premises, or a portion of the premises, may be exempted from the cleaning and disinfection if the Designated Scrapie Epidemiologist determines, based on epidemiological investigation that the C & D of such buildings, holding facilities, conveyances, or other material on the premises will not significantly reduce the risk of

transmission of scrapie. No facility where a scrapie-positive animal lambled or aborted may be exempted.

(4) The flock owner shall request breed associations and registries, livestock markets, and packers to disclose records to TAHC or APHIS representatives to be used to identify trace-ins and trace-outs, source flocks and exposed and high-risk animals.

(5) The flock owner shall agree to conduct post-exposure management and monitoring.

(g) The following are the requirements for post-exposure management and monitoring plans only. The plan requires that a TAHC or APHIS representative inspect the flock and flock records at least every 12 months. The flock owner shall maintain records for 5 years following removal of the animals from the flock. Recorded shall include:

(1) Any identifying marks or tags present on the animal, including but not limited to the premises identification number, individual animal identification number, and any secondary form of identification the owner may employ;

(2) Sex, year of birth, breed, and (when possible) the sire, dam, and offspring of the animal;

(3) Date of acquisition and the previous flock owner and address, if the animal was not born in the flock; and,

(4) Disposition of the animal, including the date and cause of death, if known, or date of removal from the flock and name and address of the person to whom the animal was transferred.

(h) Flock plans and post-exposure management and monitoring plans may be modified by the Designated Scrapie Epidemiologist to accommodate the situation of a particular flock if the modified plan requires:

(1) A TAHC or APHIS representative inspect the flock and records at least once every 12 months;

(2) The animals are tested at a level that will result in a 99% confidence of detecting a one-percent prevalence in the flock (for flock plans only);

(3) Identification by approved method of all animals leaving the premises of the flock, for purposes other than slaughter, and of all animals over 18 months of age (as evidenced by the eruption of the second incisor) in slaughter channels; and,

(4) Record keeping shall include:

(A) For acquired animals, the date of acquisition, name and address of the person from whom the animal was acquired, and all identification.

(B) For animals leaving the premises of the flock, the disposition of the animal, including those animals that are required to be identified, any identifying marks, and all identification, the date and cause of death, if known, or date of removal from the flock, and name and address of the person to whom the animal was transferred.

(5) Continued for at least 5 years.

(i) Post-exposure management and monitoring plans are for exposed flocks that were not source flocks and in which a scrapie infected animal did not give birth. A Designated Scrapie Epidemiologist shall determine the testing and monitoring requirements for these flocks based on the exposure risk of the individual flock.

(j) Waiver of requirements for scrapie control pilot projects is allowable if approved by the Administrator of APHIS and the state has a Pilot Project MOU in place.

(k) Minimum Requirements for Pilot Project Flock Plans:

(1) Restriction of high-risk animals to the premises for movement to slaughter only;

(2) Necropsy and testing of all animals over 14 months of age that die, particularly high-risk animals;

(3) Third eye-lid testing of all exposed animals over 14 months of age, or when they reach 14 months of age;

(4) Retest of all test eligible animals 18 months after the last known exposure to scrapie;

(5) Removal of all test-positive animals;

(6) Restrictions on the movements of other animals out of the flock except to slaughter unless testing or other methods have been used to insure that they are low risk for spreading scrapie; and,

(7) Genotype testing for use as a selection criteria.

(8) Removal of all QQ animals.

(9) May keep QR and RR animals.

(10) Purchase of RR ram(s).

§60.7. Exhibition Requirements.

(a) Official premises identification is required for sexually intact sheep to be exhibited. For goats, the registration tattoo may be used in lieu of the eartag if the registration papers are in accompaniment of the animals.

(b) All female animals over 12 months of age (as evidenced by the eruption of the first pair of incisors) shall be penned separately from animals from different flocks. All animals enrolled in the Scrapie Flock Certification Program shall be handled in such a way that direct contact does not occur with animals from other flocks of lower status. Spacing or solid partitions may be used to maintain separation.

(c) If sheep or goats within 30 days pre- or post-parturition, or have a vaginal discharge, are allowed to show, special arrangements shall be made to keep them separate from animals from different flocks and in an area that can and will be properly disinfected, in accordance with 9CFR 54.7.

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 August 12, 2002.

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Gene Snelson

General Counsel

Texas Animal Health Commission

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For further information, please call: (512) 719-0714



TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 1. CONSUMER CREDIT REGULATION

SUBCHAPTER A. REGULATED LOAN LICENSES

DIVISION 2. APPLICATION FOR LICENSE AND TRANSFER OF LICENSE

7 TAC §§1.30 - 1.34, 1.36 - 1.40

The Finance Commission of Texas (the commission) adopts the repeal of 7 TAC §§1.30-1.34 and §§1.36-1.40, concerning licensing procedures. As part of an agency rule review the commission is concurrently adopting new subchapters to relocate these rules in a more logical order. The repeal is adopted without changes to the proposal as published in the July 5, 2002, issue of the *Texas Register* (27 TexReg 5912).

This repeal is necessary because the sections have been rewritten and incorporated into new subchapters.

The agency received no written comments on the proposal.

The repeal is adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the adopted repeal are Chapter 342, Texas Finance Code and the rest of Title 4.

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

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Leslie L. Pettijohn

Commissioner

Finance Commission of Texas

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For further information, please call: (512) 936-7640



DIVISION 6. LOANS MADE UNDER CHAPTER 342

7 TAC §§1.101 - 1.107

The Finance Commission of Texas (the commission) adopts the repeal of 7 TAC §§1.101-1.107, concerning general provisions of regulated lenders. As part of an agency rule review the commission is concurrently adopting new subchapters to relocate these rules in a more logical order. The repeal is adopted without changes to the proposal as published in the July 5, 2002, issue of the *Texas Register* (27 TexReg 5912).

This repeal is necessary because the sections have been rewritten and incorporated into new subchapters.

The agency received no written comments on the proposal.

The repeal is adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas

Finance Code, §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the adopted repeal are Chapter 342, Texas Finance Code and the rest of Title 4.

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

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SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §§1.101 - 1.107

The Finance Commission of Texas (the commission) adopts new 7 TAC Subchapter A. General Provisions, §§1.101-1.107, concerning general provisions. As part of an agency rule review, the commission is concurrently adopting the repeal of 7 TAC §§1.101-1.107 concerning general provisions of regulated lenders. The new subchapter is adopted without changes to the proposal as published in the July 5, 2002, issue of the *Texas Register* (27 TexReg 5913).

The adopted new subchapter relocates the adopted repealed rules in a more logical order providing easier access for the public.

The agency received no written comments on this proposal.

The new subchapter is adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the adopted new subchapter are Chapter 342, Texas Finance Code and the rest of Title 4.

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

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SUBCHAPTER B. INTERPRETATIONS AND ADVISORY LETTERS

7 TAC §1.201

The Finance Commission of Texas (the commission) adopts new 7 TAC Subchapter B. Interpretations and Advisory Letters, §1.201, concerning interpretations and advisory letters. As part of an agency rule review, the commission is concurrently adopting the repeal of 7 TAC §1.911, concerning interpretations and advisory letters. The new subchapter is adopted without changes to the proposal as published in the July 5, 2002, issue of the *Texas Register* (27 TexReg 5915).

The adopted new subchapter relocates the adopted repealed rules in a more logical order providing easier access for the public.

The agency received no written comments on this proposal.

The new subchapter is adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the adopted new subchapter are Chapter 342, Texas Finance Code and the rest of Title 4.

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

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SUBCHAPTER C. APPLICATION PROCEDURES

7 TAC §§1.301 - 1.310

The Finance Commission of Texas (the commission) adopts new 7 TAC Subchapter C. Application Procedures, §§1.301-1.310, concerning application procedures. As part of an agency rule review, the commission is concurrently adopting the repeal of 7 TAC §§1.30-1.40, concerning licensing procedures. The new subchapter is adopted without changes to the proposal as published in the July 5, 2002, issue of the *Texas Register* (27 TexReg 5916).

The adopted new subchapter relocates the adopted repealed rules in a more logical order providing easier access for the public.

The agency received no written comments on this proposal.

The new subchapters are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt

rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the adopted new subchapters are Chapter 342, Texas Finance Code and the rest of Title 4.

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

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Commissioner

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SUBCHAPTER D. LICENSE

7 TAC §1.405

The Finance Commission of Texas (the commission) adopts an amendment to 7 TAC §1.405, concerning application process after suspension or revocation. The amendment is adopted without changes to the proposal as published in the July 5, 2002, issue of the *Texas Register* (27 TexReg 5921).

The purpose of the amendment is to make technical changes to the rule in order to conform with the numbering of adopted new subchapters in connection with an agency rule review.

The agency received no written comments on the proposal.

The amendment is adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the adopted amendment are Chapter 342, Texas Finance Code and the rest of Title 4.

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

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Commissioner

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SUBCHAPTER E. INTEREST CHARGES ON LOANS

7 TAC §1.504

The Finance Commission of Texas adopts an amendment to 7 TAC §1.504 concerning interest charges in Subchapter E loans and Subchapter F loans. The amendment is adopted with changes to the proposal as published in the March 8, 2002, issue of the *Texas Register* (27 TexReg 1605).

The purpose of the amendment is to make technical and conforming changes to the rule that parallels examination policies. The specific issue relates to the propriety of charging late charges on single installment loans.

The agency received two written comments on the rule proposal. One from LoanTec of Kerrville, Texas and the other one was from McGinnis, Lochridge & Kilgore, LLP of Austin, Texas. The comments specifically focused on Subchapter F loans. One commenter believes the lender is entitled to receive payment on the date agreed to by the borrower when the contract was signed. If the payment is not paid within 10 days, the lender should earn additional funds for the time use of the unpaid money. The other commenter states that a default charge on a single installment loan is analogous to a default charge on the last installment of a multiple installment loan. The agency clarified the rule to eliminate confusion about the authority to charge a default charge on the last installment of a multiple installment loan and has included these concerns in the adopted amendment.

Section 1.504 provides that default charges may be assessed on multiple installment loans, but may not be assessed on single payment loans. At the time at which the payment becomes due, the loan has matured and, thus, after maturity interest is the appropriate compensation for the delinquency. This compensation thus permits the lender to earn additional funds for the time use of the unpaid money, the concern expressed by one of the commenters.

Plain language contract forms have been or are being promulgated for Subchapter E and F loans. These contracts provide model clauses that allow default charges. To the extent a lender uses a model contract form for a single payment subchapter E or F loan, it is not a violation for a lender to use the model clause so long as the lender does not collect the default charge on the single payment loan. The model contract contains a usury savings clause and a usury saving clause would absolve any potential contract violation relating to the default clause language.

The amendments are adopted under the Texas Finance Code §11.304 and §342.551, which authorizes the Finance Commission of Texas to adopt rules to enforce Title 4 of the Texas Finance Code.

These rules affect Texas Finance Code Chapter 342, Subchapters E and F.

§1.504. Default Charges.

(a) Precomputed loans. Additional interest for default may be charged on a precomputed loans, whether regular or irregular, or on a precomputed loan contracted for on a scheduled installment earnings method, to the extent it is authorized by §342.203 or §342.206, Texas Finance Code.

(b) Interest-bearing loans. Additional interest for default may be charged on an interest-bearing Subchapter E loan as authorized under §342.203 or §342.206, Texas Finance Code.

(c) Contract required. No default charge may be assessed, imposed, charged, or collected unless contracted for in writing by the parties.

(d) Default period. A default charge may not be assessed until the 10th day after the installment due date. For example, if the installment due date is the 1st, a default charge may not be assessed until the 12th.

(e) Missed payment covered by insurance. When any payment or partial payment in default is later paid by some form of insurance such as credit disability insurance, unemployment insurance, or collateral protection insurance, any prior assessment of additional interest for default must be waived.

(f) Pyramiding prohibited. An authorized lender seeking to assess additional interest for default in a precomputed loan under §342.203 or §342.206, Texas Finance Code must comply with the prohibition on the pyramiding of late charges set forth in the Federal Trade Commission Credit Practices Rule at 16 C.F.R. §444.4 or in Regulation AA, 12 C.F.R. Part 227, promulgated by the Board of Governors of the Federal Reserve Board, as applicable.

(g) Default charge on final installment of multiple payment loan. A default charge is allowed on the final installment of a multiple installment loan.

(h) Default charge on single payment loan. A default charge under Tex. Fin. Code §342.203(d) or §342.206(b) is not allowed on a single payment loan. After maturity interest may be contracted for, charged, and collected in a single payment loan.

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

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Commissioner

Finance Commission of Texas

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SUBCHAPTER P. REGISTRATION OF RETAIL CREDITORS

7 TAC §1.911

The Finance Commission of Texas (the commission) adopts the repeal of 7 TAC §1.911, concerning interpretations and advisory letters. As part of an agency rule review the commission is concurrently adopting new subchapters to relocate these rules in a more logical order. The repeal is adopted without changes to the proposal as published in the July 5, 2002, issue of the *Texas Register* (27 TexReg 5921).

This repeal is necessary because the section has been rewritten and incorporated into new subchapters.

The agency received no written comments on the proposal.

The repeal is adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas

Finance Code, §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the adopted repeal are Chapter 342, Texas Finance Code and the rest of Title 4.

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

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Commissioner

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SUBCHAPTER Q. CHAPTER 342, PLAIN LANGUAGE CONTRACT PROVISIONS

7 TAC §§1.1211, 1.1212, 1.1214 - 1.1217

The Finance Commission of Texas (the commission) adopts new 7 TAC §§1.1211 - 1.1212, 1.1214 - 1.1217, concerning a plain language model contract for Subchapter E contracts. New 7 TAC §§1.1211-1.1212, 1.1214-1.1217 includes clauses, disclosures, layout, and font type for Subchapter E plain language contracts. The new rules are adopted with changes to the proposal as published in the May 17, 2002, issue of the *Texas Register* (27 TexReg 4251).

The purpose of the rules is stated in the purpose clause, §1.1211, and is to implement the provisions of Texas Finance Code §341.502, which requires contracts for consumer loans under Chapter 342, whether in English or in Spanish, to be written in plain language. The rule provides model Subchapter E contract provisions for use by licensees of the Office of Consumer Credit Commissioner. Use of the model contract is optional; however, should a licensee choose not to use the model contract, contracts must be submitted to the agency in accordance with the provisions of 7 TAC §1.841.

Section 1.1212 explains the relationship of federal law to the state requirements. The section describes how conflicts or inconsistencies shall be resolved.

Section 1.1213 is reserved for Subchapter E definitions and if necessary will be proposed in the future.

Section 1.1214 details the required format, typeface, and font for model plain language Subchapter E contracts. The requirements are necessary to ensure that the contract will be easy for consumers to read and understand.

Section 1.1215 identifies the types of provisions that may be included in a Subchapter E contract.

Section 1.1216 contains the model clauses. These clauses are the agency's interpretation of a plain language version of typical contract provisions.

Section 1.1217 outlines permissible changes that can be made to a contract and still comply with the model provision. This section provides licensees with flexibility in using a model contract.

Agency received one written comment from Harland Financial Solutions of Portland, Oregon on the proposal. The commenter expressed concern of the applicability to banks, savings and loans associations, and credit unions. The rule does not apply to banks, savings and loan associations, and credit unions. One modification has been made to the proposal. The model clause pertaining to late charges has been conformed to §1.504 as it relates to the lack of authority to assess default charges on single payment loans.

The effective date of the new rules is October 1, 2002. By that date, a lender needs to make a decision to adopt the model contract or submit a non-standard contract (any contract other than the model form) for a readability review. The agency will permit lenders until January 1, 2003, to deplete supplies of existing forms during a transition period after the effective date of the rules.

The new section is adopted under the Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §341.502 grants the Finance Commission the authority to adopt rules to govern the form of Subchapter E contracts and to adopt model plain language contracts.

These rules affect Texas Finance Code Chapter 342, Subchapter E.

§1.1211. Purpose.

(a) The purpose of these rules is to provide a model plain language contract in English for Texas Finance Code, Chapter 342, Subchapter E transactions. The establishment of model provisions for these transactions will encourage use of simplified wording that will ultimately benefit consumers by making these contracts easier to understand. The use of the "plain language" model contract by a licensee is not mandatory. The licensee, however, may not use a contract other than a model contract unless the licensee has submitted the contract to the commissioner in compliance with 7 TAC §1.841. The commissioner shall issue an order disapproving the contract if the commissioner determines the contract does not comply with this section or rules adopted under this section. A licensee may not claim the commissioner's failure to disapprove a contract constitutes an approval.

(b) These provisions are intended to constitute a complete plain language Subchapter E contract; however, a licensee is not limited to the contract provisions addressed by these rules.

§1.1212. Relationship with Federal Law.

In the event of an inconsistency or conflict between the disclosure or notice requirements in these provisions and any current or future federal law, regulation, or interpretation, the requirements of the federal law, regulation, or interpretation will control to the extent of the inconsistency. The remainder of the contract will remain in full force and effect. Use of the Federal Reserve Board's promulgated model forms complies with the Truth-in-Lending requirements of this chapter.

§1.1214. Format, Typeface, and Font.

(a) Plain language contracts must be printed in an easily readable font and type size pursuant to Texas Finance Code §341.502(a). If other state or federal law requires a different type size for a specific disclosure or contractual provision, the type size specified by the other law should be used.

(b) The text of the document must be set in a readable typeface. Typefaces considered to be readable include: Times, Scala, Caslon, Century Schoolbook, Helvetica, Arial, and Garamond.

(c) Titles, headings, subheadings, captions, and illustrative or explanatory tables or sidebars may be used to distinguish between different levels of information or provide emphasis.

(d) Typeface size is referred to in points (pt). Because different typefaces in the same point size are not of equal size, type face is not strictly defined but is expressed as a minimum size in the Times typeface for visual comparative purposes. Use of a larger typeface is encouraged. The typeface for the federal disclosure box or other disclosures required under federal law must be legible, but no minimum typeface is required. Generally, the typeface for the remainder of the contract must be at least as large as 8 pt in the Times typeface.

§1.1215. Contract Provision.

A Chapter 342, Subchapter E contract may include, but is not limited to, the following contract provisions to the extent not prohibited by law or regulation. If the licensee desires to exercise its rights under one of the following provisions, it must include the provision in the contract. A licensee who does not desire to apply a provision is not required to include it in the contract. For example, if a licensee does not take a security interest in the borrower's personal property, the provisions addressing security interests are not required. A licensee may also exclude non-relevant portions of a model clause. For example, a licensee who does not routinely finance certain insurance coverages may omit those non-applicable portions of the model clause.

- (1) Identification of the parties, including the name and address of each party;
- (2) A Truth-in-Lending Act (TILA) disclosure box;
- (3) An Itemization of Amount Financed box;
- (4) A definition section specifying the pronouns that designate the borrower and the lender;
- (5) A promise to pay;
- (6) A late charge provision;
- (7) A provision for after maturity interest;
- (8) A provision specifying that prepayment is permitted;
- (9) A provision specifying the finance charge earnings and refund method;
- (10) A provision authorizing deferments;
- (11) A provision contracting for a fee for a dishonored check;
- (12) A provision specifying the conditions causing default;
- (13) A provision relating to property insurance;
- (14) A provision relating to credit insurance;
- (15) A provision regarding the mailing of notices to the borrower;
- (16) Statement of truthful information;
- (17) A waiver of notice of intent to accelerate and waiver of notice of acceleration;
- (18) A provision expressing no waiver of licensee's rights;
- (19) A collection expense clause;
- (20) A clause providing for joint liability;
- (21) A usury savings clause;
- (22) A provision stating that if any part of the contract is declared invalid, the rest of the contract remains valid; and,

- (23) Complaints and inquiries notice.

§1.1216. Model Clauses.

(a) Generally. These model clauses are the plain language rendition of contract clauses that have typically been stated in technical legal terms.

(1) The model clauses refer to the Borrower as "I" or "me." The Lender is referred to as "you" or "your."

(2) Nothing in this regulation prohibits a contract from including provisions that provide more favorable results for the borrower than those that would result from the use of a model clause.

(b) Itemization of the Amount Financed box. Two model clauses for the itemization of amount financed are presented in this subsection. One is for use when the licensee finances an administrative fee. The other is for use when the administrative fee is paid in cash by the borrower. A licensee may delete portions applicable to any insurance premiums that are not financed and may also delete other inapplicable portions. The model clause itemizing the amount financed reads:

(1) For use when the administrative fee is financed:

Figure: 7 TAC §1.1216(b)(1)

(2) For use when the administrative fee is paid in cash:

Figure: 7 TAC §1.1216(b)(2)

(c) Promise to Pay. The model clause for the borrower's promise to pay reads:

(1) For contracts using the Scheduled Installment Earnings Method: "I promise to pay the Total of Payments to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(2) For contracts using the True Daily Earnings Method: "I promise to pay the cash advance plus the accrued interest to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(d) Late Charge. At the lender's option, the late charge provision may be made applicable to loans with more than one installment. Alternatively, a lender may omit the late charge provision for loans with a single repayment. The late charge model clause reads: "If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment."

(e) After Maturity Interest. The after maturity interest model clause reads: "If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due."

(f) Prepayment Clause. The model prepayment clause reads:

(1) For contracts using the Scheduled Installment Earnings Method: "I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."

(2) For contracts using the True Daily Earnings Method: "I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."

(g) Finance Charge Earnings and Refund Method. The model finance charge earnings and refund method reads:

(1) For contracts using the Scheduled Installment Earnings Method, Texas Finance Code §342.201(a):
Figure: 7 TAC §1.1216(g)(1)

(2) For contracts using the Scheduled Installment Earnings Method, Texas Finance Code §342.201(d): "The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not get a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment."

(3) For contracts using the Scheduled Installment Earnings Method, Texas Finance Code §342.201(e):
Figure: 7 TAC §1.1216(g)(3)

(4) For contracts using the True Daily Earnings Method, Texas Finance Code §342.201(d): "The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment."

(5) For contracts using the True Daily Earnings Method, Texas Finance Code §342.201(e):
Figure: 7 TAC §1.1216(g)(5)

(h) Deferment Clause. The deferment model clause reads:

(1) "If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules."

(2) Optional language for unilateral deferment(s): "You may extend one or more of my payments without my permission. You have to wait six months to do it again."

(i) Fee for Dishonored Check Clause. The fee for dishonored check model clause reads: "I agree to pay you a fee of up to \$25 for a returned check. You can add the fee to the amount I owe or collect it separately."

(j) Default Clause. The model default clause reads: "I will be in default if: I do not timely make a payment; I break any promise I made in this agreement; I allow a judgment to be entered against me or the collateral; I sell, lease, or dispose of the collateral; I use the collateral for an illegal purpose; or you believe in good faith that I am not going to keep any of my promises. If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan documents."

(k) Property Insurance Disclosure Box. The model provision for the disclosure of property insurance reads:
Figure: 7 TAC §1.1216(k)

(l) Credit Insurance Disclosure Box. The model provision for the disclosure of credit insurance reads:
Figure: 7 TAC §1.1216(l)

(m) Mailing of Notice to Borrower. The model agreement regarding notice to the borrower reads: "You can mail any notice to me

at my last address in your records. Your duty to give me notice will be satisfied when you mail it."

(n) Statement of Truthful Information. The following clause is sufficient as the borrower's agreement that the information provided to the licensee is true: "I promise that all information I give you is true."

(o) Waiver of Notice of Intent to Accelerate and Waiver of Notice of Acceleration Clause. The waiver of notice of intent to accelerate and waiver of notice of acceleration clause reads: "If I am in default, you may require me to repay the entire unpaid principal balance, and any accrued interest at once. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe."

(p) No Waiver of Lender's Rights. The model agreement regarding the lender's rights reads: "If you don't enforce your rights every time, you can still enforce them later."

(q) Collection Expense Clause. The model provision relating to the collection of expenses if default occurs reads: "If this debt is referred to an attorney for collection, I will pay any attorney fees set by the court plus court costs."

(r) Joint Liability Clause. The model joint liability clause reads: "I understand that you may seek payment from only me without first looking to any other Borrower."

(s) Usury Savings Clause. The model usury savings clause reads: "I don't have to pay interest or other amounts that are more than the law allows."

(t) Savings Clause. The model savings clause reads: "If any part of this contract is declared invalid, the rest of the contract remains valid."

(u) Final Agreement and Modifications in Writing. The model agreement requiring any change to be in writing reads: "This written loan agreement is the final agreement between you and me and may not be changed by prior, current, or future agreements or statements between you and me. There are no oral agreements between us relating to this loan agreement. Any change to this agreement has to be in writing. Both you and I have to sign it."

(v) Security Agreement Clause. The model clause for the security agreement reads: "If I am giving collateral for this loan, I will see the separate security agreement for more information and agreements."

(w) Application of Law. The model agreement regarding the law to be applied to the contract reads: "Federal law and Texas law apply to this contract."

(x) Complaints and Inquiries Notice. "This lender is licensed and examined by the State of Texas - Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems. Office of Consumer Credit Commissioner, 2601 North Lamar, Austin, Texas 78705-4207, (512) 936-7600, (800) 538-1579."

(y) Clause Describing Collateral. In the TILA disclosure box, the model clause describing the collateral reads: "You will have a security interest in the following described collateral _____."

(z) Clause Relating to Prepayment. In the TILA disclosure box, the model clause for prepayment reads:

(1) For contracts using the Scheduled Installment Earnings Method: "Prepayment: If I pay off early, I may be entitled to a refund of part of the Finance Charge."

(2) For contracts using the True Daily Earnings Method: "Prepayment: If I pay off early, I will not be entitled to a refund of part of the Finance Charge."

(aa) Security Agreement. If the loan is secured, a separate security agreement should be used.

(1) The model clause stating the secured nature of the agreement reads: "To secure this loan, I give you a security interest in the collateral. The collateral includes the property listed below, improvements and attachments to the property, insurance refunds, and proceeds."

(2) Prohibition on Transfer and Collateral Free of Encumbrance. The model agreement keeping the collateral free from encumbrance and against transferring it reads: "I own the collateral. I won't sell or transfer it without your written permission. I won't allow anyone else to have an interest in the collateral except you."

(3) Location and Restrictions on Movement or Transfer of Collateral. The model agreement regarding the location of the collateral reads: "I will keep the collateral at my address shown above. I will promptly tell you in writing if I change my address. I won't permanently remove the collateral from Texas unless you give me written permission."

(4) Upkeep and Use of Collateral. The model agreement regarding the upkeep and use of the collateral reads: "I will timely pay all taxes and license fees on the collateral. I will keep it in good repair. I won't use the collateral illegally."

(5) Modifications in Writing. The model agreement regarding changes made to the security agreement reads: "Any change to this security agreement has to be in writing. Both you and I have to sign it."

(6) Any Default is a Default of the Security Agreement. The model agreement in the security agreement regarding defaults reads: "Any default under my agreements with you will be a default of this security agreement."

(7) Default Clause. The model clause setting out the security agreement in case of default reads: "If there is a default, you can take the collateral. You will only do this lawfully and without a breach of the peace. If you take my collateral, you will tell me how much I have to pay to get it back. If I don't pay you to get the collateral back, you can sell it or take other action allowed by law. You will send me notice at least 10 days before you sell it. My right to get the collateral back ends when you sell it. You can use the money you get from selling it to pay amounts the law allows and to reduce the amount I owe. If any money is left, you will pay it to me. If the money from the sale is not enough to pay all I owe, I must pay the rest of what I owe you plus interest."

§1.1217. Permissible Changes.

(a) A licensed lender may consider making the following types of changes to the model clauses:

(1) The addition of information related to information set forth in the model clauses that is not otherwise prohibited by law.

(2) Substituting another term for "Lender", "Borrower" that has the same meaning, or use of pronouns such as "you," "we," and "us."

(3) The model clauses may be presented in any order, and may be combined or further segregated at the licensee's option.

(4) Inserting descriptive headings or number provisions.

(5) Changing the case of a word if otherwise permitted by the Texas Finance Code.

(6) Other changes which do not affect the substance of the disclosures.

(7) A sample model contract using the scheduled installment earnings method is presented in the following example. Figure: 7 TAC §1.1217(a) (7).

(8) A sample model contract using the true daily earnings method is presented in the following example. Figure: 7 TAC §1.1217(a) (8).

(9) A sample model security agreement is presented in the following example. Figure: 7 TAC §1.1217(a)(9).

(b) An authorized licensee has considerable flexibility to arrange the format of the model form if the revised format does not significantly adversely affect the substance, clarity, or meaningful sequence of the disclosures.

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 August 16, 2002.

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Leslie L. Pettijohn

Commissioner

Finance Commission of Texas

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For further information, please call: (512) 936-7640



CHAPTER 4. CURRENCY EXCHANGE

7 TAC §4.11

The Finance Commission of Texas (the commission) adopts the repeal of §4.11, concerning fees, without changes to the proposal as published in the July 5, 2002 issue of the *Texas Register* (27 TexReg 5922). The repealed section is replaced by new §4.11, adopted concurrently with this repeal.

Section 4.11 implements Finance Code, §153.303, which authorizes the commission to set currency exchange, transportation, and transmission license application fees, license renewal fees, and examination fees in amounts that are reasonable and necessary to defray the cost of administering Finance Code, Chapter 153. The repeal is necessary under Finance Code, §153.303 because the fee structure provided in existing §4.11 does not generate the revenue required by the department to administer Finance Code, Chapter 153. New §4.11, adopted at the same time as this repeal, provides a new fee structure that complies with Finance Code §153.303, and converts the rule into a plain language format.

The commission received no comments regarding the proposed repeal.

The repeal is adopted under Finance Code, §153.002, which authorizes the commission to adopt rules necessary or desirable to implement Finance Code, Chapter 153, and Finance Code §153.303, which authorizes the commission to set fees in

amounts that are reasonable and necessary to defray the cost of administering Finance Code, Chapter 153.

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

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TRD-200205312

Everette D. Jobe

Certifying Official

Finance Commission of Texas

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For further information, please call: (512) 475-1300



7 TAC §4.11

The Finance Commission of Texas (the commission) adopts new §4.11, concerning fees. The section is being adopted with non-substantive changes to the proposal published in the July 5, 2002 issue of the *Texas Register* (27 TexReg 5922), and the text will be republished. Changes to subsections (b)-(d) clarify the language in the proposal, including substitution of the term annual assessment for the term annual examination fee. Changes to subsection (e) clarify the requirements for requesting a reduction in the annual assessment.

New §4.11 implements Finance Code, §153.303, which authorizes the commission to set currency exchange, transportation, and transmission license application fees, license renewal fees, and examination fees in amounts that are reasonable and necessary to defray the cost of administering Finance Code, Chapter 153. It replaces the fee structure in existing §4.11 of \$400 per examiner per day plus associated travel cost. Existing §4.11 is being repealed concurrently with this adoption.

Under new §4.11, a license holder must pay an annual assessment that includes the cost of one examination plus the associated travel expenses for that examination. If an additional examination is required during a one year fiscal period because of a license holder's failure to comply with Finance Code, Chapter 153, commission rules, or department requests, §4.11 requires a license holder to pay for the additional examination at the rate of \$600 per day for each examiner plus any associated travel expenses. This per day rate also applies to new license holders who have not accumulated the data necessary to calculate their first annual assessment. If out-of-state travel is necessary to conduct an examination, §4.11 requires a license holder to pay the travel expenses.

New §4.11(e) also provides a means for a license holder to request a reduction in the annual assessment if payment of the fee will cause the business to be unable to pay debts as they mature or pay obligations as they become due and payable. Under §4.11(e), an application for reduction must be accompanied by a business recovery plan and other documentation demonstrating financial insolvency is temporary.

The new fee structure is established by the commission, and not mandated by the Legislature. The resulting increase in fees is necessary to comply with Finance Code, §153.303, which requires the department to collect fees from license holders in amounts necessary to administer Finance Code, Chapter 153.

Three separate comments were made by one individual. The comments were generally in opposition to the fee increase. As explained in the proposal, the fee increase is required by Finance Code, §153.303, and is essential to the department's administration of Chapter 153. Consequently, no changes were made in response to the comments concerning the fee increase.

The commentor also suggested a change in the rule allowing a license holder to bring all necessary records to Austin and to have the annual examination conducted in Austin rather than at the license holder's location. According to the commentor, this would save on travel expenses that are included in the annual examination fee. No change was made in response to this suggestion because travel expenses to conduct annual examinations were specifically included in the examination fee structure to be paid by all license holders. This fee structure ensures that similarly situated license holders are not charged a higher or lower examination fee based solely on their location.

Another comment was received from an individual who suggested that license holders with \$100,000 or less in transactions should not be subject to the annual assessment because their profit margins are very low. According to the commentor, he maintains a currency exchange license only as a convenience to customers who buy magazines and candy. No change was made in response to this comment because Finance Code, §153.117(c), and §4.6(c) of this title address the commentor's concerns. These provisions generally exempt retailers from licensing requirements if they accept currency from a foreign country in the ordinary course of business for payment of goods sold.

Another individual agreed with the proposed fee increase. However, the commentor stated that he is not currently operating and that it would be expensive for him to pay the annual assessment and bond. Subsection (e)(2)(B) was added to address this concern. This provision allows the commissioner to reduce an annual assessment for periods in which a currency exchange, transportation, or transmission business is not in operation, but the license holder wants to maintain the license.

Another individual filed a comment stating that he understands the need for the fee increase, but that it is possible for fees to exceed net profits for some license holders. The commentor also stated his support for subsection (e), which allows the commissioner to reduce the annual assessment. No changes were made in response to these statements.

The new section is adopted under Finance Code, §153.002, which authorizes the commission to adopt rules necessary or desirable to implement Finance Code, Chapter 153, and Finance Code, §153.303, which authorizes the commission to set fees in amounts that are reasonable and necessary to defray the cost of administering Finance Code, Chapter 153.

§4.11. What fees must I pay to get and maintain a currency exchange, transportation, or transmission license?

(a) Definitions.

(1) Examination-the process of evaluating the books and records of a license holder relating to its currency exchange, transmission, and transportation activities.

(2) Financially insolvent-the inability to pay debts as they mature or pay obligations as they become due and payable.

(b) What fees must I pay to the department for obtaining and renewing a currency exchange, transportation, or transmission license?

(1) You must pay a \$1,500 fee to obtain a license for your first location and \$500 for each additional location.

(2) You must pay a \$500 annual renewal fee for your first location and \$100 for each additional location.

(c) What fees must I pay for a department examination?

(1) You must pay an annually assessed examination fee (annual assessment) that is based on your total annual dollar amount of currency exchange, transportation, and transmission transactions, determined by adding the quarterly amounts listed in your last four consecutive quarterly reports filed prior to July 1st of each year under §4.3(d) of this chapter.

(A) Your annual assessment will be \$1,500 if the annual amount of your transactions is \$500,000 or less.

(B) If the annual amount of your transactions is greater than \$500,000 and less than \$1 million, your annual assessment will be the sum of:

(i) \$1,500, and

(ii) the amount of your transactions over \$500,000 multiplied by a factor of .002.

(C) If the annual amount of your transactions is equal to or greater than \$1 million and less than \$15 million, your annual assessment will be the sum of:

(i) \$2,500, and

(ii) the amount of your transactions over \$1 million multiplied by a factor of .00007.

(D) If the annual amount of your transactions is equal to or greater than \$15 million, your annual assessment will be the sum of:

(i) \$3,480, and

(ii) the amount of your transactions over \$15 million multiplied by a factor of .00003.

(2) If the annual assessment that you calculated under paragraph (1) of this subsection was over \$8,000, your annual assessment will be \$8,000.

(3) If more than one examination is required in the same fiscal year as a result of your failure to comply with Finance Code, Chapter 153, this chapter, or a department request made in the discharge of its regulatory duties under Finance Code, Chapter 153, or this chapter, as determined by the department, you must pay for the additional examination at a rate of \$600 per day for each examiner required to conduct the additional examination and any associated travel expenses.

(4) If you are a new license holder and have not yet filed four quarterly reports by September 1st of your first year in business, you will pay an examination fee of \$600 per day for each examiner that conducts your examination and any associated travel expenses. Your subsequent annual assessment will be calculated in accordance with paragraph (1) of this subsection.

(5) If an out-of-state examination is necessary, you must pay the associated travel expenses in addition to the annual assessment.

(d) How will the department bill me for the annual assessment? The assessment may be billed in quarterly or fewer installments in such periodically adjusted amounts as reasonably appear necessary to pay

for the costs of examination and to administer Finance Code, Chapter 153. The commissioner may decrease annual assessments if it is determined that a lesser amount than would otherwise be collected is necessary to administer Finance Code, Chapter 153.

(e) What if I cannot afford the annual assessment? If you are experiencing financial difficulties, you may be able to obtain a temporary reduction in the amount of your annual assessment for one year by meeting the requirements of this subsection. To request a reduction in your annual assessment, you must file a written application as described in paragraph (1) of this subsection and the commissioner must find that your application satisfies the requirements described in paragraph (2) of this subsection. If the commissioner decides to reduce your annual assessment, the commissioner has discretion to determine the amount of the reduction.

(1) To request a reduction in your annual assessment, you must:

(A) file a written application with the department not later than the date the current annual assessment is due, accompanied by a written business recovery plan and other supporting documentation sufficient to demonstrate that you satisfy each factor described in paragraph (2) of this subsection; and

(B) file any additional documentation the department requests not later than the seventh day after the date you receive the request.

(2) The commissioner will not reduce your annual assessment unless the commissioner finds, based on your application and supporting documentation, that:

(A) you are financially insolvent or payment of the full annual assessment will cause you to become financially insolvent, and your current or impending financial insolvency is temporary and you reasonably expect to have the ability to pay your annual assessment in full by at least the third year after the year in which your request is made, based on a written business recovery plan that is reasonable and attainable; or

(B) your business is temporarily closed during the annual assessment period and you have conducted no currency exchange, transportation, and transmission activities during that period.

(f) When do I need to pay the fees required by this section?

(1) You must pay the license and license renewal fees required by subsection (b) of this section at the time you file your application for a license or application for renewal.

(2) You must pay your annual assessment or first examination fee required by subsection (c) of this section no later than the 15th day after the date of the department's billing.

(3) You must pay additional examination fees and associated travel costs required by subsection (c) of this section at the time of billing.

(g) Are any of the fees I pay under this section refundable? No, the department may not refund any amounts you pay in fees.

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

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Everette D. Jobe
Certifying Official
Finance Commission of Texas
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For further information, please call: (512) 475-1300



PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 11. MISCELLANEOUS SUBCHAPTER B. SAME POWERS AS NATIONAL BANKS

7 TAC §11.81, §11.83

The Finance Commission of Texas (the commission) adopts the repeal of §11.81, concerning loans, and §11.83, concerning other matters, without changes to the proposal as published in the July 5, 2002 issue of the *Texas Register* (27 TexReg 5924).

Sections 11.81 and 11.83 were adopted in 1982 to help state banks remain competitive, by authorizing certain powers and activities for state banks that were already authorized for national banks. These rules predate the 1984 constitutional amendment to Texas Constitution, Article XVI, §16, granting state banks "the same rights and privileges that are or may be granted to national banks of the United States domiciled in this State." In addition, relevant state banking law was thoroughly and comprehensively rewritten and modernized by legislation enacted in 1995, 1999, and 2001. The need for existing §11.81 and §11.83 therefore no longer exists and repeal is appropriate.

No comments were received regarding the proposed repeal.

The repeal is adopted under Finance Code, §31.003, which authorizes the commission to adopt rules necessary to accomplish the purposes of Finance Code, Title 3, Subtitle A.

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

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Everette D. Jobe
Certifying Official
Texas Department of Banking
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For further information, please call: (512) 475-1300



CHAPTER 21. TRUST COMPANY CORPORATE ACTIVITIES

SUBCHAPTER A. FEES AND OTHER PROVISIONS OF GENERAL APPLICABILITY

The Finance Commission of Texas (commission) adopts new §21.9, concerning waiver of requirements relating to trust company corporate activities. The commission also adopts

amendments to §§21.1-21.6 and 21.8, concerning fees for corporate applications and other provisions of general applicability to trust companies; §21.23 and §21.24, concerning trust company chartering and powers; §21.31 and §21.32, concerning trust deposits; §21.41 and §21.42, concerning trust company offices; §21.51, concerning change of control of a trust company; §§21.61, 21.62, 21.64, 21.67, 21.68, 21.72, and 21.76, concerning application for merger, conversion, or sale of assets of a trust company; and §21.91 and §21.92, concerning charter amendments and certain changes in outstanding stock of a trust company. New §21.9 and amendments to §§21.1-21.6 and 21.8, 21.23 and 21.24, 21.31 and 21.32, 21.41 and 21.42, and 21.62, 21.67, 21.68, 21.72 and 21.76, and 21.91 and 21.92 are adopted without changes to the proposed text as published in the July 5, 2002, issue of the *Texas Register* (27 TexReg 5925). Amendments to §§21.51(b)(1) and 21.51(c), 21.61(a), and 21.64(d) are adopted with nonsubstantive changes to the proposed text as published in the July 5, 2002, issue of the *Texas Register* (27 TexReg 5925). The text of these sections is being republished. The changes correct minor ambiguities, citations, and typographical errors in the proposal.

New §21.9 will authorize the banking commissioner to waive or modify any application requirement imposed by Chapter 21, regarding trust company corporate activities. The new rule is necessary to expand the authority in existing §21.71, which allowed the banking commissioner to waive or modify only the requirements in Chapter 21, Subchapter F. The commission is concurrently adopting the repeal of §21.71 in this issue of the *Texas Register*.

Most of the amendments merely correct citations that changed as a result of the 1999 codification of the Texas Trust Company Act (Texas Civil Statutes, Articles 342a-1.001 et seq) into the Finance Code.

The remaining amendments concern application fees for trust companies. Section §21.2(b)(13) is amended to increase the fee for an application to amend articles of association from \$200 to \$300. The \$100 increase is necessary to more fully recover the cost of processing this type of application and will make the department fee consistent with the \$300 fee charged by the Secretary of State for the same type of application.

In addition, the amendments add two new fees to §21.2 and allow recovery of investigative fees and costs on a new type of application. Finance Code, §182.502, added to the Finance Code in 2001, permits a trust institution to convert to a state trust company with the approval of the banking commissioner. Section 21.2(b)(22) will impose a \$5,000 fee for an application under new Finance Code, §182.502. In this connection, §21.2(d) is amended to add this application to the list of applications that are subject to additional charges for recovery of investigative fees and costs. Finally, §21.2(b)(23) will impose a new \$300 fee for an application to exempt an acquisition of control transaction from the requirements of Finance Code, §183.001, as provided by Finance Code, §183.001(d)(4). This fee is considered necessary to recover the costs of processing this type of application.

The fee increase and proposed new fees were established by the department, and not mandated by the Legislature.

The commission received no comments regarding the proposal.

7 TAC §§21.1 - 21.6, 21.8

The amendments are adopted under Finance Code, §181.003, which authorizes the commission to adopt rules to accomplish

the purposes of the Texas Trust Company Act, Finance Code, Title 3, Subtitle F.

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

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7 TAC §21.9

The new section is adopted under Finance Code, §181.003, which authorizes the commission to adopt rules to accomplish the purposes of the Texas Trust Company Act, Finance Code, Title 3, Subtitle F.

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SUBCHAPTER B. TRUST COMPANY CHARTERING AND POWERS

7 TAC §21.23, §21.24

The amendments are adopted under Finance Code, §181.003, which authorizes the commission to adopt rules to accomplish the purposes of the Texas Trust Company Act, Finance Code, Title 3, Subtitle F.

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

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SUBCHAPTER C. TRUST DEPOSITS

7 TAC §21.31, §21.32

The amendments are adopted under Finance Code, §181.003, which authorizes the commission to adopt rules to accomplish the purposes of the Texas Trust Company Act, Finance Code, Title 3, Subtitle F.

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SUBCHAPTER D. TRUST COMPANY OFFICES

7 TAC §21.41, §21.42

The amendments are adopted under Finance Code, §181.003, which authorizes the commission to adopt rules to accomplish the purposes of the Texas Trust Company Act, Finance Code, Title 3, Subtitle F.

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SUBCHAPTER E. CHANGE OF CONTROL

7 TAC §21.51

The amendments are adopted under Finance Code, §181.003, which authorizes the commission to adopt rules to accomplish the purposes of the Texas Trust Company Act Finance Code, Title 3, Subtitle F.

§21.51. *Application for Acquisition or Change of Control of Trust Company.*

(a) General. Without the prior written consent of the banking commissioner, or as otherwise provided by this section, a person or entity may not, directly or indirectly, acquire a legal or beneficial interest in voting securities of a trust company or a corporation or other entity owning voting securities of a trust company if, after the acquisition, the person or entity would control the trust company. Except as otherwise

provided in this section, an application must be filed with the banking commissioner for review and consideration of the proposed transaction.

(b) Form of application. The applicant shall submit a fully completed, verified application on a form prepared and prescribed by the banking commissioner and simultaneously tender the required filing fee pursuant to §21.2 of this title (relating to Filing and Investigation Fees). The application must, except to the extent expressly waived in writing by the banking commissioner, disclose the following information:

(1) the identity, biographical data, business background, and experience relating to trust industry matters, and a current statement of financial condition, a statement of changes in net worth and a statement of cash flows of each person by whom, or on whose behalf, the acquisition is to be made and by each person acting in concert with others seeking to acquire voting securities subject to Finance Code, §183.001, and to this section. Financial statements will be considered current if audited and dated within 180 days of the date of the application or will be considered current if unaudited and dated within 90 days of the date of the application. All financial statements must be accompanied by an affidavit of no material change dated as of the date of application;

(2) a completed authorization to release employment, financial, credit, fingerprint information, and criminal history records to the department;

(3) a completed confirmation inquiry form;

(4) the identity of each entity other than a natural person seeking to acquire control or working in concert with others to acquire control of a trust company and a copy of the entity's most recent audited financial statement. Financial statements will be considered current if audited and dated within 180 days of the date of the application or will be considered current if unaudited and dated within 90 days of the date of the application. All financial statements must be accompanied by an affidavit of no material change dated as of the date of application;

(5) a description of all material, pending or adjudicated legal or administrative proceedings in which each acquiring person or entity is or was a party. A material legal proceeding includes a proceeding in which the person or entity has been charged with, cited for, or convicted under a state or federal law relating to trust or other financial institutions, securities or financial instrument reporting, or a felony or crime that directly relates to the duties and responsibilities involved in the operation of a trust company or financial institution under the laws of a state, the United States, or another country. A material legal proceeding also includes a proceeding that resulted in a material unsatisfied judgment, or may result in a judgment, against the acquiring person or entity and such loss contingency must be disclosed in the financial statements of the acquiring person or entity under generally accepted accounting principles, or is otherwise material. A material administrative proceeding includes a proceeding in which the person or entity is or has been subject to a cease and desist, removal, enforcement, or other order, including an order of supervision or conservatorship issued by a state, federal, or foreign regulatory agency;

(6) the terms and conditions of the proposed acquisition or change of control and the manner in which the acquisition or change of control is to be made;

(7) the identity, source, and amount of the funds or other consideration used or to be used in making the acquisition or change of control;

(8) if a portion of the funds or other consideration to be used in making the acquisition has been borrowed or is to be borrowed

or otherwise obtained for the purpose of making the acquisition, a complete description of the transaction, the names of the parties to the transaction, and a summary of all arrangements, agreements, or understandings with such parties including terms of repayment;

(9) the applicant's current or proposed business or strategic plan including amendments to a current plan;

(10) plans or proposals to liquidate the trust company, to sell its assets or merge it with another trust company or other entity, or to make other major changes in its business, corporate structure, or management;

(11) plans or proposals to change officers and directors of the trust company and the related trust or financial institution management experience of proposed or current officers and directors;

(12) the terms and conditions of an offer, invitation, agreement, or arrangement under which a voting security will be acquired and any contract affecting such security or its financing after it is acquired;

(13) pro forma financial statements with projections indicating whether the acquired or controlled trust company will be adequately capitalized for a period of not less than two years from the date of acquisition; and

(14) such other information that the banking commissioner requires to be included in the particular application as considered necessary to an informed decision to approve or reject the proposed acquisition. The applicant bears the burden to supply all material information necessary to enable the banking commissioner to make a fully informed decision regarding the application.

(c) Public notice. Not earlier than the 14th day before or later than the 14th day after the date of initial submission of an application filed pursuant to §21.4 of this title (relating to Required Information and Abandoned Filings), the applicant shall publish notice as required by Finance Code, §183.002(d), and §21.5 of this title (relating to Public Notice) in the county where the trust company's home office is located. One publication under this subsection is adequate unless the banking commissioner expressly requires additional notice.

(d) Confidentiality. Information obtained by the banking commissioner under this section is confidential and may not be disclosed by the banking commissioner or an officer or employee of the department, subject only to such disclosure as may be permitted by Finance Code, §183.002(c), or by §3.111 of this title (relating to Confidential Information).

(e) Grandfather clause. A principal shareholder or participant that is considered to control a trust company, under Finance Code, §183.001(b), is exempt from filing an application under this section until the principal shareholder acquires one or more additional shares or participation shares of the trust company.

(f) Capital requirements. A person or entity seeking to acquire control of a trust company subject to this section must bring the trust company into compliance with the minimum capital requirements of Finance Code, §182.008, or such amount as required by the banking commissioner at the time the transaction is consummated.

(g) Exemptions. In addition to the acquisitions specifically exempted pursuant to Finance Code, §183.001(d), the following types of involuntary acquisitions of control do not require prior written approval of the banking commissioner:

(1) the inadvertent acquisition of control of a trust company by a shareholder as a result of a stock redemption or repurchase by the issuer if the potential controlling shareholder or participant of a

trust company did not vote or have any direct or indirect input into the issuer's decision to repurchase or redeem the voting securities;

(2) the acquisition and control by a qualified employee stock ownership plan (ESOP) of less than 25% of voting securities of a trust company unless an officer, director, or principal shareholder or participant directly or indirectly controls the voting securities held by the ESOP, in which event an application for acquisition of control must be filed by the officer, director or principal shareholder or participant, if as a result that person would control over 25% of the voting securities;

(3) the acquisition of control of a trust company as a result of a shareholder receiving proportionate voting securities in a trust company arising from the liquidation of a holding company;

(4) the acquisition of additional shares of voting securities of a trust company by virtue of a pro-rata stock dividend or stock split not resulting in increased ownership percentage;

(5) the acquisition of control of a trust company as a result of a gift made in good faith, provided:

(A) the donee is related to the donor within the second degree of consanguinity or affinity;

(B) neither the donor nor donee is under an enforcement order; and

(C) notice of the gift is given to the banking commissioner pursuant to subsection (h) of this section;

(6) the acquisition of control of a trust company as a result of the transfer of voting securities by gift to a limited partnership or other estate planning vehicle, if determined by the banking commissioner to have an equivalent effect, if:

(A) the limited partnership owns no other voting securities other than the securities transferred;

(B) the donor is the sole general partner of the limited partnership who retains sole voting authority over the voting securities;

(C) neither the donor nor donee is under an enforcement order; and

(D) notice of the gift is given to the banking commissioner pursuant to subsection (h) of this section; and

(7) the acquisition of control of a trust company by another entity if:

(A) the transaction is subject to an application to be reviewed by a federal or state regulatory authority that will be the primary regulator of the trust company after the transaction is consummated; and

(B) that regulatory authority has entered into an information sharing agreement with the banking commissioner.

(h) Notices in lieu of filing. In the event that an application is not required because of exemption under Finance Code, §183.001(d), or subsection (g) of this section, but an application is required to be filed with a federal regulatory authority or a regulatory authority of another state, a copy of the application as filed with another agency must be filed with the banking commissioner within seven days of the date of such other filing or filings. A notice in lieu of filing is also required of a person claiming an exemption under Finance Code, §183.001(d), or paragraph (5) or (6) of subsection (g) of this section. This notice must be filed before the securities acquired are voted and must be accompanied by a completed authorization pursuant to subsection (b)(2)

of this section. No filing fees are required for notices filed under this section; however, should the banking commissioner determine that an application is required, the appropriate filing fee pursuant to §21.2 of this title is required.

(i) Approval. Automatic approval; conditional approval. If an application filed under this section is not approved by the banking commissioner or is not set for hearing on or before the 60th day after notice is published pursuant to subsection (c) of this section, the transaction may be consummated. The banking commissioner may, before the expiration of the initial 60-day period, give the applicant written notice that the application has been approved, in which case the transaction may be immediately consummated on receipt of the notice. The banking commissioner may also, before the expiration of the initial 60-day period, give an applicant written notice that the application has been approved subject to certain conditions. The applicant shall enter into a written agreement with the banking commissioner concerning the conditions on or before the 30th day after the date of notification of conditional approval. An agreement entered into by the applicant and the banking commissioner concerning conditional approval is enforceable against the applicant and the trust company and is considered for all purposes an agreement under the provisions of Finance Code, §185.002(a). In the event that an applicant who has received conditional approval does not enter into an agreement with the banking commissioner as required by this subsection, the banking commissioner shall set the matter for hearing.

(j) Consummation of an acquisition or change of control transaction. The acquisition or change of control of the voting securities must be consummated as proposed in the application, in the agreement concerning conditional approval as provided in subsection (i) of this section, or as provided in a final order pursuant to subsection (m) of this section. A transaction approved or conditionally approved under this section must be consummated within 12 months after the date of approval by the banking commissioner unless an extension is granted in writing. Until a transaction is consummated, the banking commissioner reserves the right to alter, suspend or withdraw approval should an interim development warrant such action.

(k) Notification by banking commissioner. A notification by the banking commissioner under this section may be by registered or certified mail, return receipt requested, and is complete when the notification is deposited in the United States mail postage prepaid, return receipt requested, addressed to the address furnished in the application.

(l) Abandoned filing. The banking commissioner may determine an application to be abandoned pursuant to §21.4 of this title.

(m) Hearing on application. The banking commissioner shall set an application for hearing on or before the 60th day after notice is published as required by Finance Code, §183.003, and subsection (i) of this section. The notice of hearing must comply with Government Code, §2001.051, and shall state that the purpose of the hearing is to give the applicant an opportunity to show all required qualifications for the banking commissioner's approval of the acquisition or change of control application have been met. The applicant has the burden of showing all such required qualifications by a preponderance of evidence. After the hearing, the banking commissioner shall grant or deny the application based solely upon the evidence presented at the hearing. An applicant may not appeal denial of an application or conditional approval of an application until a final order is issued. If after a hearing has been held, the banking commissioner has entered an order denying the application, and the order has become final, the applicant may appeal the final order as provided by Finance Code, §183.004, and Government Code, Chapter 2001.

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SUBCHAPTER F. APPLICATION FOR MERGER, CONVERSION, OR SALE OF ASSETS

7 TAC §§21.61, 21.62, 21.64, 21.67, 21.68, 21.72, 21.76

The amendments are adopted under Finance Code, §181.003, which authorizes the commission to adopt rules to accomplish the purposes of the Texas Trust Company Act, Finance Code, Title 3, Subtitle F.

§21.61. Definitions.

(a) Words and terms used in this subchapter that are defined in the Trust Company Act or in §21.1 of this title, have the same meanings as defined therein.

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

(1) Annual report-Formal financial statements and accompanying narrative of management issued yearly for the benefit of shareholders and other interested parties.

(2) Chartering agency-A government authority that has chartering jurisdiction over an entity involved in a transaction under this subchapter.

(3) Corporation or domestic corporation-A corporation for profit subject to the provisions of the Texas Business Corporation Act, except a foreign corporation.

(4) Current financial statements- Audited financial statements dated as of a date not more than 180 days prior to the date of submission of an application, or unaudited financial statements dated as of a date not more than 90 days prior to the date of submission of an application.

(5) Fiduciary institution-A bank, savings association, savings bank, credit union, or other financial institution with the power to act as a fiduciary under applicable law.

(6) Low-quality asset-An asset as defined in 12 United States Code, §371c(b)(10), currently an asset that falls in any one or more of the following categories:

(A) an asset classified as "substandard," "doubtful," or "loss," or treated as "other loans especially mentioned" in the most recent report of examination or inspection of an affiliate prepared by either a federal or state supervisory agency;

(B) an asset in a nonaccrual status;

(C) an asset on which principal or interest payments are more than 30 days past due; or

(D) an asset whose terms has been renegotiated or compromised due to the deteriorating financial condition of the obligor.

(7) Material administrative proceeding-A past or pending proceeding by a state, federal, or foreign regulatory agency against the applicant or other person involved in a transaction under this subchapter that resulted in or could result in the issuance of a cease and desist, removal, enforcement action, determination letter or other order, including an order of supervision or conservatorship; excluding, however, a past proceeding that resulted in an order, other than a removal order, that has been satisfied or otherwise terminated more than five years prior to the date the application or notice requesting such information is submitted.

(8) Material legal proceeding-

(A) a past or pending criminal proceeding against the applicant or other person involved in a transaction under this subchapter that resulted or may result in conviction of the applicant or other person of a crime under a state or federal law or the law of a foreign country relating to fiduciaries, banks or other financial institutions, securities, financial instrument reporting, or another crime involving moral turpitude; or

(B) a past or pending proceeding that has or may result in a judgment against the applicant or other person or entity involved in a transaction under this subchapter and the loss contingency must be disclosed in the financial statements of the entity under generally accepted accounting principles, or is otherwise material.

(9) Merger-A transaction that is:

(A) the division of a trust company into two or more new trust companies, fiduciary institutions, or other entities, or into a surviving trust company and one or more new trust companies, fiduciary institutions, or other entities; or

(B) the combination of one or more trust companies with one or more fiduciary institutions or other entities, resulting in:

(i) one or more surviving trust companies, fiduciary institutions, or other entities;

(ii) the creation of one or more new trust companies, fiduciary institutions, or other entities; or

(iii) one or more surviving trust companies, fiduciary institutions, or other entities and the creation of one or more new trust companies, fiduciary institutions, or other entities.

(10) Other entity-An entity, whether or not organized for profit, including a corporation, limited or general partnership, joint venture, joint stock company, cooperative, association, or another legal entity organized pursuant to the laws of this state or another state or country to the extent such laws or the constituent documents of that entity, consistent with such laws, permit that entity to enter into a merger or share exchange subject to this subchapter.

(11) Principal executive officer-An officer primarily responsible for the execution of board policies and operation of a trust company or other entity.

(12) Purchase of assets-The purchase other than in the ordinary course of business of all, substantially all, or a part of the assets of a trust company, fiduciary institution, or other entity, including but not limited to fiduciary rights pertaining to client accounts.

(13) Regulatory restriction-A memorandum of understanding, determination letter, notice of determination, order to cease and desist, or other state or federal administrative enforcement order issued by a state or federal banking regulatory agency, or another limitation

imposed on a fiduciary institution or other entity by a state or federal banking regulatory agency that restricts its ability to act without authorization from the regulatory agency imposing the condition.

(14) Resulting trust company-A trust company that is a surviving or newly created entity in a merger.

(15) Sale of assets-The sale, lease, exchange, or other disposition of substantially all of the assets of a trust company, including but not limited to fiduciary rights pertaining to client accounts, other than in the ordinary course of business.

(16) Share exchange-A transaction by which one or more trust companies, fiduciary institutions, or other entities acquire all of the outstanding shares of one or more classes or series of one or more trust companies under the authority of Finance Code, §182.301, and the Texas Business Corporation Act, Article 5.02.

(17) Trust company-A state trust company as defined by Finance Code, §181.002(a).

(18) Verified-Documents submitted by the applicant that have been attested to as true and correct, but not necessarily notarized.

§21.64. Application for Merger or Share Exchange.

(a) Scope. This section governs an application for merger or share exchange pursuant to Finance Code, §§182.301 et seq. This section does not apply to a merger that results in a trust company becoming another fiduciary institution under another regulatory system pursuant to Finance Code, §182.501, or other applicable law, and such transactions are governed by §21.67 of this title (relating to Merger, Reorganization, or Conversion of a Trust Company Into Another Fiduciary Institution).

(b) Form of application. The applicant shall submit a fully completed, verified application on a form prescribed by the banking commissioner and simultaneously tender the required filing fee pursuant to §21.2 of this title (relating to Filing and Investigation Fees). The application must, except to the extent waived by the banking commissioner, include the following information:

(1) a summary of the proposed transaction;

(2) a copy of all agreements related to the proposed transaction executed by an authorized representative of each party to the merger or share exchange;

(3) articles and plan of merger or share exchange in accordance with the Texas Business Corporation Act, Part V, which must include the following:

(A) a current draft of the articles of merger or share exchange, and such number of additional copies equal to the number of surviving, new, or acquired entities, executed and acknowledged by an authorized officer for each party to the merger or share exchange;

(B) the plan of merger or share exchange;

(C) the articles or restated articles of association of each resulting trust company;

(D) the articles or restated articles of incorporation or association, or other constitutive documents, of each newly created or surviving entity other than a resulting trust company; and

(E) if a party to a merger is an entity required to file documents with the Texas secretary of state before the transaction can be legally consummated, a provision in the articles of merger conditioning the merger upon the approval of the banking commissioner, containing wording substantially as follows, as applicable: This merger shall become effective upon the final approval and filing of the articles of merger by the Secretary of State of Texas and with the Banking

Commissioner of Texas which shall be on or before _____ (date), which is the 90th day after the date of filing of such articles of merger with the Secretary of State;

(4) for each party to the merger or share exchange, a certified copy of those portions of the minutes of board meetings and shareholder or participant meetings (or their equivalent) at which action was taken regarding approval of the merger or share exchange, or a certificate of an officer verifying the action taken by the board of directors and the shareholders or participants approving the merger or share exchange, or an explanation of the basis for concluding such action was not required;

(5) for each resulting trust company, an assessment of its future prospects, proposed officers and directors, and proposed offices and other locations;

(6) an assessment of the current regulatory and financial condition of each party to the transaction;

(7) a copy of current financial statements for each entity involved in the proposed transaction, accompanied by an affidavit of no material change dated no earlier than 30 days prior to the date of submission of the application;

(8) a copy of the latest annual report for each fiduciary institution and holding company involved in the proposed transaction;

(9) a copy of that portion of the most recent watch list for each fiduciary institution involved in the proposed transaction that identifies low-quality assets;

(10) a description of the due diligence review conducted by or for each trust company that is a party to the transaction and a summary of findings;

(11) a description of all material legal or administrative proceedings involving any party to the merger or share exchange;

(12) an opinion of legal counsel that conforms with §21.68 of this title (relating to Opinion of Legal Counsel), concluding the following:

(A) each resulting trust company will be solvent and will have adequate capitalization for its business and location;

(B) the merger or share exchange has been duly authorized by the board and shareholders or participants of each participating trust company, fiduciary institution, or other entity, including trust companies in accordance with applicable law;

(C) the merger or share exchange will not cause or result in a material violation of the laws of this state relative to the organization and operation of trust companies;

(D) all liabilities of each trust company that is a party to the merger or share exchange will be discharged or otherwise assumed or retained by a trust company or other fiduciary;

(E) each surviving, new, or acquiring entity that is not authorized to engage in the trust business will not engage in the trust business and has in all respects complied with the laws of this state;

(F) all conditions with respect to the merger or share exchange that have been imposed by the banking commissioner have been satisfied or otherwise resolved or, to the best knowledge of legal counsel, no such conditions have been imposed;

(13) a copy of each filing or application regarding the proposed merger or share exchange that is required to be made with another state or federal regulatory agency, complete with all related attachments, exhibits, and correspondence;

(14) a current pro forma balance sheet and income statement for each party to the transaction, with adjustments, reflecting the proposed merger or share exchange as of the most recent quarter ended immediately prior to the filing of the application. The pro forma must include a statement of fiduciary assets as well as corporate assets;

(15) for each resulting trust company, a copy of the strategic plan that complies with the banking commissioner's Memorandum 1009, including projections of the balance sheet and income statement of each resulting trust company as of the quarter ending one year from the date of the pro forma financial statement required by paragraph (14) of this subsection;

(16) an explanation of compliance with or nonapplicability of provisions of governing law relating to rights of dissenting shareholders or participants to the merger or share exchange;

(17) a copy of all securities offering documents, proxy statements, or other disclosure materials delivered or to be delivered to shareholders or participants of a party concerning the merger or share exchange;

(18) an explanation of the manner and basis of converting or exchanging any of the shares or other evidences of ownership of an entity that is a party to the merger or share exchange into shares, obligations, evidences of ownership, rights to purchase securities, or other securities of one or more of the surviving, acquiring, or new entities, into cash or other property, including shares, obligations, evidences of ownership, rights to purchase securities, or other securities of another person or entity, or into a combination of the foregoing;

(19) for antitrust purposes, an analysis of the anticipated competitive effect of the proposed transaction in the affected markets and a statement of the basis of the analysis of the competitive effects, or if applicable, a copy of the analysis of competitive effects of the proposed transaction addressed in a companion federal regulatory agency application; and

(20) such other information that the banking commissioner, in the exercise of discretion, requires to be included in the particular application as considered necessary to an informed decision to approve or deny the proposed merger or share exchange.

(c) Applicant's duty to disclose. The applicant bears the burden to supply all material information necessary to enable the banking commissioner to make a fully informed decision regarding the application.

(d) Public notice. Not earlier than the 14th day before or later than the 14th day after the date of the initial submission of the application, the applicant shall publish notice in accordance with the requirements of §21.5 of this title (relating to Public Notice) in the specified communities where the home office of the applicant, the target entity, and the resulting trust company are located.

(e) Approval by the banking commissioner and filings with a chartering agency.

(1) The banking commissioner shall approve a merger or share exchange only if the application indicates substantial compliance with all conditions of Finance Code, §182.302(c).

(2) If any party is required to file with its chartering agency after acceptance for filing pursuant to §21.4(b) of this title (relating to Required Information and Abandoned Filings), an applicant for merger or share exchange shall file the original articles of merger or share exchange as certified by the chartering agency with the banking commissioner.

(3) After approval of an application under this section by the banking commissioner, the articles of merger or share exchange previously filed with the chartering agency, if applicable, will be accepted and a certificate of merger or share exchange will be issued by the banking commissioner who shall perform the duties required by Finance Code, §182.303(a). With respect to a transaction that requires filing with the Texas secretary of state, if the banking commissioner does not approve the articles of merger or share exchange on or before the 90th day after the filing of the articles of merger with the Texas secretary of state, the applicant must refile the articles of merger or share exchange with both the Texas secretary of state and with the banking commissioner.

(4) After issuance of the certificate of merger or share exchange by the banking commissioner, the applicant shall file a statement with the chartering authority, if applicable, certifying that any future event upon which the effectiveness of the merger or share exchange was conditioned, has been satisfied and the date upon which the condition was satisfied.

(5) The date of issuance of the certificate of merger or share exchange by the banking commissioner constitutes the date of approval pursuant to Finance Code, §182.303(b), unless the merger or exchange agreement provides for a later effective date which has been approved by the banking commissioner.

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 August 30, 2002.

TRD-200205321
Everette D. Jobe
Certifying Official
Texas Department of Banking
Effective date: September 5, 2002
Proposal publication date: July 5, 2002
For further information, please call: (512) 475-1300



SUBCHAPTER G. CHARTER AMENDMENTS AND CERTAIN CHANGES IN OUTSTANDING STOCK

7 TAC §21.91, §21.92

The amendments are adopted under Finance Code, §181.003, which authorizes the commission to adopt rules to accomplish the purposes of the Texas Trust Company Act, Finance Code, Title 3, Subtitle F.

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 August 16, 2002.

TRD-200205322
Everette D. Jobe
Certifying Official
Texas Department of Banking
Effective date: September 5, 2002
Proposal publication date: July 5, 2002
For further information, please call: (512) 475-1300

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SUBCHAPTER F. APPLICATION FOR MERGER, CONVERSION, OR SALE OF ASSETS

7 TAC §21.71

The Finance Commission of Texas (the commission), adopts the repeal of §21.71, concerning waiver of requirements, without changes to the proposal as published in the July 5, 2002 issue of the *Texas Register* (27 TexReg 5933).

Section 21.71 authorizes the banking commissioner to waive a requirement in Chapter 21, Subchapter F, concerning applications for merger, conversion, or sale of assets. The provision became unnecessary after adoption of new §21.9, which authorizes the commissioner to waive or modify any requirement in Chapter 21. New §21.9 was adopted concurrently with this repeal.

No comments were received regarding the proposed repeal.

The repeal is adopted under Finance Code, §181.003, which authorizes the commission to adopt rules to accomplish the purposes of the Texas Trust Company Act, Finance Code, Title 3, Subtitle F.

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 August 16, 2002.

TRD-200205323

Everette D. Jobe

Certifying Official

Texas Department of Banking

Effective date: September 5, 2002

Proposal publication date: July 5, 2002

For further information, please call: (512) 475-1300

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TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 303. GENERAL PROVISIONS

SUBCHAPTER A. ORGANIZATION OF THE COMMISSION

16 TAC §303.4, §303.9

The Texas Racing Commission adopts amendments to §303.4, relating to Commission meetings and §303.9 relating to Commission records with changes to the text as published in the July 12, 2002, issue of the *Texas Register* (27 TexReg 6164).

The amendments were the result of a chapter review in accordance with the requirements of Chapter 1275, Acts of the 75th Legislature, 1997, Section 55 and Government Code §2001.039. The amendments update referenced citations and conform the rule to current rule style.

No written comments were received regarding these amendments.

The amendments are adopted under the Texas Civil Statutes, Article 179e, §2.11, which authorizes the Commission to conduct meetings and implement policies for public participation.

The adoption implements Texas Civil Statutes, Article 179e.

§303.4. Meetings.

(a) Except as otherwise provided by state law, Commission meetings are subject to the Texas open meetings law, Government Code, Chapter 551.

(b) The Commission shall hold at least six regular meetings each year on dates set by the Commission. The Chair or any four members of the Commission may call a special meeting of the Commission.

(c) Except as otherwise provided by state law or by the Rules, Robert's Rules of Order (Revised 1996) govern the proceedings of the Commission.

(d) The executive secretary shall prepare the agenda for each Commission meeting, subject to the approval of the Chair of the Commission. At the request of any two Commissioners, the executive secretary shall place an item on the agenda. If only one Commissioner requests that an item be placed on the agenda, the Chair shall review the request and, after consulting with the Vice-chair, determine whether to place the item on the agenda.

(e) A licensee of the Commission or a member of the public may request that an item be placed on the agenda by filing a written request with the executive secretary not later than 14 days before the date of the meeting. The party making the request must include with the request an original and one copy of all information, data, or other supporting materials relating to the request. After receiving a request under this subsection, the Chair shall review the request and, after consulting with the Vice-chair, determine whether to place the item on the agenda.

(f) All individuals wishing to address the Commission must sign a registration form and make their remarks under oath. All individuals addressing the Commission are subject to questioning by the Commission and the Commission staff.

(g) Before each regular Commission meeting, the executive secretary shall distribute the agenda and a summary of each rule scheduled for proposal at the meeting to each licensed racetrack, each official breed registry, the officially recognized horsemen's organization, and the Texas Veterinary Medical Association. An association shall post the agenda and rules in a prominent place that will ensure access by interested persons.

§303.9. Records.

(a) Except as otherwise provided by the Act, Commission records are subject to the Texas Open Records law, Government Code, Chapter 552.

(b) To inspect Commission records, a person must make a request to the executive secretary. The executive secretary may require the request to be made in writing.

(c) A person may not remove an original record from the offices of the Commission without the approval of the executive secretary.

(d) A person requesting to inspect a Commission record must pay all costs involved in preparing or copying the record. The Commission adopts the suggested charges promulgated by the Texas Building and Procurement Commission for providing copies of public information at 1 TAC §111.63 and Government Code §552.261.

(e) If the Commission mails a copy of Commission record to a person requesting to inspect the record, the Commission may also charge the person for the appropriate amount of postage.

(f) The executive secretary may establish written procedures for inspection of Commission records consistent with the state's open records requirements.

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 August 14, 2002.

TRD-200205302

Judith L. Kennison

General Counsel

Texas Racing Commission

Effective date: September 9, 2002

Proposal publication date: July 12, 2002

For further information, please call: (512) 833-6699



SUBCHAPTER B. POWERS AND DUTIES OF THE COMMISSION

16 TAC §303.35, §303.38

The Texas Racing Commission adopts amendments to §303.35, relating to access to Commission programs, and to §303.38, relating to cooperation with peace officers and other enforcement entities without changes to the proposed text as published in the July 12, 2002, issue of the *Texas Register* (27 TexReg 6165) and will not be republished.

The amendments were the result of a chapter review in accordance with the requirements of Chapter 1275, Acts of the 75th Legislature, 1997, Section 55 and Government Code §2001.039. The amendments will update referenced citations, update current word usage, and conform the rule to current rule style.

No written comments were received regarding these amendments.

The amendments are adopted under the Texas Civil Statutes, Article 179e, §2.22, relating to public programs and facility accessibility, and §3.11, which requires the Commission to cooperate with all state law enforcement officials.

The adoption implements Texas Civil Statutes, Article 179e.

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

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

TRD-200205303

Judith L. Kennison

General Counsel

Texas Racing Commission

Effective date: September 9, 2002

Proposal publication date: July 12, 2002

For further information, please call: (512) 833-6699



SUBCHAPTER D. TEXAS BRED INCENTIVE PROGRAM

DIVISION 1. GENERAL PROVISIONS

16 TAC §§303.82, 303.84, 303.85

The Texas Racing Commission adopts amendments to §§303.82, 303.84, and 303.85, relating to general provisions of the Commission's Texas-bred incentive programs without changes to the proposed text as published in the July 12, 2002, issue of the *Texas Register* (27 TexReg 6166) and will not be republished.

These amendments were the result of a chapter review in accordance with the requirements of Chapter 1275, Acts of the 75th Legislature, 1997, Section 55 and Government Code §2001.039. The amendments rephrase certain language for clarity and to conform the rule to current rule style.

No written comments were received regarding these amendments.

The amendments are adopted under the Texas Civil Statutes, Article 179e, §9.01, which authorizes the official breed registries to develop and improve breeding of horses in Texas.

The adoption implements Texas Civil Statutes, Article 179e.

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

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

TRD-200205304

Judith L. Kennison

General Counsel

Texas Racing Commission

Effective date: September 9, 2002

Proposal publication date: July 12, 2002

For further information, please call: (512) 833-6699



DIVISION 2. PROGRAM FOR HORSES

16 TAC §303.91

The Texas Racing Commission adopts the repeal of §303.91, relating to horse breed registries without changes to the proposal as published in the July 12, 2002, issue of the *Texas Register* (27 TexReg 6166) and will not be republished. The repeal is being adopted in accordance with the requirements of Chapter 1275, Acts of the 75th Legislature, 1997, Section 55 and Government Code §2001.039.

The repeal is necessary because its provisions are duplicative of §9.02 of the Racing Act and are therefore redundant.

No written comments were received regarding these repeals.

The repeal is adopted under the Texas Civil Statutes, Article 179e, §9.02, which authorizes officially designated horse breed registries.

The repeal implements Texas Civil Statutes, Article 179e.

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

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

TRD-200205305

Judith L. Kennison
General Counsel
Texas Racing Commission
Effective date: September 9, 2002
Proposal publication date: July 12, 2002
For further information, please call: (512) 833-6699

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

**CHAPTER 97. PLANNING AND
ACCREDITATION**

SUBCHAPTER AA. ACCOUNTABILITY

RATINGS AND ACKNOWLEDGMENTS

**DIVISION 1. STANDARD ACCOUNTABILITY
SYSTEM**

19 TAC §97.1003

The Texas Education Agency (TEA) adopts new §97.1003, concerning the Texas public school accountability system without changes to the proposed text as published in the July 12, 2002, issue of the *Texas Register* (27 TexReg 6167) and will not be republished. The new section adopts by reference *Sections 1 and 2 of the 2003 Accountability Plan*, dated July 2002, which specifies the procedures by which the accountability system will be administered in 2003.

Legal counsel with the TEA has recommended that the procedures for issuing regular accountability ratings for public school districts and campuses be adopted as part of the *Texas Administrative Code*. This decision was made in 2000 given a court decision challenging state agency decision making via administrative letter/publications. Given the statewide application of the accountability rating process and the existence of sufficient statutory authority for the commissioner of education to formally adopt rules in this area, portions of each annual accountability manual have been adopted since 2000. The new section adopts by reference *Sections 1 and 2 of the 2003 Accountability Plan*, dated July 2002.

The 2003 accountability system will provide a transition from the current accountability rating system that uses Texas Assessment of Academic Skills (TAAS) results and annual dropout rates to the new accountability rating system that will use Texas Assessment of Knowledge and Skills (TAKS) results and longitudinal completion rates. State statute requires annual district performance ratings with the standard accountability labels of *Exemplary, Recognized, Academically Acceptable*, and *Academically Unacceptable*. Campuses must also be evaluated annually; however, accountability labels for campuses are not specified in statute. To comply with state statute, district 2002 accountability ratings will be carried forward to 2003. A separate December 2003 performance evaluation will address the requirement for annual campus evaluations.

The December 2003 accountability evaluations will be based on 2003 performance data and the 2004 accountability standards. Districts will be identified in the December 2003 accountability evaluations as *2003 Performance Meets 2004 Standard(s)* or *2003 Performance Does Not Meet 2004 Standard(s)*. Districts

with a 2002 accountability rating of *Academically Unacceptable* and a designation *2003 Performance Does Not Meet 2004 Standard(s)* will receive follow-up site visits during the 2003-2004 school year. Campus performance evaluations will identify the indicators and student groups for which 2003 performance fails to meet the 2004 accountability standard(s). Campuses will not receive the designation *2003 Performance Meets 2004 Standard(s)* or *2003 Performance Does Not Meet 2004 Standard(s)*.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Education Code, §§39.051(c)-(e), 39.073, 39.074(a)-(b), and 39.075, which authorize the commissioner of education to specify the indicators, standards, and procedures used to determine standard accountability ratings and to determine acknowledgment on additional indicators.

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 August 19, 2002.

TRD-200205408

Cristina De La Fuente-Valadez

Manager, Policy Planning

Texas Education Agency

Effective date: September 8, 2002

Proposal publication date: July 12, 2002

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

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TITLE 22. EXAMINING BOARDS

**PART 15. TEXAS STATE BOARD OF
PHARMACY**

**CHAPTER 281. ADMINISTRATIVE PRACTICE
AND PROCEDURES**

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §§281.2, 281.4, 281.14, 281.17

The Texas State Board of Pharmacy adopts amendments to §281.2, concerning Definitions, §281.4, concerning Official Acts in Writing and Open to the Public, §281.14, concerning Charges for Public Records, and §281.17, concerning Historically Underutilized Businesses. The amendments are adopted without changes to the proposed text as published in the June 21, 2002, issue of the *Texas Register* (27 TexReg 5352), and will not be republished.

The adopted amendments correct and/or simplify citations referenced in the rules.

Comments were received from a chain pharmacy organization with the following suggestions. Section 281.2 contains a definition of the term "executive director/secretary." Since the statute has been changed to refer only to the executive director, the term defined in §281.2 should be changed to simply "executive director." The Board disagrees with this change since the statute states that the executive director shall perform the regular administrative functions of the board (administer the agency) and

shall serve as secretary to the Board. Therefore, the title "executive director/secretary," as used in the rules, more accurately describes the two major responsibilities of this position and should remain the term defined in this section.

The second suggestion was to add a definition of the term "registration" in §281.2 in anticipation of technician registration. The Board disagrees with this change as the definition of the term "license" in §281.2 includes a registration.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the rule: Chapters 551 - 566, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on August 19, 2002.

TRD-200205411

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: September 8, 2002

Proposal publication date: June 21, 2002

For further information, please call: (512) 305-8028



SUBCHAPTER B. GENERAL PROCEDURES IN A CONTESTED CASE

22 TAC §§281.27, 281.33, 281.43, 281.45

The Texas State Board of Pharmacy adopts amendments to §281.27, concerning Service of Documents on Parties, §281.33, concerning Discovery, §281.43, concerning Public Attendance and Comment at Hearing; and §281.45, concerning Evidence. The amendments are adopted without changes to the proposed text as published in the June 21, 2002, issue of the *Texas Register* (27 TexReg 5353), and will not be republished.

The adopted amendments correct and/or simplify citations referenced in the rules.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the rules: Chapters 551 - 566, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on August 19, 2002.

TRD-200205412

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: September 8, 2002

Proposal publication date: June 21, 2002

For further information, please call: (512) 305-8028



SUBCHAPTER B. GENERAL PROCEDURES IN A CONTESTED CASE

The Texas State Board of Pharmacy adopts repeal of §281.40, concerning Participation by Telephone and simultaneously adopts new §281.40, concerning Participation by Telephone. The repeal and the adoption of the new rule is made without changes to the proposed text as published in the June 21, 2002, issue of the *Texas Register* (27 TexReg 5355), and will not be republished.

The new rule updates the section to be consistent with rules adopted by the State Office of Administrative Hearings (SOAH).

No comments were received.

22 TAC §281.40

The repeal is adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the repeal: Chapters 551 - 566, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on August 19, 2002.

TRD-200205413

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: September 8, 2002

Proposal publication date: June 21, 2002

For further information, please call: (512) 305-8028



22 TAC §281.40

The new rule is adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Chapters 551 - 566, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on August 19, 2002.

TRD-200205414

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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Proposal publication date: June 21, 2002

For further information, please call: (512) 305-8028

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CHAPTER 291. PHARMACIES
SUBCHAPTER A. ALL CLASSES OF
PHARMACIES

22 TAC §291.20

The Texas State Board of Pharmacy adopts amendments to §291.20, concerning Remote Pharmacy Services. The amendments are adopted without changes to the proposed text as published in the June 21, 2002, issue of the *Texas Register* (27 TexReg 5355), and will not be republished.

The adopted amendments: (1) add Assisted Living Centers to the list of facilities in which automated pharmacy systems may be located; and (2) delete the requirement for the signature of the medical director or other person responsible for the on-site operation of the facility on renewal applications.

No comments were received.

The amendments are adopted under §§551.002, 554.051, 562.108, 562.109, and 562.110 of the Texas Pharmacy Act (Chapters 551 - 566, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §562.108 as authorizing the agency to adopt rules for Emergency Medication Kits. The Board interprets §562.109 as authorizing the agency to adopt rules for Automated Pharmacy Systems. The Board interprets §562.110 as authorizing the agency to adopt rules for Telepharmacy Systems.

The statutes affected by this rule: Chapters 551 - 566, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on August 19, 2002.

TRD-200205415

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: September 8, 2002

Proposal publication date: June 21, 2002

For further information, please call: (512) 305-8028

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SUBCHAPTER B. COMMUNITY PHARMACY
(CLASS A)

22 TAC §291.32, §291.36

The Texas State Board of Pharmacy adopts amendments to §291.32, concerning Personnel, and §291.36, concerning Class A Pharmacies Compounding Sterile Pharmaceuticals. The amendments are adopted with changes to the proposed text as published in the June 21, 2002, issue of the *Texas Register* (27 TexReg 5357).

The adopted amendments: (1) permit a pharmacist to be in-charge of two Class A pharmacies open at the same time under certain conditions; and (2) separate responsibilities of the pharmacist-in-charge and the owner of a Class A pharmacy license.

One written comment was received from the National Association of Chain Drug Stores (NACDS). NACDS made comment regarding the following sections of the rules.

Section 291.32(a)(1)--NACDS supports the change allowing a pharmacist-in-charge to be the pharmacist-in-charge of two Class A pharmacies if they work at least 10 hours in each pharmacy.

Section 291.32(a)(2)(H)--NACDS believes the change means the same thing as the original. Suggests clarifying that the owner sets policies and the pharmacist-in-charge creates procedures to be sure the policies are followed. The Board agrees and incorporated the language suggested by NACDS both here and in §291.36(c)(1)(B).

Section 291.32(a)(2)(J)(i)--NACDS believes it is more likely the owner rather than the pharmacist-in-charge who will make decisions concerning obtaining an automated pharmacy dispensing system and creating policies and procedures for that system. They suggest deleting the language and placing it under the responsibilities of the pharmacy owner. The Board agrees with the basic comment but felt the pharmacist-in-charge should be involved in creating the policies and procedures for the system. The language was changed to reflect this involvement. The review and approval of an automated pharmacy dispensing system is already a responsibility of the pharmacy owner.

Section 291.32(b)--NACDS suggests language to clarify that the pharmacy owner is responsible for functions of the pharmacy that are not otherwise the responsibility of the pharmacist-in-charge. The Board disagrees because there are situations when both the pharmacist-in-charge and the pharmacy owner are, and should be, responsible.

Section 291.32(b)--NACDS suggests language clarifying that it is a responsibility of the pharmacy owner to establish policies for the legal use of a data processing system and the pharmacist-in-charge to assure that the policies and procedures are maintained in compliance with legal requirements. The Board agrees and incorporated the language suggested by NACDS both here and in §291.36(c)(2).

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets

§554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Chapters 551 - 566, Texas Occupations Code.

§291.32. *Personnel.*

(a) Pharmacist-in-charge.

(1) General.

(A) Each Class A pharmacy shall have one pharmacist-in-charge who is employed on a full-time basis, who may be the pharmacist-in-charge for only one such pharmacy; provided, however, such pharmacist-in-charge may be the pharmacist-in-charge of:

(i) more than one Class A pharmacy, if the additional Class A pharmacies are not open to provide pharmacy services simultaneously; or

(ii) up to two Class A pharmacies open simultaneously if the pharmacist-in-charge works at least 10 hours per week in each pharmacy.

(B) The pharmacist-in-charge shall comply with the provisions of §291.17 of this title (relating to Inventory Requirements).

(2) Responsibilities. The pharmacist-in-charge shall have responsibility for the practice of pharmacy at the pharmacy for which he or she is the pharmacist-in-charge. The pharmacist-in-charge may advise the owner on administrative or operational concerns. The pharmacist-in-charge shall have responsibility for, at a minimum, the following:

(A) education and training of pharmacy technicians;

(B) supervising a system to assure appropriate procurement of prescription drugs and devices and other products dispensed from the Class A pharmacy;

(C) disposal and distribution of drugs from the Class A pharmacy;

(D) bulk compounding of drugs;

(E) storage of all materials, including drugs, chemicals, and biologicals;

(F) maintaining records of all transactions of the Class A pharmacy necessary to maintain accurate control over and accountability for all pharmaceutical materials required by applicable state and federal laws and sections;

(G) supervising a system to assure maintenance of effective controls against the theft or diversion of prescription drugs, and records for such drugs;

(H) adherence to policies and procedures regarding the maintenance of records in a data processing system such that the data processing system is in compliance with Class A (community) pharmacy requirements;

(I) legal operation of the pharmacy, including meeting all inspection and other requirements of all state and federal laws or sections governing the practice of pharmacy; and

(J) effective September 1, 2000, if the pharmacy uses an automated pharmacy dispensing system, shall be responsible for the following:

(i) consulting with the owner concerning and adherence to the policies and procedures for system operation, safety, security, accuracy and access, patient confidentiality, prevention of unauthorized access, and malfunction;

(ii) inspecting medications in the automated pharmacy dispensing system, at least monthly, for expiration date, misbranding, physical integrity, security, and accountability;

(iii) assigning, discontinuing, or changing personnel access to the automated pharmacy dispensing system;

(iv) ensuring that pharmacy technicians and licensed healthcare professionals performing any services in connection with an automated pharmacy dispensing system have been properly trained on the use of the system and can demonstrate comprehensive knowledge of the written policies and procedures for operation of the system; and

(v) ensuring that the automated pharmacy dispensing system is stocked accurately and an accountability record is maintained in accordance with the written policies and procedures of operation.

(b) Owner. The owner of a Class A pharmacy shall have responsibility for all administrative and operational functions of the pharmacy. The pharmacist-in-charge may advise the owner on administrative and operational concerns. The owner shall have responsibility for, at a minimum, the following, and if the owner is not a Texas licensed pharmacist, the owner shall consult with the pharmacist-in-charge or another Texas licensed pharmacist:

(1) establishment of policies for procurement of prescription drugs and devices and other products dispensed from the Class A pharmacy;

(2) establishment and maintenance of effective controls against the theft or diversion of prescription drugs;

(3) if the pharmacy uses an automated pharmacy dispensing system, reviewing and approving all policies and procedures for system operation, safety, security, accuracy and access, patient confidentiality, prevention of unauthorized access, and malfunction;

(4) providing the pharmacy with the necessary equipment and resources commensurate with its level and type of practice; and

(5) establishment of policies and procedures regarding maintenance, storage, and retrieval of records in a data processing system such that the system is in compliance with state and federal requirements.

(c) Pharmacists.

(1) General.

(A) The pharmacist-in-charge shall be assisted by sufficient number of additional licensed pharmacists as may be required to operate the Class A pharmacy competently, safely, and adequately to meet the needs of the patients of the pharmacy.

(B) All pharmacists shall assist the pharmacist-in-charge in meeting his or her responsibilities in ordering, dispensing, and accounting for prescription drugs.

(C) Pharmacists are solely responsible for the direct supervision of pharmacy technicians and for designating and delegating duties, other than those listed in paragraph (2) of this subsection, to pharmacy technicians. Each pharmacist:

(i) shall verify the accuracy of all acts, tasks, and functions performed by pharmacy technicians; and

(ii) shall be responsible for any delegated act performed by pharmacy technicians under his or her supervision.

(D) All pharmacists while on duty, shall be responsible for complying with all state and federal laws or rules governing the practice of pharmacy.

(E) A dispensing pharmacist shall ensure that the drug is dispensed and delivered safely, and accurately as prescribed. In addition, if multiple pharmacists participate in the dispensing process, each pharmacist shall ensure the safety and accuracy of the portion of the process the pharmacist is performing. The dispensing process shall include, but not be limited to, drug regimen review and verification of accurate prescription data entry, packaging, preparation, compounding and labeling and performance of the final check of the dispensed prescription.

(2) Duties. Duties which may only be performed by a pharmacist are as follows:

(A) receiving oral prescription drug orders and reducing these orders to writing, either manually or electronically;

(B) interpreting prescription drug orders;

(C) selection of drug products;

(D) performing the final check of the dispensed prescription before delivery to the patient to ensure that the prescription has been dispensed accurately as prescribed;

(E) communicating to the patient or patient's agent information about the prescription drug or device which in the exercise of the pharmacist's professional judgement, the pharmacist deems significant, as specified in §291.33(c) of this title;

(F) communicating to the patient or the patient's agent on his or her request information concerning any prescription drugs dispensed to the patient by the pharmacy;

(G) assuring that a reasonable effort is made to obtain, record, and maintain patient medication records;

(H) interpreting patient medication records and performing drug regimen reviews; and

(I) performing a specific act of drug therapy management for a patient delegated to a pharmacist by a written protocol from a physician licensed in this state in compliance with the Medical Practice Act.

(3) Special requirements for nonsterile compounding.

(A) All pharmacists engaged in compounding shall possess the education, training, and proficiency necessary to properly and safely perform compounding duties undertaken or supervised. Continuing education shall include training in the art and science of compounding and the legal requirements for compounding.

(B) A pharmacist shall inspect and approve all components, drug product containers, closures, labeling, and any other materials involved in the compounding process.

(C) A pharmacist shall review all compounding records for accuracy and conduct in-process and final checks to assure that errors have not occurred in the compounding process.

(D) A pharmacist is responsible for the proper maintenance, cleanliness, and use of all equipment used in the compounding process.

(d) Pharmacy Technicians.

(1) Qualifications.

(A) General. All pharmacy technicians shall:

(i) have a high school or equivalent degree, e.g., GED, or be currently enrolled in a program which awards such a degree; and

(ii) complete a structured didactic and experiential training program, which provides instruction and experience in the areas listed in paragraph (4) of this subsection.

(iii) Effective January 1, 2001, all pharmacy technicians must have taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board or be a pharmacy technician trainee.

(B) Pharmacy Technician Trainee.

(i) A person shall be designated as a pharmacy technician trainee while participating in a pharmacy's technician training program in preparation for the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board.

(ii) A person may be designated a pharmacy technician trainee for no more than one year. A person may not be a technician trainee if they fail to pass the certification exam within this one year training period. This clause does not apply to a pharmacy technician trainee working in a pharmacy as part of a training program accredited by the American Society of Health-System Pharmacists or an individual enrolled in a health science technology education program in a Texas high school.

(iii) Individuals enrolled in a health science technology education program in a Texas high school that is accredited by the Texas Education Agency, may be designated as a pharmacy technician trainee for up to two years provided:

(I) the work as a pharmacy technician is concurrent with enrollment in a health science technology education program, which may include:

(-a-) partial semester breaks such as spring breaks;

(-b-) between semesters; and

(-c-) whole semester breaks provided the individual was enrolled in the health science technology education program in the immediate preceding semester and is scheduled with the high school to attend in the immediate subsequent semester;

(II) the individual is under the direct supervision of and responsible to a pharmacist; and

(III) the supervising pharmacist verifies the accuracy of all acts, tasks, or functions performed by the individual.

(C) Certified Pharmacy Technicians.

(i) All certified pharmacy technicians shall have taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board and maintain a current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the Board.

(ii) A certified pharmacy technician shall publicly display their current certification certificate in the technician's primary place of practice and a copy of their current certification certificate in all other pharmacies where the technician performs the duties of a technician.

(2) Duties.

(A) Pharmacy technicians may not perform any of the duties listed in subsection (b)(2) of this section.

(B) A pharmacist may delegate to pharmacy technicians any nonjudgmental technical duty associated with the preparation and distribution of prescription drugs provided:

(i) a pharmacist verifies the accuracy of all acts, tasks, and functions performed by pharmacy technicians;

(ii) pharmacy technicians are under the direct supervision of and responsible to a pharmacist; and

(iii) effective September 1, 2000, only pharmacy technicians who have been properly trained on the use of an automated pharmacy dispensing system and can demonstrate comprehensive knowledge of the written policies and procedures for the operation of the system may be allowed access to the system; and

(C) Pharmacy technicians may perform only nonjudgmental technical duties associated with the preparation and distribution of prescription drugs, including but not limited to the following:

(i) initiating and receiving refill authorization requests;

(ii) entering prescription data into a data processing system;

(iii) taking a stock bottle from the shelf for a prescription;

(iv) preparing and packaging prescription drug orders (i.e., counting tablets/capsules, measuring liquids and placing them in the prescription container);

(v) affixing prescription labels and auxiliary labels to the prescription container provided:

(I) the pharmacy technician has completed the education and training requirements outlined in paragraphs (1) and (4) of this subsection; and

(II) effective January 1, 2001, only certified pharmacy technicians may affix a label to a prescription container.

(vi) reconstituting medications;

(vii) prepackaging and labeling prepackaged drugs;

(viii) loading bulk unlabeled drugs into an automated dispensing system provided a pharmacist verifies that the system is properly loaded prior to use;

(ix) compounding non-sterile prescription drug orders; and

(x) bulk compounding.

(3) Ratio of pharmacist to pharmacy technicians.

(A) The ratio of pharmacists to pharmacy technicians may not exceed 1:2

(B) The ratio of pharmacists to pharmacy technicians may be 1:3 provided that at least one of the three technicians is certified.

(4) Training.

(A) pharmacy technicians shall complete initial training as outlined by the pharmacist-in-charge in a training manual. Such training:

(i) shall include training and experience as outlined in paragraph (5) of this subsection; and

(ii) may not be transferred to another pharmacy unless:

(I) the pharmacies are under common ownership and control and have a common training program; and

(II) the pharmacist-in-charge of each pharmacy in which the pharmacy technician works certifies that the pharmacy technician is competent to perform the duties assigned in that pharmacy.

(B) A pharmacy technician shall be designated a pharmacy technician trainee until completing the full training program. A pharmacy technician trainee:

(i) may perform all of the duties of a pharmacy technician except affix a label to a prescription container;

(ii) may be designated a pharmacy technician trainee for no longer than one year except as specified in paragraph (1)(B) of this subsection; and

(iii) shall be counted in the pharmacist to pharmacy technician ratio.

(C) The pharmacist-in-charge shall assure the continuing competency of pharmacy technicians through in-service education and training to supplement initial training.

(D) The pharmacist-in-charge shall document the completion of the training program and certify the competency of pharmacy technicians completing the training. A written record of initial and in-service training of pharmacy technicians shall be maintained and contain the following information:

(i) name of the person receiving the training;

(ii) date(s) of the training;

(iii) general description of the topics covered;

(iv) a statement or statements that certifies that the pharmacy technician is competent to perform the duties assigned;

(v) name of the person supervising the training; and

(vi) signature of the pharmacy technician and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training of pharmacy technicians.

(E) A person who has previously completed training as a pharmacy technician, or a licensed nurse or physician assistant is not required to complete the entire training program if the person is able to show competency through a documented assessment of competency. Such competency assessment may be conducted by personnel designated by the pharmacist-in-charge, but the final acceptance of competency must be approved by the pharmacist-in-charge.

(5) Training program. Pharmacy technician training shall be outlined in a training manual. Such training manual shall, at a minimum, contain the following:

(A) written procedures and guidelines for the use and supervision of pharmacy technicians. Such procedures and guidelines shall:

(i) specify the manner in which the pharmacist responsible for the supervision of pharmacy technicians will supervise such personnel and verify the accuracy and completeness of all acts, tasks, and functions performed by such personnel; and

(ii) specify duties which may and may not be performed by pharmacy technicians; and

(B) instruction in the following areas and any additional areas appropriate to the duties of pharmacy technicians in the pharmacy:

(i) Orientation;

- (ii) Job descriptions;
- (iii) Communication techniques;
- (iv) Laws and rules;
- (v) Security and safety;
- (vi) Prescription drugs:
 - (I) Basic pharmaceutical nomenclature;
 - (II) Dosage forms;
- (vii) Prescription drug orders:
 - (I) Prescribers;
 - (II) Directions for use;
 - (III) Commonly-used abbreviations and symbols;
 - (IV) Number of dosage units;
 - (V) Strengths and systems of measurement;
 - (VI) Routes of administration;
 - (VII) Frequency of administration;
 - (VIII) Interpreting directions for use;
- (viii) Prescription drug order preparation:
 - (I) Creating or updating patient medication records;
 - (II) Entering prescription drug order information into the computer or typing the label in a manual system;
 - (III) Selecting the correct stock bottle;
 - (IV) Accurately counting or pouring the appropriate quantity of drug product;
 - (V) Selecting the proper container;
 - (VI) Affixing the prescription label;
 - (VII) Affixing auxiliary labels, if indicated; and
 - (VIII) Preparing the finished product for inspection and final check by pharmacists;
 - (ix) Other functions;
 - (x) Drug product prepackaging;
 - (xi) Compounding of non-sterile pharmaceuticals;
 - (xii) Written policy and guidelines for use of and supervision of pharmacy technicians.

(e) Identification of pharmacy personnel. All pharmacy personnel shall be identified as follows.

(1) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacy technician trainee, pharmacy technician, or a certified pharmacy technician.

(2) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist intern.

(3) Pharmacists. All pharmacists shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist.

§291.36. *Class A Pharmacies Compounding Sterile Pharmaceuticals.*

(a) Purpose. The purpose of this section is to provide standards for the preparation, labeling, and distribution of compounded sterile pharmaceuticals by licensed pharmacies, pursuant to a prescription drug order. The intent of these standards is to provide a minimum level of pharmaceutical care to the patient so that the patient's health is protected while striving to produce positive patient outcomes.

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

(1) ACPE--The American Council on Pharmaceutical Education.

(2) Act--The Texas Pharmacy Act, Chapter 551 - 556, Occupations Code, as amended.

(3) Accurately as prescribed--Dispensing, delivering, and/or distributing a prescription drug order:

(A) to the correct patient (or agent of the patient) for whom the drug or device was prescribed;

(B) with the correct drug in the correct strength, quantity, and dosage form ordered by the practitioner; and

(C) with correct labeling (including directions for use) as ordered by the practitioner. Provided, however, that nothing herein shall prohibit pharmacist substitution if substitution is conducted in strict accordance with applicable laws and rules, including Chapters 562 and 563 of the Texas Pharmacy Act.

(4) Advanced practice nurse--A registered nurse approved by the Texas State Board of Nurse Examiners to practice as an advanced practice nurse on the basis of completion of an advanced education program. The term includes a nurse practitioner, a nurse midwife, a nurse anesthetist, and a clinical nurse specialist.

(5) Airborne particulate cleanliness class--The level of cleanliness specified by the maximum allowable number of particles per cubic foot of air as specified in Federal Standard 209E, et seq. For example:

(A) Class 100 is an atmospheric environment which contains less than 100 particles 0.5 microns in diameter per cubic foot of air;

(B) Class 10,000 is an atmospheric environment which contains less than 10,000 particles 0.5 microns in diameter per cubic foot of air; and

(C) Class 100,000 is an atmospheric environment which contains less than 100,000 particles 0.5 microns in diameter per cubic foot of air.

(6) Ancillary supplies--Supplies necessary for the administration of compounded sterile pharmaceuticals.

(7) Aseptic preparation--The technique involving procedures designed to preclude contamination of drugs, packaging, equipment, or supplies by microorganisms during processing.

(8) Automated compounding or counting device--An automated device that compounds, measures, counts, and or packages a specified quantity of dosage units for a designated drug product.

(9) Batch preparation compounding--Compounding of multiple sterile-product units, in a single discrete process, by the same individual(s), carried out during one limited time period. Batch

preparation/compounding does not include the preparation of multiple sterile-product units pursuant to patient specific medication orders.

(10) Biological Safety Cabinet--Containment unit suitable for the preparation of low to moderate risk agents where there is a need for protection of the product, personnel, and environment, according to National Sanitation Foundation (NSF) Standard 49.

(11) Board--The Texas State Board of Pharmacy.

(12) Carrying out or signing a prescription drug order--The completion of a prescription drug order presigned by the delegating physician, or the signing of a prescription by an advanced practice nurse or physician assistant after the person has been designated with the Texas State Board of Medical Examiners by the delegating physician as a person delegated to sign a prescription. The following information shall be provided on each prescription:

- (A) patient's name and address;
- (B) name, strength, and quantity of the drug to be dispensed;
- (C) directions for use;
- (D) the intended use of the drug, if appropriate;
- (E) the name, address, and telephone number of the physician;
- (F) the name, address, telephone number, and identification number of the advanced practice nurse or physician assistant completing the prescription drug order;
- (G) the date; and
- (H) the number of refills permitted.

(13) Certified Pharmacy Technician--A pharmacy technician who:

- (A) has completed the pharmacy technician training program of the pharmacy;
- (B) has taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board; and
- (C) maintains a current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the Board.

(14) Clean room--A room in which the concentration of airborne particles is controlled and there are one or more clean zones according to Federal Standard 209E, et seq.

(15) Clean zone--A defined space in which the concentration of airborne particles is controlled to meet a specified airborne particulate cleanliness class.

(16) Compounding--The preparation, mixing, assembling, packaging, or labeling of a drug or device:

- (A) as the result of a practitioner's prescription drug or medication order or initiative based on the practitioner-patient pharmacist relationship in the course of professional practice;
- (B) in anticipation of prescription drug or medication orders based on routine, regularly observed prescribing patterns; or
- (C) for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale or dispensing.

(17) Confidential record--Any health related record that contains information that identifies an individual and that is maintained

by a pharmacy or pharmacist such as a patient medication record, prescription drug order, or medication drug order.

(18) Controlled area--A controlled area is the area designated for preparing sterile pharmaceuticals.

(19) Controlled substance--A drug, immediate precursor, or other substance listed in Schedules I - V or Penalty Groups 1-4 of the Texas Controlled Substances Act, as amended, or a drug, immediate precursor, or other substance included in Schedule I, II, III, IV, or V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(20) Critical areas--Any area in the controlled area where products or containers are exposed to the environment.

(21) Cytotoxic--A pharmaceutical that has the capability of killing living cells.

(22) Dangerous drug--Any drug or device that is not included in Penalty Groups 1-4 of the Controlled Substances Act and that is unsafe for self-medication or any drug or device that bears or is required to bear the legend:

(A) "Caution: federal law prohibits dispensing without prescription"; or

(B) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

(23) Data communication device--An electronic device that receives electronic information from one source and transmits or routes it to another (e.g., bridge, router, switch or gateway).

(24) Deliver or delivery--The actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

(25) Designated agent--

(A) a licensed nurse, physician assistant, pharmacist, or other individual designated by a practitioner, and for whom the practitioner assumes legal responsibility, who communicates prescription drug orders to a pharmacist;

(B) a licensed nurse, physician assistant, or pharmacist employed in a health care facility to whom the practitioner communicates a prescription drug order;

(C) an advanced practice nurse or physician assistant authorized by a practitioner to carry out or sign a prescription drug order for dangerous drugs under Chapter 157 of the Medical Practice Act (Subtitle B, Occupations Code); or

(D) a person who is a licensed vocational nurse or has an education equivalent to or greater than that required for a licensed vocational nurse designated by the practitioner to communicate prescriptions for an advanced practice nurse or physician assistant authorized by the practitioner to sign prescription drug orders under Chapter 157 of the Medical Practice Act (Subtitle B, Occupations Code).

(26) Device--An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

(27) Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(28) Dispensing pharmacist--The pharmacist responsible for the final check of the dispensed prescription before delivery to the patient.

(29) Distribute--The delivery of a prescription drug or device other than by administering or dispensing.

(30) Downtime--Period of time during which a data processing system is not operable.

(31) Drug regimen review--An evaluation of prescription drug or medication orders and patient medication records for:

- (A) known allergies;
- (B) rational therapy--contraindications;
- (C) reasonable dose and route of administration;
- (D) reasonable directions for use;
- (E) duplication of therapy;
- (F) drug-drug interactions;
- (G) drug-food interactions;
- (H) drug-disease interactions;
- (I) adverse drug reactions; and
- (J) proper utilization, including overutilization or underutilization.

(32) Electronic prescription drug order--A prescription drug order which is transmitted by an electronic device to the receiver (pharmacy).

(33) Electronic signature--A unique security code or other identifier which specifically identifies the person entering information into a data processing system. A facility which utilizes electronic signatures must:

(A) maintain a permanent list of the unique security codes assigned to persons authorized to use the data processing system; and

(B) have an ongoing security program which is capable of identifying misuse and/or unauthorized use of electronic signatures.

(34) Expiration date--The date (and time, when applicable) beyond which a product should not be used.

(35) Full-time pharmacist--A pharmacist who works in a pharmacy from 30 to 40 hours per week or if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(36) Hard copy--A physical document that is readable without the use of a special device (i.e., cathode ray tube (CRT), microfiche reader, etc.).

(37) Medical Practice Act--The Texas Medical Practice Act, Subtitle B, Occupations Code, as amended.

(38) New prescription drug order--A prescription drug order that:

(A) has not been dispensed to the patient in the same strength and dosage form by this pharmacy within the last year;

(B) is transferred from another pharmacy; and/or

(C) is a discharge prescription drug order. (Note: furlough prescription drug orders are not considered new prescription drug orders.)

(39) Original prescription--The:

(A) original written prescription drug orders; or

(B) original verbal or electronic prescription drug orders reduced to writing either manually or electronically by the pharmacist.

(40) Part-time pharmacist--A pharmacist who works less than full-time.

(41) Patient counseling--Communication by the pharmacist of information to the patient or patient's agent, in order to improve therapy by ensuring proper use of drugs and devices.

(42) Pharmacist-in-charge--The pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(43) Pharmaceutical care--The provision of drug therapy and other pharmaceutical services intended to assist in the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(44) Pharmacy technicians--Those individuals utilized in pharmacies whose responsibility it shall be to provide technical services that do not require professional judgment concerned with the preparation and distribution of drugs under the direct supervision of and responsible to a pharmacist. Pharmacy technician includes certified pharmacy technicians, pharmacy technicians, and pharmacy technician trainees.

(45) Pharmacy technician trainee--a pharmacy technician:

(A) participating in a pharmacy's technician training program; or

(B) a person currently enrolled in a technician training program accredited by the American Society of Health-System Pharmacists provided:

(i) the person is working during times the individual is assigned to a pharmacy as a part of the experiential component of the American Society of Health-System Pharmacists training program;

(ii) the person is under the direct supervision of and responsible to a pharmacist; and

(iii) the supervising pharmacist conducts in-process and final checks.

(46) Physician assistant--A physician assistant recognized by the Texas State Board of Medical Examiners as having the specialized education and training required under Subtitle B, Chapter 157, Occupations Code, and issued an identification number by the Texas State Board of Medical Examiners.

(47) Practitioner--

(A) a physician, dentist, podiatrist, veterinarian, or other person licensed or registered to prescribe, distribute, administer, or dispense a prescription drug or device in the course of professional practice in this state;

(B) a person licensed by another state in a health field in which, under Texas law, licensees in this state may legally prescribe dangerous drugs or a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, having a current federal Drug Enforcement Administration registration number, and who may legally prescribe Schedule II, III, IV, or V controlled substances in such other state; or

(C) a person licensed in the Dominion of Canada or the United Mexican States in a health field in which, under the laws of this state, a licensee may legally prescribe dangerous drugs;

(D) does not include a person licensed under the Texas Pharmacy Act.

(48) Repackaging--The act of repackaging and relabeling quantities of drug products from a manufacturer's original commercial container into a prescription container for dispensing by a pharmacist to the ultimate consumer.

(49) Prescription drug--

(A) a substance for which federal or state law requires a prescription before it may be legally dispensed to the public;

(B) a drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(i) "Caution: federal law prohibits dispensing without prescription"; or

(ii) "Caution: federal law restricts this drug to use by or on order of a licensed veterinarian"; or

(C) a drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by a practitioner only.

(50) Prescription drug order--

(A) an order from a practitioner or a practitioner's designated agent to a pharmacist for a drug or device to be dispensed; or

(B) an order pursuant to the Subtitle B, Chapter 157, Occupations Code.

(51) Process validation--Documented evidence providing a high degree of assurance that a specific process will consistently produce a product meeting its predetermined specifications and quality attributes.

(52) Quality assurance--The set of activities used to assure that the process used in the preparation of sterile drug products lead to products that meet predetermined standards of quality.

(53) Quality control--The set of testing activities used to determine that the ingredients, components (e.g., containers), and final sterile pharmaceuticals prepared meet predetermined requirements with respect to identity, purity, non-pyrogenicity, and sterility.

(54) Sample--A prescription drug which is not intended to be sold and is intended to promote the sale of the drug.

(55) State--One of the 50 United States of America, a U.S. territory, or the District of Columbia.

(56) Sterile pharmaceutical--A dosage form free from living micro-organisms.

(57) Texas Controlled Substances Act--The Texas Controlled Substances Act, Health and Safety Code, Chapter 481, as amended.

(58) Unit-dose packaging--The ordered amount of drug in a dosage form ready for administration to a particular patient, by the prescribed route at the prescribed time, and properly labeled with name, strength, and expiration date of the drug.

(59) Unusable drugs--Drugs or devices that are unusable for reasons such as they are adulterated, misbranded, expired, defective, or recalled.

(60) Written protocol--A physician's order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Texas State Board of Medical Examiners under the Texas Medical Practice Act.

(c) Personnel.

(1) Pharmacist-in-charge.

(A) General.

(i) Each Class A pharmacy compounding sterile pharmaceuticals shall have one pharmacist-in-charge who is employed on a full-time basis, who may be the pharmacist-in-charge for only one such pharmacy; provided, however, such pharmacist-in-charge may be the pharmacist-in-charge of:

(I) more than one Class A pharmacy, if the additional Class A pharmacies are not open to provide pharmacy services simultaneously; or

(II) up to two Class A pharmacies open simultaneously if the pharmacist-in-charge works at least 10 hours per week in each pharmacy.

(ii) The pharmacist-in-charge shall comply with the provisions of §291.17 of this title (relating to Inventory Requirements).

(B) Responsibilities. The pharmacist-in-charge shall have responsibility for the practice of pharmacy at the pharmacy for which he or she is the pharmacist-in-charge. The pharmacist-in-charge may advise the owner on administrative and operational concerns. The pharmacist-in-charge shall have the responsibility for, at a minimum, the following:

(i) developing a system to assure that all pharmacy personnel responsible for compounding and/or supervising the compounding of sterile pharmaceuticals within the pharmacy receive appropriate education and training and competency evaluation;

(ii) supervising a system to assure appropriate procurement of drugs and devices and storage of all pharmaceutical materials including pharmaceuticals, components used in the compounding of pharmaceuticals, and drug delivery devices;

(iii) developing a system for the disposal and distribution of drugs from the Class A pharmacy;

(iv) developing a system for bulk compounding or batch preparation of drugs;

(v) developing a system for the compounding, sterility assurance, quality assurance and quality control of sterile pharmaceuticals;

(vi) participating in those aspects of the patient care evaluation program relating to pharmaceutical material utilization and effectiveness;

(vii) implementing the policies and decisions relating to pharmaceutical services;

(viii) maintaining records of all transactions of the Class A pharmacy necessary to maintain accurate control over and accountability for all pharmaceutical materials required by applicable state and federal laws and rules;

(ix) supervising a system to assure maintenance of effective controls against the theft or diversion of prescription drugs, and records for such drugs;

(x) adherence to policies and procedures regarding the maintenance of records in a data processing system such that the data processing system is in compliance with this section;

(xi) assuring that the pharmacy has a system to dispose of cytotoxic waste in a manner so as not to endanger the public health; and

(xii) legal operation of the pharmacy, including meeting all inspection and other requirements of all state and federal laws or rules governing the practice of pharmacy.

(2) Owner. The owner of a Class A pharmacy shall have responsibility for all administrative and operational functions of the pharmacy. The pharmacist-in-charge may advise the owner on administrative and operational concerns. The owner shall have responsibility for, at a minimum, the following, and if the owner is not a Texas licensed pharmacist, the owner shall consult with the pharmacist-in-charge or another Texas licensed pharmacist:

(A) establishment of policies for procurement of prescription drugs and devices and other products dispensed from the Class A pharmacy;

(B) establishment and maintenance of effective controls against the theft or diversion of prescription drugs;

(C) if the pharmacy uses an automated pharmacy dispensing system, reviewing and approving all policies and procedures for system operation, safety, security, accuracy and access, patient confidentiality, prevention of unauthorized access, and malfunction;

(D) providing the pharmacy with the necessary equipment and resources commensurate with its level and type of practice; and

(E) establishment of policies and procedures regarding maintenance, storage, and retrieval of records in a data processing system such that the system is in compliance with state and federal requirements.

(3) Pharmacists.

(A) General.

(i) The pharmacist-in-charge shall be assisted by sufficient number of additional licensed pharmacists as may be required to operate the pharmacy competently, safely, and adequately to meet the needs of the patients of the pharmacy.

(ii) All pharmacists shall assist the pharmacist-in-charge in meeting his or her responsibilities in ordering, dispensing, and accounting for prescription drugs.

(iii) Pharmacists are solely responsible for the direct supervision of pharmacy technicians and for designating and delegating duties, other than those listed in subparagraph (B) of this paragraph, to pharmacy technicians. Each pharmacist:

(I) shall verify the accuracy of all acts, tasks, and functions performed by pharmacy technicians; and

(II) shall be responsible for any delegated act performed by pharmacy technicians under his or her supervision.

(iv) All pharmacists while on duty, shall be responsible for complying with all state and federal laws or rules governing the practice of pharmacy.

(v) A pharmacist shall be accessible at all times to respond to patients' and other health professionals' questions and needs. Such access may be through a telephone which is answered 24 hours a day.

(vi) A dispensing pharmacist shall ensure that the drug is dispensed and delivered safely, and accurately as prescribed. In addition, if multiple pharmacists participate in the dispensing process, each pharmacist shall ensure the safety and accuracy of the portion of the process the pharmacist is performing. The dispensing process shall include, but not be limited to, drug regimen review and verification of accurate prescription data entry, packaging, preparation, compounding and labeling, and performance of the final check of the dispensed prescription.

(B) Duties. Duties which may only be performed by a pharmacist are as follows:

(i) receiving verbal prescription drug orders and reducing these orders to writing, either manually or electronically;

(ii) interpreting and evaluating prescription drug orders;

(iii) selection of drug products;

(iv) interpreting patient medication records and performing drug regimen reviews;

(v) performing the final check of the dispensed prescription before delivery to the patient to ensure that the prescription has been dispensed accurately as prescribed;

(vi) communicating to the patient or patient's agent information about the prescription drug or device which in the exercise of the pharmacist's professional judgment, the pharmacist deems significant as specified in paragraph (3) of this subsection;

(vii) communicating to the patient or the patient's agent on his or her request, information concerning any prescription drugs dispensed to the patient by the pharmacy;

(viii) assuring that a reasonable effort is made to obtain, record, and maintain patient medication records; and

(ix) performing a specific act of drug therapy management for a patient delegated to a pharmacist by a written protocol from a physician licensed in this state in compliance with the Medical Practice Act.

(4) Pharmacy technicians.

(A) Qualifications.

(i) General. All pharmacy technicians shall:

(I) have a high school or equivalent degree, e.g., GED, or be currently enrolled in a program which awards such a degree; and

(II) complete a structured didactic and experiential training program, which provides instruction and experience in the areas listed in subparagraph (D) of this paragraph.

(III) Effective January 1, 2001, all pharmacy technicians must have taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board or be a pharmacy technician trainee.

(ii) Pharmacy Technician Trainee.

(I) A person shall be designated as a pharmacy technician trainee while participating in a pharmacy's technician training program in preparation for the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board.

(II) A person may be designated a pharmacy technician trainee for no more than one year. A person may not be a

technician trainee if they fail to pass the certification exam within this one year training period. This subclause does not apply to a pharmacy technician trainee working in a pharmacy as part of a training program accredited by the American Society of Health-System Pharmacists or an individual enrolled in a health science technology education program in a Texas high school.

(III) Individuals enrolled in a health science technology education program in a Texas high school that is accredited by the Texas Education Agency, may be designated as a pharmacy technician trainee for up to two years provided:

(-a-) the work as a pharmacy technician is concurrent with enrollment in a health science technology education program, which may include:

(-1-) partial semester breaks such as spring breaks;

(-2-) between semesters; and

(-3-) whole semester breaks provided the individual was enrolled in the health science technology education program in the immediate preceding semester and is scheduled with the high school to attend in the immediate subsequent semester;

(-b-) the individual is under the direct supervision of and responsible to a pharmacist; and

(-c-) the supervising pharmacist verifies the accuracy of all acts, tasks, or functions performed by the individual.

(iii) Certified Pharmacy Technicians.

(I) All certified pharmacy technicians shall have taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board and maintain a current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the Board.

(II) A certified pharmacy technician shall publicly display their current certification certificate in the technician's primary place of practice and a copy of their current certification certificate in all other pharmacies where the technician performs the duties of a technician.

(B) Duties.

(i) pharmacy technicians may not perform any of the duties listed in paragraph (2)(B) of this subsection.

(ii) A pharmacist may delegate to pharmacy technicians any nonjudgmental technical duty associated with the preparation and distribution of prescription drugs provided:

(I) a pharmacist verifies the accuracy of all acts, tasks, and functions performed by pharmacy technicians; and

(II) pharmacy technicians are under the direct supervision of and responsible to a pharmacist.

(iii) Pharmacy technicians may perform only non-judgmental technical duties associated with the preparation and distribution of prescription drugs, including but not limited to the following.

(I) initiating and receiving refill authorization requests;

(II) entering prescription data into a data processing system;

(III) taking a stock bottle from the shelf for a prescription;

(IV) preparing and packaging prescription drug orders (i.e., counting tablets/capsules, measuring liquids and placing them in the prescription container);

(V) affixing prescription labels and auxiliary labels to the prescription container provided:

(-a-) the pharmacy technician has completed the education and training requirements outlined in subparagraphs (A) and (D) of this paragraph; and

(-b-) effective January 1, 2001, only certified pharmacy technicians may affix a label to a prescription container.

(VI) reconstituting medications;

(VII) prepackaging and labeling prepackaged drugs;

(VIII) loading bulk unlabeled drugs into an automated dispensing system provided a pharmacist verifies that the system is properly loaded prior to use;

(IX) compounding sterile pharmaceuticals provided:

(-a-) the pharmacy technician has completed the education and training specified in paragraph (4) of this subsection and the pharmacy technician is supervised by a pharmacist who has completed the training specified in paragraph (4) of this subsection; and

(-b-) effective January 1, 2001, the pharmacy technicians:

(-1-) are either certified pharmacy technicians or technician trainees;

(-2-) have completed the training specified in paragraph (4) of this subsection; and

(-3-) are supervised by a pharmacist who has completed the training specified in paragraph (4) of this subsection, conducts in-process and final checks, and affixes his or her initials to the appropriate quality control records.

(X) compounding non-sterile prescription drug orders; and

(XI) bulk compounding.

(iv) Certified pharmacy technicians. Effective January 1, 2001, only certified pharmacy technicians may:

(I) affix a label to a prescription container; and

(II) compound sterile pharmaceuticals.

(C) Ratio of pharmacist to pharmacy technicians.

(i) The ratio of pharmacists to pharmacy technicians may not exceed 1:2 provided that only one pharmacy technician may be engaged in the compounding of sterile pharmaceuticals.

(ii) The ratio of pharmacists to pharmacy technicians may be 1:3 provided that at least one of the three technicians is certified and only one may be engaged in the compounding of sterile pharmaceuticals.

(D) Training.

(i) pharmacy technicians shall complete initial training as outlined by the pharmacist-in-charge in a training manual which includes training and experience as outlined in subparagraph (E) of this paragraph prior to the regular performance of their duties. Such training:

(I) shall include training and experience as outlined in subparagraph (E) of this paragraph; and

(II) may not be transferred to another pharmacy unless:

(-a-) the pharmacies are under common ownership and control and have a common training program; and

(-b-) the pharmacist-in-charge of each pharmacy in which the pharmacy technician works certifies that the pharmacy technician is competent to perform the duties assigned in that pharmacy.

(ii) A pharmacy technician shall be designated a pharmacy technician trainee until completing the full training program. A pharmacy technician trainee:

(I) may perform all of the duties of a pharmacy technician except affix a label to a prescription;

(II) may be designated a pharmacy technician trainee for no longer than one year except as specified in subparagraph (A)(ii) of this paragraph; and

(III) shall be counted in the pharmacist to pharmacy technician ratio.

(iii) The pharmacist-in-charge shall assure the continuing competency of pharmacy technicians through in-service education and training to supplement initial training.

(iv) The pharmacist-in-charge shall document the completion of the training program and certify the competency of pharmacy technicians completing the training. A written record of initial and in-service training of pharmacy technicians shall be maintained and contain the following information:

(I) name of the person receiving the training;

(II) date(s) of the training;

(III) general description of the topics covered;

(IV) a statement or statements that certifies that the pharmacy technician is competent to perform the duties assigned;

(V) name of the person supervising the training; and

(VI) signature of the pharmacy technician and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training of pharmacy technicians.

(v) A person who has previously completed training as a pharmacy technician, or a licensed nurse or physician assistant is not required to complete the entire training program if the person is able to show competency through a documented assessment of competency. Such competency assessment may be conducted by personnel designated by the pharmacist-in-charge, but the final acceptance of competency must be approved by the pharmacist-in-charge.

(E) Training program. Pharmacy technicians training shall be outlined in a training manual. Such training manual shall, at a minimum, contain the following:

(i) written procedures and guidelines for the use and supervision of pharmacy technicians. Such procedures and guidelines shall:

(I) specify the manner in which the pharmacist responsible for the supervision of pharmacy technicians will supervise such personnel and verify the accuracy and completeness of all acts, task and functions performed by such personnel; and

(II) specify duties which may and may not be performed by pharmacy technicians; and

(ii) instruction in the following areas and any additional areas appropriate to the duties of pharmacy technicians in the pharmacy:

(I) Orientation;

(II) Job descriptions;

(III) Communication techniques;

(IV) Laws and rules;

(V) Security and safety;

(VI) Prescription drugs:

(-a-) Basic pharmaceutical nomenclature;

(-b-) Dosage forms;

(VII) Prescription drug orders:

(-a-) Prescribers;

(-b-) Directions for use;

(-c-) Commonly-used abbreviations and

symbols;

(-d-) Number of dosage units;

(-e-) Strength and systems of measurement;

(-f-) Route of administration;

(-g-) Frequency of administration;

(-h-) Interpreting directions for use;

(VIII) Prescription drug order preparation:

(-a-) Creating or updating patient medication records;

(-b-) Entering prescription drug order information into the computer or typing the label in a manual system;

(-c-) Selecting the correct stock bottle;

(-d-) Accurately counting or pouring the appropriate quantity of drug product;

(-e-) Selecting the proper container;

(-f-) Affixing the prescription label;

(-g-) Affixing auxiliary labels, if indicated;

and

(-h-) Preparing the finished product for inspection and final check by pharmacists;

(IX) Other functions;

(X) Drug product prepackaging;

(XI) Compounding of non-sterile pharmaceuticals;

and

(XII) Written policy and guidelines for use of and supervision of pharmacy technicians.

(5) Special education, training, and evaluation requirements for pharmacy personnel compounding or responsible for the direct supervision of pharmacy personnel compounding sterile pharmaceuticals.

(A) General.

(i) All pharmacy personnel preparing sterile pharmaceuticals shall receive didactic and experiential training and competency evaluation through demonstration, testing (written or practical) as outlined by the pharmacist-in-charge and described in the policy and procedure or training manual. Such training shall include instruction and experience in the following areas:

(I) aseptic technique;

- (II) critical area contamination factors;
- (III) environmental monitoring;
- (IV) facilities;
- (V) equipment and supplies;
- (VI) sterile pharmaceutical calculations and terminology;
- (VII) sterile pharmaceutical compounding documentation;
- (VIII) quality assurance procedures;
- (IX) aseptic preparation procedures including proper gowning and gloving technique;
- (X) handling of cytotoxic and hazardous drugs, if applicable; and
- (XI) general conduct in the controlled area.

(ii) The aseptic technique of each person compounding or responsible for the direct supervision of personnel compounding sterile pharmaceuticals shall be observed and evaluated as satisfactory through written or practical tests and process validation and such evaluation documented.

(iii) Although process validation may be incorporated into the experiential portion of a training program, process validation must be conducted at each pharmacy where an individual compounds sterile pharmaceuticals. No product intended for patient use shall be compounded by an individual until the on-site process validation test indicates that the individual can competently perform aseptic procedures, except that a pharmacist may temporarily compound sterile pharmaceuticals and supervise pharmacy technicians compounding sterile pharmaceuticals without process validation provided the pharmacist:

(I) has completed a recognized course in an accredited college of pharmacy or a course sponsored by an American Council on Pharmaceutical Education approved provider which provides 20 hours of instruction and experience in the areas listed in this subparagraph; and

(II) completes the on-site process validation within seven days of commencing work at the pharmacy.

(iv) Process validation procedures for assessing the preparation of specific types of sterile pharmaceuticals shall be representative of all types of manipulations, products, and batch sizes that personnel preparing that type of pharmaceutical are likely to encounter.

(v) The pharmacist-in-charge shall assure continuing competency of pharmacy personnel through in-service education, training, and process validation to supplement initial training. Personnel competency shall be evaluated:

(I) during orientation and training prior to the regular performance of those tasks;

(II) whenever the quality assurance program yields an unacceptable result;

(III) whenever unacceptable techniques are observed; and

(IV) at least on an annual basis.

(B) Pharmacists.

(i) All pharmacists who compound sterile pharmaceuticals or supervise pharmacy technicians compounding sterile pharmaceuticals shall:

(I) complete through a single course, a minimum of 20 hours of instruction and experience in the areas listed in subparagraph (A) of this paragraph. Such training may be through:

(-a-) completion of a structured on-the-job didactic and experiential training program at this pharmacy which provides 20 hours of instruction and experience in the areas listed in paragraph (1) of this subsection. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; or

(-b-) completion of a recognized course in an accredited college of pharmacy or a course sponsored by an American Council on Pharmaceutical Education approved provider which provides 20 hours of instruction and experience in the areas listed in subparagraph (A) of this paragraph; and

(II) possess knowledge about:

(-a-) aseptic processing;

(-b-) quality control and quality assurance as related to environmental, component, and end-product testing;

(-c-) chemical, pharmaceutical, and clinical properties of drugs;

(-d-) container, equipment, and closure system selection; and

(-e-) sterilization techniques.

(ii) The required experiential portion of the training programs specified in this subparagraph must be supervised by an individual who has already completed training as specified in subparagraph (B) or (C) of this paragraph.

(C) Pharmacy technicians. In addition to the qualifications and training outlined in paragraph (3) of this subsection, all pharmacy technicians who compound sterile pharmaceuticals shall:

(i) have a high school or equivalent education;

(ii) either:

(I) complete through a single course, a minimum of 40 hours of instruction and experience in the areas listed in subparagraph (A) of this paragraph. Such training may be obtained through the:

(-a-) completion of a structured on-the-job didactic and experiential training program at this pharmacy which provides 40 hours of instruction and experience in the areas listed in subparagraph (A) of this paragraph. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; or

(-b-) completion of a course sponsored by an ACPE approved provider which provides 40 hours of instruction and experience in the areas listed in subparagraph (A) of this paragraph; or

(II) completion of a training program which is accredited by the American Society of Health-System Pharmacists (formerly the American Society of Hospital Pharmacists). Individuals enrolled in training programs accredited by the American Society of Health-System Pharmacists may compound sterile pharmaceuticals in a licensed pharmacy provided:

(-a-) the compounding occurs only during times the individual is assigned to a pharmacy as a part of the experiential component of the American Society of Health-System Pharmacists training program;

(-b-) the individual is under the direct supervision of and responsible to a pharmacist who has completed training as specified in subparagraph (B) of this paragraph; and

(-c-) the supervising pharmacist conducts in-process and final checks; and

(iii) on January 1, 2001, discontinue preparation of sterile pharmaceuticals if the technician has not taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board. Such pharmacy technicians may continue to compound sterile pharmaceuticals during the interim between the effective date of these rules and January 1, 2001, if they maintain documentation of completion of the training specified in clause (ii) of this subparagraph.

(iv) acquire the required experiential portion of the training programs specified in this subparagraph under the supervision of an individual who has already completed training as specified in subparagraph (B) or (C) of this paragraph.

(D) Documentation of Training. A written record of initial and in-service training and the results of written or practical testing and process validation of pharmacy personnel shall be maintained and contain the following information:

(i) name of the person receiving the training or completing the testing or process validation;

(ii) date(s) of the training, testing, or process validation;

(iii) general description of the topics covered in the training or testing or of the process validated;

(iv) name of the person supervising the training, testing, or process validation; and

(v) signature (first initial and last name or full signature) of the person receiving the training or completing the testing or process validation and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training, testing, or process validation of personnel.

(6) Identification of pharmacy personnel. Pharmacy personnel shall be identified as follows.

(A) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacy technician trainee, pharmacy technician, or a certified pharmacy technician.

(B) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist intern.

(C) Pharmacists. All pharmacists shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist.

(d) Operational standards.

(1) Licensing requirements.

(A) A Class A pharmacy compounding sterile pharmaceuticals shall register annually or biennially with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

(B) A Class A pharmacy compounding sterile pharmaceuticals which changes ownership shall notify the board within ten

days of the change of ownership and apply for a new and separate license as specified in §291.4 of this title (relating to Change of Ownership).

(C) A Class A pharmacy compounding sterile pharmaceuticals which changes location and/or name shall notify the board within ten days of the change and file for an amended license as specified in §291.2 of this title (relating to Change of Location and/or Name).

(D) A Class A pharmacy compounding sterile pharmaceuticals owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within ten days of the change, following the procedures in §291.3 of this title (relating to Change of Managing Officers).

(E) A Class A pharmacy compounding sterile pharmaceuticals shall notify the board in writing within ten days of closing, following the procedures in §291.5 of this title (relating to Closed Pharmacies).

(F) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(G) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance and renewal of a license and the issuance of an amended license.

(H) A Class A pharmacy compounding sterile pharmaceuticals, licensed under the provisions of the Act, §560.051(a)(1), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(2), concerning nuclear pharmacy (Class B), is not required to secure a license for such other type of pharmacy; provided, however, such licensee is required to comply with the provisions of §291.51 of this title (relating to Purpose), §291.52 of this title (relating to Definitions), §291.53 of this title (relating to Personnel), §291.54 of this title (relating to Operational Standards), and §291.55 of this title (relating to Records), contained in Nuclear Pharmacy (Class B), to the extent such sections are applicable to the operation of the pharmacy.

(I) A Class A pharmacy engaged in nonsterile compounding of drug products shall comply with the provisions of §§291.31 - 291.34 of this title (relating to Definitions, Personnel, Operational Standards, and Records for Class A (Community) Pharmacies) to the extent such rules are applicable to nonsterile compounding of drug products.

(J) A Class A (Community) pharmacy compounding sterile pharmaceuticals which is engaged in the provision of remote pharmacy services, including storage and dispensing of prescription drugs, shall comply with the provisions of §291.20 of this title (relating to Remote Pharmacy Services).

(2) Environment.

(A) General requirements.

(i) The pharmacy shall be enclosed and lockable.

(ii) The pharmacy shall have adequate space necessary for the storage, compounding, labeling, dispensing, and sterile preparation of drugs prepared in the pharmacy, and additional space, depending on the size and scope of pharmaceutical services.

(iii) The pharmacy shall be arranged in an orderly fashion and shall be kept clean. All required equipment shall be clean and in good operating condition.

(iv) A sink with hot and cold running water, exclusive of restroom facilities, designated primarily for use of admixtures, shall be available within the pharmacy facility to all pharmacy personnel and shall be maintained in a sanitary condition at all times.

(v) The pharmacy shall be properly lighted and ventilated.

(vi) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs; the temperature of the refrigerator shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration.

(vii) If prescription drug orders are delivered to the patient at the pharmacy, the pharmacy shall contain an area which is suitable for confidential patient counseling.

(I) Such counseling area shall:

(-a-) be easily accessible to both patient and pharmacists and not allow patient access to prescription drugs;

(-b-) be designed to maintain the confidentiality and privacy of the pharmacist/patient communication.

(II) In determining whether the area is suitable for confidential patient counseling and designed to maintain the confidentiality and privacy of the pharmacist/patient communication, the board may consider factors such as the following:

(-a-) the proximity of the counseling area to the check-out or cash register area;

(-b-) the volume of pedestrian traffic in and around the counseling area;

(-c-) the presence of walls or other barriers between the counseling area and other areas of the pharmacy; and

(-d-) any evidence of confidential information being overheard by persons other than the patient or patient's agent or the pharmacist or agents of the pharmacist.

(viii) Animals, including birds and reptiles, shall not be kept within the pharmacy and in immediately adjacent areas under the control of the pharmacy. This provision does not apply to fish in aquariums, guide dogs accompanying disabled persons, or animals for sale to the general public in a separate area that is inspected by local health jurisdictions.

(B) Special requirements for the compounding of sterile pharmaceuticals. When the pharmacy compounds sterile pharmaceuticals, the following is applicable.

(i) Aseptic environment control device(s). The pharmacy shall prepare sterile pharmaceuticals in an appropriate aseptic environmental control device(s) or area, such as a laminar air flow hood, biological safety cabinet, or clean room which is capable of maintaining at least Class 100 conditions during normal activity. The aseptic environmental control device(s) shall:

(I) be certified by an independent contractor according to Federal Standard 209E, et seq, for operational efficiency at least every six months or when it is relocated; and

(II) have pre-filters inspected periodically and replaced as needed, in accordance with written policies and procedures, and the inspection and/or replacement date documented.

(ii) Controlled area. The pharmacy shall have a designated controlled area for the compounding of sterile pharmaceuticals that is functionally separate from areas for the preparation of non-sterile pharmaceuticals and is constructed to minimize the opportunities for particulate and microbial contamination. This controlled area for the preparation of sterile pharmaceuticals shall:

(I) have a controlled environment that is aseptic or contains an aseptic environmental control device(s);

(II) be clean, well lighted, and of sufficient size to support sterile compounding activities;

(III) be used only for the compounding of sterile pharmaceuticals;

(IV) be designed to avoid outside traffic and air flow;

(V) have non-porous and washable floors or floor covering to enable regular disinfection;

(VI) be ventilated in a manner not interfering with aseptic environmental control conditions;

(VII) have hard cleanable walls and ceilings (acoustical ceiling tiles that are coated with an acrylic paint are acceptable);

(VIII) have drugs and supplies stored on shelving areas above the floor to permit adequate floor cleaning;

(IX) contain only the appropriate compounding supplies and not be used for bulk storage for supplies and materials.

(iii) End-product evaluation.

(I) The responsible pharmacist shall verify that the sterile pharmaceutical was compounded accurately with respect to the use of correct ingredients, quantities, containers, and reservoirs.

(II) end product sterility testing according to policies and procedures, which include a statistically valid sampling plan and acceptance criteria for the sampling and testing, shall be performed if deemed appropriate by the pharmacist-in-charge;

(III) the pharmacist-in-charge shall establish a mechanism for recalling all products of a specific batch if end-product testing procedures yield unacceptable results.

(iv) Automated compounding or counting device. If automated compounding or counting devices are used, the pharmacy shall have a method to calibrate and verify the accuracy of automated compounding or counting devices used in aseptic processing and document the calibration and verification on a routine basis.

(v) Cytotoxic drugs. In addition to the requirements specified in clause (i) of this subparagraph, if the product is also cytotoxic, the following is applicable.

(I) General.

(-a-) All personnel involved in the compounding of cytotoxic products shall wear appropriate protective apparel, such as masks, gloves, and gowns or coveralls with tight cuffs.

(-b-) Appropriate safety and containment techniques for compounding cytotoxic drugs shall be used in conjunction with aseptic techniques required for preparing sterile pharmaceuticals.

(-c-) Disposal of cytotoxic waste shall comply with all applicable local, state, and federal requirements.

(-d-) Prepared doses of cytotoxic drugs must be dispensed, labeled with proper precautions inside and outside, and distributed in a manner to minimize patient contact with cytotoxic agents.

(II) Aseptic environment control device(s).

(-a-) Cytotoxic drugs must be prepared in a vertical flow biological safety cabinet.

(-b-) If the vertical flow biological safety cabinet is also used to prepare non-cytotoxic sterile pharmaceuticals, the cabinet must be thoroughly cleaned prior to its use to prepare non-cytotoxic sterile pharmaceuticals.

(C) Security requirements.

(i) The pharmacy shall have locked storage for Schedule II controlled substances and other controlled drugs requiring additional security.

(ii) All areas occupied by a pharmacy shall be capable of being locked by key or combination, so as to prevent access by unauthorized personnel when a pharmacist is not on-site.

(iii) The pharmacy may authorize personnel to gain access to that area of the pharmacy containing dispensed sterile pharmaceuticals, in the absence of the pharmacist, for the purpose of retrieving dispensed prescriptions to deliver to patients. If the pharmacy allows such after-hours access, the area containing the dispensed sterile pharmaceuticals shall be an enclosed and lockable area separate from the area containing undispensed prescription drugs. A list of the authorized personnel having such access shall be in the pharmacy's policy and procedure manual.

(iv) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of prescription drugs, and records for such drugs.

(D) Temporary absence of pharmacist.

(i) If a pharmacy is staffed by a single pharmacist, the pharmacist may leave the prescription department for breaks and meal periods without closing the prescription department and removing pharmacy technicians and other pharmacy personnel from the prescription department provided the following conditions are met:

(I) at least one certified pharmacy technician remains in the prescription department;

(II) the pharmacist remains on-site at the licensed location of the pharmacy and available for an emergency;

(III) the absence does not exceed 30 minutes at a time and a total of one hour in a 12 hour period;

(IV) the pharmacist reasonably believes that the security of the prescription department will be maintained in his or her absence. If in the professional judgment of the pharmacist, the pharmacist determines that the prescription department should close during his or her absence, then the pharmacist shall close the prescription department and remove the pharmacy technicians and other pharmacy personnel from the prescription department during his or her absence; and

(V) a notice is posted which includes the following information:

(-a-) the fact that pharmacist is on a break and the time the pharmacist will return; and

(-b-) the fact that pharmacy technicians may begin the processing of prescription drug orders or refills brought in during the pharmacist absence but the prescription or refill may not be delivered to the patient or the patient's agent until the pharmacist returns and verifies the accuracy of the prescription.

(ii) During the time a pharmacist is absent from the prescription department, only pharmacy technicians who have completed the pharmacy's training program may perform the following duties, provided a pharmacist verifies the accuracy of all acts, tasks, and

functions performed by the pharmacy technicians prior to delivery of the prescription to the patient or the patient's agent:

(I) initiating and receiving refill authorization requests;

(II) entering prescription data into a data processing system;

(III) taking a stock bottle from the shelf for a prescription;

(IV) preparing and packaging prescription drug orders (i.e., counting tablets/capsules, measuring liquids and placing them in the prescription container);

(V) affixing prescription labels and auxiliary labels to the prescription container. After January 1, 2001, only certified pharmacy technicians may affix prescription labels to prescription containers; and

(VI) prepackaging and labeling prepackaged drugs.

(iii) Upon return to the prescription department, the pharmacist shall:

(I) conduct a drug regimen review as specified in paragraph (4)(A)(ii) of this subsection; and

(II) verify the accuracy of all acts, tasks, and functions performed by pharmacy technicians prior to delivery of the prescription to the patient or the patient's agent.

(iv) An agent of the pharmacist may deliver a prescription drug order to the patient or his or her agent provided a record of the delivery is maintained containing the following information:

(I) date of the delivery;

(II) unique identification number of the prescription drug order;

(III) patient's name;

(IV) patient's phone number or the phone number of the person picking up the prescription; and

(V) signature of the person picking up the prescription.

(v) Any prescription delivered to a patient when a pharmacist is not in the prescription department must meet the requirements for a prescription delivered to a patient as described in paragraph (3)(A)(v) of this subsection.

(vi) During the times a pharmacist is absent from the prescription department a pharmacist intern shall be considered a certified pharmacy technician and may perform only the duties of a certified pharmacy technician.

(vii) In pharmacies with two or more pharmacists on duty, the pharmacists shall stagger their breaks and meal periods so that the prescription department is not left without a pharmacist on duty.

(3) Prescription dispensing and delivery.

(A) Patient counseling and provision of drug information.

(i) To optimize drug therapy, a pharmacist shall communicate to the patient or the patient's agent, information about the prescription drug or device which in the exercise of the pharmacist's professional judgment the pharmacist deems significant, such as the following:

(I) the name and description of the drug or device;

(II) dosage form, dosage, route of administration, and duration of drug therapy;

(III) special directions and precautions for preparation, administration, and use by the patient;

(IV) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(V) techniques for self monitoring of drug therapy;

(VI) proper storage;

(VII) refill information; and

(VIII) action to be taken in the event of a missed dose.

(ii) Such communication:

(I) shall be provided with each new prescription drug order, once yearly on maintenance medications, and if the pharmacist deems appropriate, with prescription drug order refills. (For the purposes of this clause, maintenance medications are defined as any medication the patient has taken for one year or longer);

(II) shall be provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent;

(III) shall be communicated orally in person unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits such oral communication; and

(IV) shall be reinforced with written information. The following is applicable concerning this written information.

(-a-) Written information designed for the consumer such as the USP DI Patient Information Leaflets shall be provided.

(-b-) When a compounded product is dispensed, information shall be provided for the major active ingredient(s), if available.

(-c-) For new drug entities, if no written information is initially available, the pharmacist is not required to provide information until such information is available, provided:

(-1-) the pharmacist informs the patient or the patient's agent that the product is a new drug entity and written information is not available;

(-2-) the pharmacist documents the fact that no written information was provided; and

(-3-) if the prescription is refilled after written information is available, such information is provided to the patient or patient's agent.

(iii) Only a pharmacist may verbally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs. Non-pharmacist personnel may not ask questions of a patient or patient's agent which are intended to screen and/or limit interaction with the pharmacist.

(iv) Nothing in this subparagraph shall be construed as requiring a pharmacist to provide consultation when a patient or patient's agent refuses such consultation. The pharmacist shall document such refusal for consultation.

(v) In addition to the requirements of clauses (i) - (iv) of this subparagraph, if a prescription drug order is delivered to the patient at the pharmacy, the following is applicable.

(I) So that a patient will have access to information concerning his or her prescription, a prescription may not be delivered to a patient unless a pharmacist is in the pharmacy, except as provided in paragraph (2)(D) of this subsection or subclause (II) of this clause.

(II) An agent of the pharmacist may deliver a prescription drug order to the patient or his or her agent during short periods of time when a pharmacist is absent from the pharmacy, provided the short periods of time do not exceed two hours, and provided a record of the delivery is maintained containing the following information:

(-a-) date of the delivery;

(-b-) unique identification number of the prescription drug order;

(-c-) patient's name;

(-d-) patient's phone number or the phone number of the person picking up the prescription; and

(-e-) signature of the person picking up the prescription.

(III) Any prescription delivered to a patient when a pharmacist is not in the pharmacy must meet the requirements described in clause (vi) of this subparagraph.

(IV) A Class A pharmacy compounding sterile pharmaceuticals that delivers prescriptions to patients or their agents on-site shall make available for use by the public a current or updated edition of the United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient), or another source of such information, such as patient information leaflets.

(vi) In addition to the requirements of clauses (i) - (iv) of this subparagraph, if a prescription drug order is delivered to the patient or his or her agent at the patient's residence or other designated location, the following is applicable.

(I) The information specified in clause (i) of this subparagraph shall be delivered with the dispensed prescription in writing.

(II) If prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacy shall provide a toll-free telephone line which is answered during normal business hours to enable communication between the patient and a pharmacist.

(III) The pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container in both English and Spanish the local and if applicable, toll-free telephone number of the pharmacy and the statement: "Written information about this prescription has been provided for you. Please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions at (insert the pharmacy's local and toll-free telephone numbers)."

(IV) The pharmacist-in-charge shall assure that:

(-a-) the pharmacy maintain and use adequate storage or shipment containers and shipping processes to ensure drug stability and potency. Such shipping processes shall include the use of appropriate packaging material and/or devices to ensure that the drug is maintained at an appropriate temperature range to maintain the integrity of the medication throughout the delivery process; and

(-b-) the pharmacy uses a delivery system which is designed to assure that the drugs are delivered to the appropriate patient.

(vii) The provisions of this subparagraph do not apply to patients in facilities where drugs are administered to patients by a person authorized to do so by the laws of the state (i.e., nursing homes).

(B) Generic Substitution. A pharmacist may substitute on a prescription drug order issued for a brand name product provided the substitution is authorized and performed in compliance with Chapter 309 of this title (relating to Generic Substitution).

(C) Therapeutic Drug Interchange. A switch to a drug providing a similar therapeutic response to the one prescribed shall not be made without prior approval of the prescribing practitioner. This subparagraph does not apply to generic substitution. For generic substitution, see the requirements of subparagraphs (E) and (F) of this paragraph.

(i) The patient shall be notified of the therapeutic drug interchange prior to, or upon delivery, of the dispensed prescription to the patient. Such notification shall include:

- (I) a description of the change;
- (II) the reason for the change;
- (III) whom to notify with questions concerning the change; and
- (IV) instructions for return of the drug if not wanted by the patient.

(ii) The pharmacy shall maintain documentation of patient notification of therapeutic drug interchange which shall include:

- (I) the date of the notification;
- (II) the method of notification;
- (III) a description of the change; and
- (IV) the reason for the change.

(D) Prescription containers.

(i) A drug dispensed pursuant to a prescription drug order shall be dispensed in an appropriate container as specified on the manufacturer's container.

(ii) Prescription containers or closures shall not be re-used.

(E) Labeling.

(i) At the time of delivery of the drug, the dispensing container of a sterile pharmaceutical shall bear a label with at least the following information:

- (I) name, address and phone number of the pharmacy, including a phone number which is answered 24 hours a day;
- (II) date dispensed;
- (III) name of prescribing practitioner;
- (IV) name of patient;
- (V) directions for use, including infusion rate and directions to the patient for the addition of additives, if applicable;
- (VI) unique identification number of the prescription;

(VII) name and amount of the base solution and of each drug added unless otherwise directed by the prescribing practitioner;

(VIII) initials or identification code of the person preparing the product and the pharmacist who checked and released the final product;

(IX) expiration date of the preparation based on published data;

(X) appropriate ancillary instructions, such as storage instructions or cautionary statements, including cytotoxic/bio-hazardous warning labels where applicable;

(XI) if the prescription is for a Schedule II - IV controlled substance, the statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed";

(XII) if the pharmacist has selected a generically equivalent drug pursuant to the provisions of the Act, Chapters 562 and 563, the statement "Substituted for Brand Prescribed" or "Substituted for 'Brand Name'" where "Brand Name" is the actual name of the brand name product prescribed; and

(XIII) the name of the advanced practice nurse or physician assistant, if the prescription is carried out by an advanced practice nurse or physician assistant in compliance with Subtitle B, Chapter 157, Occupations Code.

(ii) The dispensing container is not required to bear the label specified in clause (i) of this subparagraph if:

(I) the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care facility (e.g., nursing home, hospice, hospital);

(II) no more than a 34-day supply or 100 dosage units, whichever is less, is dispensed at one time;

(III) the drug is not in the possession of the ultimate user prior to administration;

(IV) the pharmacist-in-charge has determined that the institution:

(-a-) maintains medication administration records which include adequate directions for use for the drug(s) prescribed;

(-b-) maintains records of ordering, receipt, and administration of the drug(s); and

(-c-) provides for appropriate safeguards for the control and storage of the drug(s);

(V) the system employed by the pharmacy in dispensing the prescription drug order adequately identifies the:

(-a-) pharmacy by name and address;

(-b-) unique identification number of the prescription;

(-c-) name and strength of the drug dispensed;

(-d-) the name of the patient;

(-e-) name of the prescribing practitioner; and

(VI) the system employed by the pharmacy in dispensing the prescription drug order adequately sets forth the directions for use and cautionary statements, if any, contained on the prescription drug order or required by law.

(4) Pharmaceutical care services.

(A) The following pharmaceutical care services shall be provided by pharmacists of the pharmacy.

(i) Drug utilization review. A systematic ongoing process of drug utilization review shall be designed, followed, and documented to increase the probability of desired patient outcomes and decrease the probability of undesired outcomes from drug therapy.

(ii) Drug regimen review.

(I) For the purpose of promoting therapeutic appropriateness, a pharmacist shall evaluate prescription drug orders and patient medication records for:

- (-a-) known allergies;
- (-b-) rational therapy--contraindications;
- (-c-) reasonable dose and route of administration;

tion;

- (-d-) reasonable directions for use;
- (-e-) duplication of therapy;
- (-f-) drug-drug interactions;
- (-g-) drug-food interactions;
- (-h-) drug-disease interactions;
- (-i-) adverse drug reactions;
- (-j-) proper utilization, including overutilization or underutilization; and

(-k-) clinical laboratory or clinical monitoring methods to monitor and evaluate drug effectiveness, side effects, toxicity, or adverse effects, and appropriateness to continued use of the drug in its current regimen.

(II) Upon identifying any clinically significant conditions, situations, or items listed in subclause (I) of this clause, the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner. The pharmacist shall document such occurrences.

(iii) Patient care guidelines.

(I) Primary provider. There shall be a designated physician primarily responsible for the patient's medical care. There shall be a clear understanding between the physician, the patient, and the pharmacy of the responsibilities of each in the areas of the delivery of care, and the monitoring of the patient. This shall be documented in the patient medication record (PMR).

(II) Patient training. The pharmacist-in-charge shall develop policies that assure that the patient and/or patient's caregiver receives information regarding drugs and their safe and appropriate use, including instruction regarding:

- (-a-) appropriate disposition of hazardous solutions and ancillary supplies;
- (-b-) proper disposition of controlled substances in the home;
- (-c-) self-administration of drugs, where appropriate;
- (-d-) emergency procedures, including how to contact an appropriate individual in the event of problems or emergencies related to drug therapy; and
- (-e-) if the patient or patient's caregiver prepares sterile preparations in the home, the following additional information shall be provided:

(-1-) safeguards against microbial contamination, including aseptic techniques for compounding intravenous admixtures and aseptic techniques for injecting additives to premixed intravenous solutions;

(-2-) appropriate storage methods, including storage durations for sterile pharmaceuticals and expirations of self-mixed solutions;

(-3-) handling and disposition of premixed and self-mixed intravenous admixtures; and

(-4-) proper disposition of intravenous admixture compounding supplies such as syringes, vials, ampules, and intravenous solution containers.

(III) Pharmacist-patient relationship. It is imperative that a pharmacist-patient relationship be established and maintained throughout the patient's course of therapy. This shall be documented in the patient's medication record (PMR).

(IV) Patient monitoring. The pharmacist-in-charge shall develop policies to ensure that:

- (-a-) the patient's response to drug therapy is monitored and conveyed to the appropriate health care provider; and
- (-b-) the first dose of any new drug therapy is administered in the presence of an individual qualified to monitor for and respond to adverse drug reactions.

(B) Other pharmaceutical care services which may be provided by pharmacists include, but are not limited to, the following:

- (i) managing drug therapy as delegated by a practitioner as allowed under the provisions of the Medical Practice Act;
- (ii) administering immunizations and vaccinations under written protocol of a physician;
- (iii) managing patient compliance programs;
- (iv) providing preventative health care services; and
- (v) providing case management of patients who are being treated with high-risk or high-cost drugs, or who are considered "high risk" due to their age, medical condition, family history, or related concern.

(5) Equipment and supplies. Class A pharmacies compounding sterile pharmaceuticals shall have the following equipment and supplies:

- (A) typewriter or comparable equipment;
- (B) refrigerator and, if sterile pharmaceuticals are stored in the refrigerator, a system or device (i.e., thermometer) to monitor the temperature daily to ensure that proper storage requirements are met;
- (C) adequate supply of prescription, poison, and other applicable labels;
- (D) appropriate equipment necessary for the proper preparation of prescription drug orders;
- (E) metric-apothecary weight and measure conversion charts;
- (F) if the pharmacy compounds prescription drug orders which require the use of a balance, a Class A prescription balance, or analytical balance and weights. Such balance shall be properly maintained and inspected at least every three years by the appropriate authority as prescribed by local, state, or federal law or regulations.
- (G) appropriate disposal containers for used needles, syringes, etc., and if applicable, cytotoxic waste from the preparation of chemotherapeutic agents, and/or biohazardous waste;
- (H) temperature controlled delivery containers;

- (I) infusion devices, if applicable;
- (J) all necessary supplies, including:
 - (i) disposable needles, syringes, and other aseptic mixing;
 - (ii) disinfectant cleaning solutions;
 - (iii) hand washing agents with bacteriocidal action;
 - (iv) disposable, lint free towels or wipes;
 - (v) appropriate filters and filtration equipment;
 - (vi) cytotoxic spill kits, if applicable; and
 - (vii) masks, caps, coveralls or gowns with tight cuffs, shoe covers, and gloves, as applicable.

(6) Library. A reference library shall be maintained which includes the following in hard-copy or electronic format:

- (A) current copies of the following:
 - (i) Texas Pharmacy Act and rules;
 - (ii) Texas Dangerous Drug Act and rules;
 - (iii) Texas Controlled Substances Act and rules; and
 - (iv) Federal Controlled Substances Act and rules (or official publication describing the requirements of the Federal Controlled Substances Act and rules);

(B) at least one current or updated reference from each of the following categories:

(i) patient information (if prescriptions are delivered to patients or their agents on-site):

(I) United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient); or

(II) a reference text or information leaflets which provide patient information;

(ii) drug interactions. A reference text on drug interactions, such as Hansten's and Horn's Drug Interactions;

(iii) a general information reference text, such as:

(I) Facts and Comparisons with current supplements;

(II) United States Pharmacopeia Dispensing Information, Volume I (Drug Information for the Healthcare Provider);

(III) AHFS Drug Information with current supplements;

(IV) Remington's Pharmaceutical Sciences; or

(V) Micromedex;

(iv) sterile pharmaceuticals. A current or updated reference text on injectable drug products, such as Handbook on Injectable Drug Products;

(C) a specialty reference appropriate for the scope of pharmacy services provided by the pharmacy, e.g., if the pharmacy prepares cytotoxic drugs, a reference text on the preparation of cytotoxic drugs, such as Procedures for Handling Cytotoxic Drugs;

(D) patient education manuals; and

(E) basic antidote information and the telephone number of the nearest regional poison control center.

(7) Drugs.

(A) Procurement and storage.

(i) The pharmacist-in-charge shall have the responsibility for the procurement and storage of drugs, but may receive input from other appropriate staff relative to such responsibility.

(ii) Prescription drugs and devices shall be stored within the prescription department or a locked storage area.

(iii) All drugs shall be stored at the proper temperature, as defined by the following terms.

(I) Cold--Any temperature not exceeding 8 degrees Centigrade (46 degrees Fahrenheit). A refrigerator is a cold place in which the temperature is maintained thermostatically between 2 and 8 degrees Centigrade (36 and 46 degrees Fahrenheit). A freezer is a cold place in which the temperature is maintained thermostatically between -20 and -10 degrees Centigrade (-4 and -14 degrees Fahrenheit).

(II) Cool--Any temperature between 8 and 15 degrees Centigrade (46 and 59 degrees Fahrenheit). An article for which storage in a cool place is directed may, alternatively, be stored in a refrigerator unless otherwise specified in the labeling.

(III) Room temperature--The temperature prevailing in a working area. Controlled room temperature is a temperature thermostatically between 15 and 30 degrees Centigrade (59 and 86 degrees Fahrenheit).

(IV) Warm--Any temperature between 30 and 40 degrees Centigrade (86 and 104 degrees Fahrenheit).

(V) Excessive heat--Temperature above 40 degrees Centigrade (104 degrees Fahrenheit).

(VI) Protection from freezing where, in addition to the risk of breakage of the container, freezing subjects a product to loss of strength or potency, or to destructive alteration of the dosage form, the container label bears an appropriate instruction to protect the product from freezing.

(B) Out-of-date and other unusable drugs or devices.

(i) Any drug or device bearing an expiration date shall not be dispensed beyond the expiration date of the drug or device.

(ii) Outdated and other unusable drugs or devices shall be removed from dispensing stock and shall be quarantined together until such drugs or devices are disposed of properly.

(C) Class A Pharmacies may not sell, purchase, trade or possess prescription drug samples, unless the pharmacy meets all of the following conditions:

(i) the pharmacy is owned by a charitable organization described in the Internal Revenue Code of 1986, or by a city, state or county government;

(ii) the pharmacy is a part of a health care entity which provides health care primarily to indigent or low income patients at no or reduced cost;

(iii) the samples are for dispensing or provision at no charge to patients of such health care entity; and

(iv) the samples are possessed in compliance with the federal Prescription Drug Marketing Act of 1986.

(8) Prepackaging of drugs and loading bulk drugs into automated compounding or counting devices.

(A) Prepackaging of drugs.

(i) Drugs may be prepackaged in quantities suitable for internal distribution only by a pharmacist or by pharmacy technicians under the direction and direct supervision of a pharmacist.

(ii) The label of a prepackaged unit shall indicate:

(I) brand name and strength of the drug; or if no brand name then the generic name, strength, and name of the manufacturer or distributor;

(II) facility's unique lot number;

(III) expiration date based on currently available literature; and

(IV) quantity of the drug, if the quantity is greater than one.

(iii) Records of prepackaging shall be maintained to show:

(I) name of the drug, strength, and dosage form;

(II) facility's unique lot number;

(III) manufacturer or distributor;

(IV) manufacturer's lot number;

(V) expiration date;

(VI) quantity per prepackaged unit;

(VII) number of prepackaged units;

(VIII) date packaged;

(IX) name, initials, signature, or electronic signature of the preparer; and

(X) signature or electronic signature of the responsible pharmacist.

(iv) Stock packages, repackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(B) Loading bulk drugs into automated compounding or counting devices.

(i) Automated compounding or counting devices may be loaded with bulk drugs only by a pharmacist or by pharmacy technicians under the direction and direct supervision of a pharmacist.

(ii) The label of an automated compounding or counting device container shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor.

(iii) Records of loading bulk drugs into an automated compounding or counting device shall be maintained to show:

(I) name of the drug, strength, and dosage form;

(II) manufacturer or distributor;

(III) manufacturer's lot number;

(IV) expiration date;

(V) date of loading;

(VI) name, initials, signature, or electronic signature of the person loading the automated compounding or counting device; and

(VII) signature or electronic signature of the responsible pharmacist.

(iv) The automated compounding or counting device shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature or electronic signature to the record specified in clause (iii) of this subparagraph.

(9) Sterile pharmaceuticals.

(A) Batch preparation.

(i) Master work sheet. A master work sheet shall be developed and approved by a pharmacist for each batch of sterile pharmaceuticals to be prepared. Once approved, a duplicate of the master work sheet shall be used as the preparation work sheet from which each batch is prepared and on which all documentation for that batch occurs. The master work sheet shall contain at a minimum:

(I) the formula;

(II) the components;

(III) the compounding directions;

(IV) a sample label;

(V) evaluation and testing requirements;

(VI) sterilization method(s);

(VII) specific equipment used during aseptic preparation (e.g., specific automated compounding or counting device); and

(VIII) storage requirements.

(ii) Preparation work sheet. The preparation work sheet for each batch of sterile pharmaceuticals shall document the following:

(I) identity of all solutions and ingredients and their corresponding amounts, concentrations, or volumes;

(II) manufacturer lot number for each component;

(III) component manufacturer or suitable identifying number;

(IV) container specifications (e.g., syringe, pump cassette);

(V) unique lot or control number assigned to batch;

(VI) expiration date of batch-prepared products;

(VII) date of preparation;

(VIII) name, initials, or electronic signature of the person(s) involved in the preparation;

(IX) name, initials, or electronic signature of the responsible pharmacist;

(X) end-product evaluation and testing specifications, if applicable; and

(XI) comparison of actual yield to anticipated yield, when appropriate.

(iii) Label. The label of each batch prepared sterile pharmaceutical shall bear at a minimum:

(I) the unique lot number assigned to the batch;

(II) all solution and ingredient names, amounts, strengths, and concentrations, when applicable;

(III) quantity;

(IV) expiration date and time, when applicable;

(V) appropriate ancillary instructions, such as storage instructions or cautionary statements, including cytotoxic warning labels where appropriate; and

(VI) device-specific instructions, when appropriate.

(B) Expiration date.

(i) The expiration date assigned shall be based on currently available drug stability information and sterility considerations or appropriate in-house or contract service stability testing.

(ii) Sources of drug stability information shall include the following:

(I) references (e.g., Remington's Pharmaceutical Sciences, Handbook on Injectable Drugs);

(II) manufacturer recommendations; and

(III) reliable, published research.

(iii) When interpreting published drug stability information, the pharmacist shall consider all aspects of the final sterile product being prepared (e.g., drug reservoir, drug concentration, storage conditions).

(iv) Methods used for establishing expiration dates shall be documented.

(C) Quality control. There shall be a documented, ongoing quality control program that monitors and evaluates personnel performance, equipment and facilities. Procedures shall be in place to assure that the pharmacy is capable of consistently preparing pharmaceuticals which are sterile and stable. Quality control procedures shall include, but are not limited to, the following:

(i) recall procedures;

(ii) storage and dating;

(iii) documentation of appropriate functioning of refrigerator, freezer, and other equipment;

(iv) documentation of aseptic environmental control device(s) certification at least every six months and the regular replacement of pre-filters as necessary; and

(v) a process to evaluate and confirm the quality of the prepared pharmaceutical product.

(D) Quality assurance.

(i) There shall be a documented, ongoing quality assurance program for monitoring and evaluating personnel performance and patient outcomes to assure an efficient drug delivery process, patient safety, and positive clinical outcomes.

(ii) There shall be documentation of quality assurance audits at regular, planned intervals including infection control, sterile technique, delivery systems/times, order transcription accuracy, drug administration systems, adverse drug reactions, and drug therapy appropriateness.

(iii) A plan for corrective action of program of problems identified by quality assurance audits shall be developed which

includes procedures for documentation of identified problems and action taken.

(iv) A periodic evaluation of the effectiveness of the quality assurance activities shall be completed and documented.

(e) Records.

(1) Maintenance of records.

(A) Every inventory or other record required to be kept under this section shall be kept by the pharmacy and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative, and other authorized local, state, or federal law enforcement agencies.

(B) Records of controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy.

(C) Records of controlled substances, other than original prescription drug orders, listed in Schedules III - V shall be maintained separately or readily retrievable from all other records of the pharmacy. For purposes of this subsection, "readily retrievable" means that the controlled substances shall be asterisked, red-lined, or in some other manner readily identifiable apart from all other items appearing on the record.

(D) Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

(i) the records maintained in the alternative system contain all of the information required on the manual record; and

(ii) the data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(2) Prescriptions.

(A) Professional responsibility.

(i) Pharmacists shall exercise sound professional judgment with respect to the accuracy and authenticity of any prescription drug order they dispense. If the pharmacist questions the accuracy or authenticity of a prescription drug order, he/she shall verify the order with the practitioner prior to dispensing.

(ii) Prior to dispensing a prescription, pharmacists shall determine, in the exercise of sound professional judgment, that the prescription is a valid prescription. A pharmacist may not dispense a prescription drug if the pharmacist knows or should have known that the prescription was issued on the basis of an Internet-based or telephonic consultation without a valid patient-practitioner relationship.

(iii) Clause (ii) of this subparagraph does not prohibit a pharmacist from dispensing a prescription when a valid patient-practitioner relationship is not present in an emergency situation (e.g. a practitioner taking calls for the patient's regular practitioner).

(B) Written prescription drug orders.

(i) Practitioner's signature.

(I) Except as noted in subclause (II) of this clause, written prescription drug orders shall be:

(-a-) manually signed by the practitioner; or

(-b-) electronically signed by the practitioner

using a system which electronically replicates the practitioner's manual

signature on the written prescription, provided that security features of the system require the practitioner to authorize each use.

(II) Prescription drug orders for Schedule II controlled substances shall be issued on an official prescription form as required by the Texas Controlled Substances Act, §481.075, and be manually signed by the practitioner.

(III) A practitioner may sign a prescription drug order in the same manner as he would sign a check or legal document, e.g., J.H. Smith or John H. Smith.

(IV) Rubber stamped or otherwise reproduced signatures may not be used except as authorized in subclause (I) of this clause.

(V) The prescription drug order may not be signed by a practitioner's agent but may be prepared by an agent for the signature of a practitioner. However, the prescribing practitioner is responsible in case the prescription drug order does not conform in all essential respects to the law and regulations.

(ii) Prescription drug orders written by practitioners in another state.

(I) Dangerous drug prescription orders. A pharmacist may dispense a prescription drug order for dangerous drugs issued by practitioners in a state other than Texas in the same manner as prescription drug orders for dangerous drugs issued by practitioners in Texas are dispensed.

(II) Controlled substance prescription drug orders.

(-a-) A pharmacist may dispense prescription drug order for controlled substances in Schedule II issued by a practitioner in another state provided:

(-1-) the prescription is filled in compliance with a written plan approved by the Director of the Texas Department of Public Safety in consultation with the Board, which provides the manner in which the dispensing pharmacy may fill a prescription for a Schedule II controlled substance;

(-2-) the prescription drug order is an original written prescription issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration (DEA) registration number, and who may legally prescribe Schedule II controlled substances in such other state; and

(-3-) the prescription drug order is not dispensed after the end of the seventh day after the date on which the prescription is issued.

(-b-) A pharmacist may dispense prescription drug orders for controlled substances in Schedule III, IV, or V issued by a practitioner in another state provided:

(-1-) the prescription drug order is an original written prescription issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration registration number, and who may legally prescribe Schedule III, IV, or V controlled substances in such other state;

(-2-) the prescription drug order is not dispensed or refilled more than six months from the initial date of issuance and may not be refilled more than five times; and

(-3-) if there are no refill instructions on the original written prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the

original written prescription drug order have been dispensed, a new written prescription drug order is obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(iii) Prescription drug orders written by practitioners in the United Mexican States or the Dominion of Canada.

(I) Controlled substance prescription drug orders. A pharmacist may not dispense a prescription drug order for a Schedule II, III, IV, or V controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States.

(II) Dangerous drug prescription drug orders. A pharmacist may dispense a dangerous drug prescription issued by a person licensed in the Dominion of Canada or the United Mexican States as a physician, dentist, veterinarian, or podiatrist provided:

(-a-) the prescription drug order is an original written prescription; and

(-b-) if there are no refill instructions on the original written prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original written prescription drug order have been dispensed, a new written prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of dangerous drugs.

(iv) Prescription drug orders carried out or signed by an advanced practice nurse or physician assistant.

(I) A pharmacist may dispense a prescription drug order for a dangerous drug which is carried out or signed by an advanced practice nurse or physician assistant provided:

(-a-) the prescription is for a dangerous drug and not for a controlled substance; and

(-b-) the advanced practice nurse or physician assistant is practicing in accordance with Subtitle B, Chapter 157, Occupations Code.

(II) Each practitioner shall designate in writing the name of each advanced practice nurse or physician assistant authorized to carry out or sign a prescription drug order pursuant to Subtitle B, Chapter 157, Occupations Code. A list of the advanced practice nurses or physician assistants designated by the practitioner must be maintained in the practitioner's usual place of business. On request by a pharmacist, a practitioner shall furnish the pharmacist with a copy of the written authorization for a specific advanced practice nurse or physician assistant.

(v) Prescription drug orders for Schedule II controlled substances. No Schedule II controlled substance may be dispensed without a written prescription drug order of a practitioner on an official prescription form as required by the Texas Controlled Substances Act, §481.075.

(C) Verbal prescription drug orders.

(i) A verbal prescription drug order from a practitioner or a practitioner's designated agent may only be received by a pharmacist or a pharmacist-intern under the direct supervision of a pharmacist.

(ii) A practitioner shall designate in writing the name of each agent authorized by the practitioner to communicate prescriptions verbally for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(iii) A pharmacist may not dispense a verbal prescription drug order for a Schedule III, IV, or V controlled substance issued by a practitioner licensed in another state unless the practitioner is also registered under the Texas Controlled Substances Act.

(iv) A pharmacist may not dispense a verbal prescription drug order for a dangerous drug or a controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(D) Electronic prescription drug orders. For the purpose of this subparagraph, electronic prescription drug orders shall be considered the same as verbal prescription drug orders.

(i) An electronic prescription drug order may be transmitted by a practitioner or a practitioner's designated agent:

(I) directly to a pharmacy; or

(II) through the use of a data communication device provided:

(-a-) the prescription information is not altered during transmission; and

(-b-) confidential patient information is not accessed or maintained by the operator of the data communication device unless the operator is authorized to receive the confidential information as specified in paragraph (11) of this subsection.

(ii) A practitioner shall designate in writing the name of each agent authorized by the practitioner to electronically transmit prescriptions for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(iii) A pharmacist may not dispense an electronic prescription drug order for a:

(I) Schedule II controlled substance except as authorized for faxed prescriptions in §481.074, Health and Safety Code;

(II) Schedule III, IV, or V controlled substance issued by a practitioner licensed in another state unless the practitioner is also registered under the Texas Controlled Substances Act; or

(III) dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(E) Original prescription drug order records.

(i) Original prescriptions shall be maintained by the pharmacy in numerical order and remain legible for a period of two years from the date of filling or the date of the last refill dispensed.

(ii) If an original prescription drug order is changed, such prescription order shall be invalid and of no further force and effect; if additional drugs are to be dispensed, a new prescription drug order with a new and separate number is required.

(iii) Original prescriptions shall be maintained in one of the following formats:

(I) in three separate files as follows:

(-a-) prescriptions for controlled substances listed in Schedule II;

(-b-) prescriptions for controlled substances listed in Schedule III - V; and

(-c-) prescriptions for dangerous drugs and nonprescription drugs; or

(II) within a patient medication record system provided that original prescriptions for controlled substances are maintained separate from original prescriptions for noncontrolled substances and official prescriptions for Schedule II controlled substances are maintained separate from all other original prescriptions.

(iv) Original prescription records other than prescriptions for Schedule II controlled substances may be stored on microfilm, microfiche, or other system which is capable of producing a direct image of the original prescription record, e.g., digitalized imaging system. If original prescription records are stored in a direct imaging system, the following is applicable.

(I) The record of refills recorded on the original prescription must also be stored in this system.

(II) The original prescription records must be maintained in numerical order and as specified in clause (iii) of this subparagraph.

(III) The pharmacy must provide immediate access to equipment necessary to render the records easily readable.

(F) Prescription drug order information.

(i) All original prescriptions shall bear:

(I) name of the patient;

(II) address of the patient, provided, however, a prescription for a dangerous drug is not required to bear the address of the patient if such address is readily retrievable on another appropriate, uniformly maintained pharmacy record, such as medication records;

(III) name, and if for a controlled substance, the address and DEA registration number of the practitioner;

(IV) name and strength of the drug prescribed;

(V) quantity prescribed;

(VI) directions for use;

(VII) intended use for the drug unless the practitioner determines the furnishing of this information is not in the best interest of the patient;

(VIII) date of issuance; and

(IX) if telephoned to the pharmacist by a designated agent, the full name of the designated agent.

(ii) All original prescriptions for dangerous drugs carried out by an advanced practice nurse or physician assistant in accordance with Subtitle B, Chapter 157, Occupations Code, shall bear:

(I) name and address of the patient;

(II) name, address, and telephone number of the practitioner;

(III) name, address, telephone number, identification number, and original signature of the advanced practice nurse or physician assistant;

(IV) name, strength, and quantity of the dangerous drug;

(V) directions for use;

(VI) the intended use of the drug, if appropriate;

(VII) date of issuance; and

(VIII) number of refills authorized.

(iii) All original electronic prescription drug orders shall bear:

(I) name of the patient;
(II) address of the patient, provided, however, a prescription for a dangerous drug is not required to bear the address of the patient if such address is readily retrievable on another appropriate, uniformly maintained pharmacy record, such as patient medication records;

(III) name and strength of the drug prescribed;

(IV) quantity prescribed;

(V) directions for use;

(VI) intended use for the drug unless the practitioner determines the furnishing of this information is not in the best interest of the patient;

(VII) date of issuance;

(VIII) a statement which indicates that the prescription has been electronically transmitted (e.g., Faxed to or electronically transmitted to);

(IX) name, address, and electronic access number of the pharmacy to which the prescription was transmitted;

(X) telephone number of the prescribing practitioner;

(XI) date the prescription drug order was electronically transmitted to the pharmacy, if different from the date of issuance of the prescription; and

(XII) if transmitted by a designated agent, the full name of the designated agent.

(iv) At the time of dispensing, a pharmacist is responsible for the addition of the following information to the original prescription:

(I) unique identification number of the prescription drug order;

(II) initials or identification code of the person who compounded the sterile pharmaceutical and the pharmacist who checked and released the product;

(III) name, quantity, lot number, and expiration date of each product used in compounding the sterile pharmaceutical; and

(IV) date of dispensing, if different from the date of issuance.

(G) Refills.

(i) Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order. Such refills may be indicated as authorization to refill the prescription drug order a specified number of times or for a specified period of time period, such as the duration of therapy.

(ii) If there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner shall be obtained prior to dispensing any refills.

(iii) Refills of prescription drug orders for dangerous drugs or nonprescription drugs shall be dispensed as follows.

(I) Prescription drug orders for dangerous drugs or nonprescription drugs may not be refilled after one year from the date of issuance of the original prescription order.

(II) If one year has expired from the date of issuance of an original prescription drug order for a dangerous drug or nonprescription drug, authorization shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of the drug.

(iv) Refills of prescription drug orders for Schedule III - V controlled substances shall be dispensed as follows.

(I) Prescription drug orders for Schedule III - V controlled substances may not be refilled more than five times or after six months from the date of issuance of the original prescription drug order, whichever occurs first.

(II) If a prescription drug order for a Schedule III, IV, or V controlled substance has been refilled a total of five times or if six months have expired from the date of issuance of the original prescription drug order, whichever comes first, a new and separate prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(v) A pharmacist may exercise his professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

(I) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(II) either:

(-a-) a natural or manmade disaster has occurred which prohibits the pharmacist from being able to contact the practitioner; or

(-b-) the pharmacist is unable to contact the practitioner after a reasonable effort;

(III) the quantity of prescription drug dispensed does not exceed a 72-hour supply;

(IV) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(V) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(VI) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this paragraph;

(VII) the pharmacist affixes a label to the dispensing container as specified in this paragraph; and

(VIII) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his professional judgment in refilling the prescription provided:

(-a-) the patient has the prescription container, label, receipt or other documentation from the other pharmacy which contains the essential information;

(-b-) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(-c-) the pharmacist, in his professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of subclauses (I) and (II) of this clause; and

(IX) the pharmacist complies with the requirements of subclauses (III) - (V) of this clause.

(3) Prescription drug order records maintained in a manual system.

(A) Original prescriptions. Original prescriptions shall be maintained in three files as specified in paragraph (2)(E)(iii) of this subsection.

(B) Refills.

(i) Each time a prescription drug order is refilled, a record of such refill shall be made:

(I) on the back of the prescription by recording the date of dispensing, the written initials or identification code of the dispensing pharmacist and the amount dispensed. (If the pharmacist merely initials and dates the back of the prescription drug order, he or she shall be deemed to have dispensed a refill for the full face amount of the prescription drug order); or

(II) on another appropriate, uniformly maintained, readily retrievable record, such as patient medication records, which indicates by patient name the following information:

- (-a-) unique identification number of the prescription;
- (-b-) name, strength, and lot number of each drug product used in compounding the sterile pharmaceutical;
- (-c-) date of each dispensing;
- (-d-) quantity dispensed at each dispensing;
- (-e-) initials or identification code of person who compounded the sterile pharmaceutical and the pharmacist who checks and releases the final product; and
- (-f-) total number of refills for the prescription.

(ii) If refill records are maintained in accordance with clause (i)(II) of this subparagraph, refill records for controlled substances in Schedule III - V shall be maintained separately from refill records of dangerous drugs and nonprescription drugs.

(C) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted on the original prescription, in addition to the documentation of dispensing the refill.

(D) Transfer of prescription drug order information. For the purpose of refill or initial dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements.

(i) The transfer of original prescription drug order information for controlled substances listed in Schedules III, IV, or V is permissible between pharmacies on a one-time basis.

(ii) The transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies without limitation up to the number of originally authorized refills.

(iii) The transfer is communicated directly between pharmacists and/or pharmacist interns.

(iv) Both the original and the transferred prescription drug order are maintained for a period of two years from the date of last refill.

(v) The pharmacist or pharmacist intern transferring the prescription drug order information shall:

(I) write the word "void" on the face of the invalidated prescription drug order; and

(II) record on the reverse of the invalidated prescription drug order the following information:

(-a-) the name, address, and, if a controlled substance, the DEA registration number of the pharmacy to which such prescription drug order is transferred;

(-b-) the name of the pharmacist or pharmacist intern receiving the prescription drug order information;

(-c-) the name of the pharmacist or pharmacist intern transferring the prescription drug order information; and

(-d-) the date of the transfer.

(vi) The pharmacist or pharmacist intern receiving the transferred prescription drug order information shall:

(I) write the word "transfer" on the face of the transferred prescription drug order; and

(II) record on the transferred prescription drug order the following information:

(-a-) original date of issuance and date of dispensing or receipt, if different from date of issuance;

(-b-) original prescription number and the number of refills authorized on the original prescription drug order;

(-c-) number of valid refills remaining and the date of last refill, if applicable;

(-d-) name, address, and, if a controlled substance, the DEA registration number of the pharmacy from which such prescription information is transferred; and

(-e-) name of the pharmacist or pharmacist intern transferring the prescription drug order information.

(E) A pharmacist or pharmacist intern may not refuse to transfer original prescription information to another pharmacist or pharmacist intern who is acting on behalf of a patient and who is making a request for this information as specified in subparagraph (D) of this paragraph.

(4) Prescription drug order records maintained in a data processing system.

(A) General requirements for records maintained in a data processing system.

(i) Compliance with data processing system requirements. If a pharmacy's data processing system is not in compliance with this subsection, the pharmacy must maintain a manual recordkeeping system as specified in paragraph (3) of this subsection.

(ii) Original prescriptions. Original prescriptions shall be maintained as specified in paragraph (2)(E)(iii) of this subsection.

(iii) Requirements for backup systems.

(I) The pharmacy shall maintain a backup copy of information stored in the data processing system using disk, tape, or other electronic backup system and update this backup copy on a regular basis, at least monthly, to assure that data is not lost due to system failure.

(II) Data processing systems shall have a workable (electronic) data retention system which can produce an audit trail of drug usage for the preceding two years as specified in subparagraph (B) (vii) of this paragraph.

(iv) Change or discontinuance of a data processing system.

(I) Records of dispensing. A pharmacy that changes or discontinues use of a data processing system must:

(-a-) transfer the records of dispensing to the new data processing system; or

(-b-) purge the records of dispensing to a printout which contains the same information required on the daily printout as specified in subparagraph (B) of this paragraph. The information on this hard-copy printout shall be sorted and printed by prescription number and list each dispensing for this prescription chronologically.

(II) Other records. A pharmacy that changes or discontinues use of a data processing system must:

(-a-) transfer the records to the new data processing system; or

(-b-) purge the records to a printout which contains all of the information required on the original document.

(III) Maintenance of purged records. Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(v) Loss of data. The pharmacist-in-charge shall report to the board in writing any significant loss of information from the data processing system within 10 days of discovery of the loss.

(B) Records of dispensing.

(i) Each time a prescription drug order is filled or refilled, a record of such dispensing shall be entered into the data processing system.

(ii) The data processing system shall have the capacity to produce a daily hard-copy printout of all original prescriptions dispensed and refilled. This hard-copy printout shall contain the following information:

(I) unique identification number of the prescription;

(II) date of dispensing;

(III) patient name;

(IV) prescribing practitioner's name;

(V) name and amount of each drug product used in compounding the sterile pharmaceutical;

(VI) total quantity dispensed;

(VII) initials or an identification code of the dispensing pharmacist; and

(VIII) if not immediately retrievable via CRT display, the following shall also be included on the hard-copy printout:

(-a-) patient's address;

(-b-) prescribing practitioner's address;

(-c-) practitioner's DEA registration number, if the prescription drug order is for a controlled substance;

(-d-) quantity prescribed, if different from the quantity dispensed;

(-e-) date of issuance of the prescription drug order, if different from the date of dispensing; and

(-f-) total number of refills dispensed to date for that prescription drug order.

(iii) The daily hard-copy printout shall be produced within 72 hours of the date on which the prescription drug orders were dispensed and shall be maintained in a separate file at the pharmacy. Records of controlled substances shall be readily retrievable from records of noncontrolled substances.

(iv) Each individual pharmacist who dispenses or refills a prescription drug order shall verify that the data indicated on the daily hard-copy printout is correct, by dating and signing such document in the same manner as signing a check or legal document (e.g., J.H. Smith or John H. Smith) within seven days from the date of dispensing.

(v) In lieu of the printout described in clause (ii) of this subparagraph, the pharmacy shall maintain a log book in which each individual pharmacist using the data processing system shall sign a statement each day, attesting to the fact that the information entered into the data processing system that day has been reviewed by him or her and is correct as entered. Such log book shall be maintained at the pharmacy employing such a system for a period of two years after the date of dispensing; provided, however, that the data processing system can produce the hard-copy printout on demand by an authorized agent of the Texas State Board of Pharmacy, Texas Department of Public Safety, or Drug Enforcement Administration. If no printer is available on site, the hard-copy printout shall be available within 48 hours with a certification by the individual providing the printout which states that the printout is true and correct as of the date of entry and such information has not been altered, amended, or modified.

(vi) The pharmacist-in-charge is responsible for the proper maintenance of such records and responsible that such data processing system can produce the records outlined in this section and that such system is in compliance with this subsection.

(vii) The data processing system shall be capable of producing a hard-copy printout of an audit trail for all dispensings (original and refill) of any specified strength and dosage form of a drug (by either brand or generic name or both) during a specified time period.

(I) Such audit trail shall contain all of the information required on the daily printout as set out in clause (ii) of this subparagraph.

(II) The audit trail required in this subparagraph shall be supplied by the pharmacy within 48 hours, if requested by an authorized agent of the Texas State Board of Pharmacy, Texas Department of Public Safety, or Drug Enforcement Administration.

(viii) Failure to provide the records set out in this paragraph, either on site or within 48 hours for whatever reason, constitutes prima facie evidence of failure to keep and maintain records.

(ix) The data processing system shall provide on-line retrieval (via CRT display or hard-copy printout) of the information set out in clause (ii) of this subparagraph of:

(I) the original controlled substance prescription drug orders currently authorized for refilling; and

(II) the current refill history for Schedule III - V controlled substances for the immediately preceding six-month period.

(x) In the event that a pharmacy which uses a data processing system experiences system downtime, the following is applicable:

(I) an auxiliary procedure shall ensure that refills are authorized by the original prescription drug order and that the maximum number of refills has not been exceeded or authorization from the prescribing practitioner shall be obtained prior to dispensing a refill; and

(II) all of the appropriate data shall be retained for on-line data entry as soon as the system is available for use again.

(C) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted as follows:

- (i) on the hard-copy prescription drug order;
- (ii) on the daily hard-copy printout; or
- (iii) via the CRT display.

(D) Transfer of prescription drug order information. For the purpose of refill or initial dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements.

(i) The transfer of original prescription drug order information for controlled substances listed in Schedules III, IV, or V is permissible between pharmacies on a one-time basis only. However, pharmacies electronically sharing a real-time, on-line database may transfer up to the maximum refills permitted by law and the prescriber's authorization.

(ii) The transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies without limitation up to the number of originally authorized refills.

(iii) The transfer is communicated directly between pharmacists and/or pharmacist interns or as authorized in paragraph (3)(D) of this subsection.

(iv) Both the original and the transferred prescription drug orders are maintained for a period of two years from the date of last refill.

(v) The pharmacist or pharmacist intern transferring the prescription drug order information shall:

(I) write the word "void" on the face of the invalidated prescription drug order; and

(II) record on the reverse of the invalidated prescription drug order the following information:

(-a-) the name, address, and, if a controlled substance, the DEA registration number of the pharmacy to which such prescription is transferred;

(-b-) the name of the pharmacist or pharmacist intern receiving the prescription drug order information;

(-c-) the name of the pharmacist or pharmacist intern transferring the prescription drug order information; and

(-d-) the date of the transfer.

(vi) The pharmacist or pharmacist intern receiving the transferred prescription drug order information shall:

(I) write the word "transfer" on the face of the transferred prescription drug order; and

(II) record on the transferred prescription drug order the following information:

(-a-) original date of issuance and date of dispensing or receipt, if different from date of issuance;

(-b-) original prescription number and the number of refills authorized on the original prescription drug order;

(-c-) number of valid refills remaining and the date of last refill, if applicable;

(-d-) name, address, and, if a controlled substance, the DEA registration number of the pharmacy from which such prescription drug order information is transferred; and

(-e-) name of the pharmacist or pharmacist intern transferring the prescription drug order information.

(vii) Prescription drug orders may not be transferred by non-electronic means during periods of downtime except on consultation with and authorization by a prescribing practitioner; provided however, during downtime, a hard copy of a prescription drug order may be made available for informational purposes only, to the patient, a pharmacist or pharmacist intern, and the prescription may be read to a pharmacist or pharmacist intern by telephone.

(viii) The original prescription drug order shall be invalidated in the data processing system for purposes of filling or refilling, but shall be maintained in the data processing system for refill history purposes.

(ix) If the data processing system has the capacity to store all the information required in clause (v) and (vi) of this subparagraph, the pharmacist is not required to record this information on the original or transferred prescription drug order. (x) The data processing system shall have a mechanism to prohibit the transfer or refilling of controlled substance prescription drug orders which have been previously transferred.

(E) Electronic transfer of prescription drug order information between pharmacies. Pharmacies electronically accessing the same prescription drug order records may electronically transfer prescription information if the following requirements are met.

(i) The original prescription is voided and the following information is documented in the records of the transferring pharmacy;

(I) the name, address, and if a controlled substance, the DEA registration number of the pharmacy to which such prescription is transferred;

(II) the name of the pharmacist or pharmacist intern receiving the prescription drug order information; and

(III) the date of the transfer.

(ii) Pharmacies not owned by the same person may electronically access the same prescription drug order records, provided the owner or chief executive officer of each pharmacy signs an agreement allowing access to such prescription drug order records.

(F) A pharmacist or pharmacist intern may not refuse to transfer original prescription information to another pharmacist or pharmacist intern who is acting on behalf of a patient and who is making a request for this information as specified in subparagraph (D) of this paragraph.

(5) Limitation to one type of recordkeeping system. When filing prescription drug order information a pharmacy may use only one of the two systems described in paragraph (3) or (4) of this subsection.

(6) Policy and procedure manual. A policy and procedure manual as it relates to the sterile pharmaceuticals shall be maintained at the pharmacy and be available for inspection. The manual shall include policies and procedures for:

(A) pharmaceutical care services;

(B) handling, storage, and disposal of cytotoxic/biohazardous drugs and waste;

(C) disposal of unusable drugs, supplies, and returns;

(D) security;

(E) equipment;

(F) sanitation;

(G) reference materials;

- (H) drug selection and procurement;
- (I) drug storage;
- (J) drug administration to include infusion devices, drug delivery systems, and first dose monitoring;
- (K) drug labeling;
- (L) delivery of drugs;
- (M) recordkeeping;
- (N) controlled substances;
- (O) investigational drugs, including the obtaining of protocols from the principal investigator;
- (P) quality assurance/quality control;
- (Q) duties and education and training of professional and nonprofessional staff; and
- (R) emergency preparedness plan, to include continuity of patient and public safety.

(7) Patient Medication Record (PMR). A PMR shall be maintained for each patient of the pharmacy. The PMR shall contain at a minimum the following.

- (A) Patient information:
 - (i) patient's full name, gender, and date of birth;
 - (ii) weight and height;
 - (iii) known drug sensitivities and allergies to drugs and/or food;
 - (iv) primary diagnosis and chronic conditions;
 - (v) other drugs the patient is receiving;
 - (vi) documentation of patient training;
 - (vii) pharmacist's comments relevant to the individual's drug therapy, including any other information unique to the specific patient or drug.
- (B) Prescription drug order information:
 - (i) date of dispensing each sterile pharmaceutical;
 - (ii) unique identification number of the prescription;
 - (iii) physician's name;
 - (iv) name, quantity, and lot number of each product used in compounding the sterile pharmaceutical;
 - (v) quantity dispensed; and
 - (vi) directions for use and method of administration, including infusion rate if applicable.

(C) Nothing in this paragraph shall be construed as requiring a pharmacist to obtain, record, and maintain patient information other than prescription drug order information when a patient or patient's agent refuses to provide the necessary information for such patient medication records.

(8) Distribution of controlled substances to another registrant. A pharmacy may distribute controlled substances to a practitioner, another pharmacy or other registrant, without being registered to distribute, under the following conditions.

(A) The registrant to whom the controlled substance is to be distributed is registered under the Controlled Substances Act to dispense that controlled substance.

(B) The total number of dosage units of controlled substances distributed by a pharmacy may not exceed 5.0% of all controlled substances dispensed and distributed by the pharmacy during each calendar year in which the pharmacy is registered; if during the same calendar year it does exceed 5.0%, the pharmacy is required to obtain an additional registration to distribute controlled substances.

(C) If the distribution is for a Schedule III, IV, or V controlled substance, a record shall be maintained which indicates:

- (i) the actual date of distribution;
- (ii) the name, strength, and quantity of controlled substances distributed;
- (iii) the name, address, and DEA registration number of the distributing pharmacy; and
- (iv) the name, address, and DEA registration number of the pharmacy, practitioner, or other registrant to whom the controlled substances are distributed.

(D) If the distribution is for a Schedule I or II controlled substance, the following is applicable.

(i) The pharmacy, practitioner or other registrant who is receiving the controlled substances shall issue copy 1 and copy 2 of a DEA order form (DEA 222) to the distributing pharmacy.

(ii) The distributing pharmacy shall:

- (I) complete the area on the DEA order form (DEA 222) titled TO BE FILLED IN BY SUPPLIER;

(II) maintain copy 1 of the DEA order form (DEA 222) at the pharmacy for two years; and

(III) forward copy 2 of the DEA order form (DEA 222) to the divisional office of the Drug Enforcement Administration at the close of the month during which the order is filled.

(9) Other records. Other records to be maintained by a pharmacy:

(A) a permanent log of the initials or identification codes which will identify each dispensing pharmacist by name (the initials or identification code shall be unique to ensure that each pharmacist can be identified, i.e., identical initials or identification codes shall not be used);

(B) copy 3 of DEA order form (DEA 222) which has been properly dated, initialed, and filed, and all copies of each unaccepted or defective order form and any attached statements or other documents;

(C) a hard copy of the power of attorney to sign DEA 222 order forms (if applicable);

(D) suppliers' invoices of dangerous drugs and controlled substances; pharmacists or other responsible individuals shall verify that the controlled drugs listed on the invoices were actually received by clearly recording their initials and the actual date of receipt of the controlled substances;

(E) suppliers' credit memos for controlled substances and dangerous drugs;

(F) a hard copy of inventories required by §291.17 of this title (relating to Inventory Requirements);

(G) hard-copy reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(H) records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(I) a hard copy of any notification required by the Texas Pharmacy Act or these sections, including, but not limited to, the following:

(i) reports of theft or significant loss of controlled substances to DEA, DPS, and the board;

(ii) notifications of a change in pharmacist-in-charge of a pharmacy; and

(iii) reports of a fire or other disaster which may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, and disease.

(10) Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

(A) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met.

(i) Prior to the initiation of central recordkeeping, the pharmacy submits written notification by registered or certified mail to the divisional director of the Drug Enforcement Administration as required by the Code of Federal Regulations, Title 21, §1304.04(a), and submits a copy of this written notification to the Texas State Board of Pharmacy. Unless the registrant is informed by the divisional director of the Drug Enforcement Administration that permission to keep central records is denied, the pharmacy may maintain central records commencing 14 days after receipt of notification by the divisional director.

(ii) The pharmacy maintains a copy of the notification required in clause (i) of this subparagraph.

(iii) The records to be maintained at the central record location shall not include executed DEA order forms, prescription drug orders, or controlled substance inventories, which shall be maintained at the pharmacy.

(B) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location.

(C) Access to records. If the records are kept on microfilm, computer media, or in any form requiring special equipment to render the records easily readable, the pharmacy shall provide access to such equipment with the records.

(D) Delivery of records. The pharmacy agrees to deliver all or any part of such records to the pharmacy location within two business days of written request of a board agent or any other authorized official.

(E) Ownership of pharmacy records. For purposes of these sections, a pharmacy licensed under the Act is the only entity which may legally own and maintain prescription drug records.

(11) Confidentiality.

(A) A pharmacist shall provide adequate security of prescription drug order and patient medication records to prevent indiscriminate or unauthorized access to confidential health information. If prescription drug orders, requests for refill authorization, or other confidential health information are not transmitted directly between a pharmacy and a physician but are transmitted through a data communication device, confidential health information may not be accessed

or maintained by the operator of the data communication device unless specifically authorized to obtain the confidential information by this subsection.

(B) Confidential records are privileged and may be released only to:

(i) the patient or the patient's agent;

(ii) a practitioner or another pharmacist if, in the pharmacist's professional judgement, the release is necessary to protect the patient's health and well being;

(iii) the board or to a person or another state or federal agency authorized by law to receive the confidential record;

(iv) a law enforcement agency engaged in investigation of a suspected violation of Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.);

(v) a person employed by a state agency that licenses a practitioner, if the person is performing the person's official duties; or

(vi) an insurance carrier or other third party payor authorized by a patient to receive such information.

(f) Triplicate prescription requirements. The Texas State Board of Pharmacy adopts by reference the rules promulgated by the Texas Department of Public Safety, which are set forth in Subchapter F of 37 TAC §§13.101 - 13.113 concerning triplicate prescriptions.

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 August 19, 2002.

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Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8028



SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.73

The Texas State Board of Pharmacy adopts amendments to §291.73, concerning Personnel. The amendments are adopted without changes to the proposed text as published in the June 21, 2002, issue of the *Texas Register* (27 TexReg 5366), and will not be republished.

The amendments as adopted permit pharmacy technician certification certificates to be maintained in a file at a Class C pharmacy provided certain conditions are met.

No comments were received.

The amendments are adopted under §§551.002, 554.051, and 554.053 of the Texas Pharmacy Act (Chapters 551 - 566, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets

§554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §554.053 as authorizing the agency to adopt rules for the use of pharmacy technicians in pharmacies.

The statutes affected by this rule: Chapters 551 - 566, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on August 19, 2002.

TRD-200205417

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: September 8, 2002

Proposal publication date: June 21, 2002

For further information, please call: (512) 305-8028



CHAPTER 301. FRAUD, DECEIT, AND MISREPRESENTATION IN THE PRACTICE OF PHARMACY

22 TAC §301.1

The Texas State Board of Pharmacy adopts the repeal of §301.1, concerning a Savings Clause. The repeal is adopted without changes to the proposal published in the June 21, 2002, issue of the *Texas Register* (27 TexReg 5367).

The adopted repeal deletes a section which has been determined, through the rule review process, to no longer be necessary.

No comments were received.

The repeal is adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The

The statutes affected by this rule: Chapters 551 - 566, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on August 19, 2002.

TRD-200205418

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: September 8, 2002

Proposal publication date: June 21, 2002

For further information, please call: (512) 305-8028



CHAPTER 311. CODE OF CONDUCT

22 TAC §311.1

The Texas State Board of Pharmacy adopts amendments to §311.1, concerning Procedures. The amendments are adopted without changes to the proposed text as published in the June 21, 2002, issue of the *Texas Register* (27 TexReg 5367), and will not be republished.

The amendment, if adopted, will clarify responsible parties.

No comments were received.

The amendment is adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Chapters 551 - 566, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on August 19, 2002.

TRD-200205419

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: September 8, 2002

Proposal publication date: June 21, 2002

For further information, please call: (512) 305-8028



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 3. TEXAS WORKS

The Texas Department of Human Services (DHS) adopts amendments to §3.301, §3.1104, and §3.1203, without changes to the proposed text published in the June 28, 2002, issue of the *Texas Register* (27 TexReg 5747).

Justification for the amendments is to make the sections more detailed and accurate. The amendment to §3.301 details the roles that DHS eligibility workers have in monitoring participation and completion of parenting skills for non-Choices clients. The amendment to §3.1104 clarifies that it is the caretaker or second parent of a household certified for Temporary Assistance for Needy Families who must comply with the Title IV-A requirements. The amendment to §3.1203 specifies that an individual is exempt from the Food Stamp program work requirement if he lives in a county covered under Texas' 15% exemption allowance, as described in 7 U.S.C §2015(o)(6). This ensures that Texas complies with the provisions of the revised Food Stamp Education and Training State Plan.

DHS received no comments regarding adoption of the amendments.

SUBCHAPTER C. THE APPLICATION PROCESS

40 TAC §3.301

The amendment is adopted under the Human Resources Code, Chapters 22, 31, and 33, which authorizes DHS to administer public, financial, and nutritional assistance programs.

The amendment implements the Human Resources Code, §§22.001-22.036, §§31.001-31.053, and §§33.001-33.027.

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 August 14, 2002.

TRD-200205299

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Effective date: September 3, 2002

Proposal publication date: June 28, 2002

For further information, please call: (512) 438-3734



SUBCHAPTER K. EMPLOYMENT SERVICES

40 TAC §3.1104

The amendment is adopted under the Human Resources Code, Chapters 22, 31, and 33, which authorizes DHS to administer public, financial, and nutritional assistance programs.

The amendment implements the Human Resources Code, §§22.001-22.036, §§31.001-31.053, and §§33.001-33.027.

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 August 14, 2002.

TRD-200205300

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Effective date: September 3, 2002

Proposal publication date: June 28, 2002

For further information, please call: (512) 438-3734



SUBCHAPTER L. WORK REGISTRATION

40 TAC §3.1203

The amendment is adopted under the Human Resources Code, Chapters 22 and 33, which authorizes DHS to administer public and nutritional assistance programs.

The amendment implements the Human Resources Code, §§22.001-22.036 and §§33.001-33.027.

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 August 14, 2002.

TRD-200205301

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Effective date: September 3, 2002

Proposal publication date: June 28, 2002

For further information, please call: (512) 438-3734



CHAPTER 12. SPECIAL NUTRITION PROGRAMS

SUBCHAPTER A. CHILD AND ADULT CARE FOOD PROGRAM

40 TAC §12.24

The Texas Department of Human Services (DHS) adopts an amendment to §12.24 without changes to the proposed text published in the July 5, 2002, issue of the *Texas Register* (27 TexReg 5949).

The Agricultural Risk Protection Act of 2000 (P.L. 106-224), which amended the Richard B. Russell National School Lunch Act (42 U.S.C. 1766), called for the establishment of procedures to terminate participation by contractors under the Child and Adult Care Food Program (CACFP) that fail to fulfill the terms of their contract. The justification for the amendment is to modify DHS procedures for taking adverse action against CACFP day care home sponsors in accordance with USDA guidelines established in response to P.L. 106-224. The amendment requires DHS to give CACFP day care home contractors advance notification that DHS intends to terminate their contract when DHS determines during the first follow-up review that the contractor has not corrected all instances of program noncompliance identified in the initial review. The amendment also removes the provision for DHS to suspend contractors' administrative payments and deny payment of contractors' outstanding claims when DHS determines during the first follow-up review that the contractor has not corrected all instances of program noncompliance identified in the initial review. Additionally, the amendment makes technical and other non-substantive improvements to the rule language.

DHS received no comments regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which authorizes DHS to administer public and nutritional assistance programs.

The amendment implements the Human Resources Code, §§22.001-22.036 and §§33.001-33.027.

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 August 19, 2002.

TRD-200205410

Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: September 8, 2002
Proposal publication date: July 5, 2002
For further information, please call: (512) 438-3734



— 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.

Agency Rule Review Plan

Comptroller of Public Accounts

Title 34, Part 1

TRD-200205492

Filed: August 21, 2002

Proposed Rule Reviews

Comptroller of Public Accounts

Title 34, Part 1

The Comptroller of Public Accounts proposes to review and consider for readoption, revision, or repeal all sections of Texas Administrative Code, Title 34, Part 1, Chapter 1, Subchapter A (relating to Practice and Procedures) and Subchapter B (relating to Public Information); and Chapter 3, Subchapter D (relating to Occupation Tax on Sulphur Producers), Subchapter F (relating to Motor Vehicle Sales Tax), Subchapter I (relating to Miscellaneous Occupation Tax), Subchapter J (relating to Petroleum Products Delivery Fee), Subchapter O (relating to State Sales and Use Tax, §§3.324 - 3.368), Subchapter T (relating to Manufactured Housing Sales and Use Tax), and Subchapter Z (relating to Coastal Protection Fee). This review and consideration is being conducted in accordance with Government Code, §2001.039. The review will include, at a minimum, whether the reasons for adopting or readopting the rules continue to exist.

In accordance with the above referenced §2001.039, the comptroller will accept comments regarding whether the reason for adopting or readopting each of these rules continues to exist. The comment period will last for 30 days beginning with the publication of this notice in the *Texas Register*.

Comments pertaining to this notice to review Chapter 1, Subchapters A and B, may be submitted to Jesse Ancira, General Counsel, P.O. Box 13528, Austin, Texas 78711-3528.

Comments pertaining to this notice to review Chapter 3, Subchapters D, F, I, J, O, T, and Z, may be submitted to Bryant Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-200205500

Martin Cherry

Deputy General Counsel for Taxation

Comptroller of Public Accounts

Filed: August 21, 2002

Texas Department of Human Services

Title 40, Part 1

The Texas Department of Human Services (DHS) files this notice of intention to review Title 40 TAC, Chapter 4 (Medicaid Programs--Children and Pregnant Women), Chapter 5 (Medicaid Programs for Aliens), Chapter 6 (Disaster Assistance Program), Chapter 7 (Refugee Cash Assistance and Medical Assistance Programs), Chapter 9 (Refugee Social Services), Chapter 11 (Food Distribution and Processing), Chapter 12 (Special Nutrition Programs), and Chapter 13 (Title IV-A Emergency Assistance Program), in accordance with Government Code, §2001.039.

In conjunction with this review, DHS is proposing repeals and new sections to Chapter 9 published elsewhere in this issue of the *Texas Register*.

As required by §2001.039, DHS will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the rules under review continue to exist.

Any questions or written comments pertaining to this notice of intention to review Chapters 4, 5, or 13 should be directed to Eric McDaniel, Texas Works Policy Section, Texas Department of Human Services W-312, P.O. Box 149030, Austin, Texas 78714- 9030 or at (512) 438-2909.

Any questions or written comments pertaining to this notice of intention to review Chapter 6 should be directed to Dennis McCudden, Regional Operations/IFGP, Texas Department of Human Services Y-950, P.O. Box 149030, Austin, Texas 78714-9030 or at (512) 533-4437.

Any questions or written comments pertaining to this notice of intention to review Chapters 7 or 9 should be directed to Liz Cruz-Garbutt, Family Services, Texas Department of Human Services W-230, P.O. Box 149030, Austin, Texas 78714-9030 or at (512) 438-5440.

Any questions or written comments pertaining to this notice of intention to review Chapters 11 or 12 should be directed to Karen Van Reenen, Special Nutrition Programs, Texas Department of Human Services Y-906, P.O. Box 149030, Austin, Texas 78714- 9030 or at (512) 420-2581.

TRD-200205396
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Filed: August 16, 2002

◆ ◆ ◆
Texas Natural Resource Conservation Commission

Title 30, Part 1

This review of Chapter 10 is proposed in accordance with the requirements of Texas Government Code, §2001.039, added by Acts 1999, 76th Legislature, Chapter 1499, §1.11(a), which requires state agencies to review and consider for re-adoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist.

CHAPTER SUMMARY

Chapter 10 implements certain requirements of Texas Government Code, Chapter 551, relating to Open Meetings; and Texas Water Code (TWC), §5.058, relating to Officers; Meetings. In order to implement these requirements, Chapter 10 includes general requirements relating to commission meetings and other requirements relating to conduct and decorum in commission meetings, deadline to file comments on a matter set for a commission meeting, continuance or remand of a matter set for a commission meeting, preparation of draft orders, execution of orders showing action taken at commission meetings, minutes of commission meetings, an evidentiary hearing held by the commission, and document filing and service.

PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission conducted a preliminary review of the rules under Chapter 10 and determined that the reasons for the rules in Chapter 10 continue to exist. These rules are needed to implement Texas Government Code, Chapter 551 and TWC, §5.058.

PUBLIC COMMENT

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039. The commission invites comments on whether the reasons for the rules in Chapter 10 continue to exist. Comments may be submitted to Patricia Durón, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711- 3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2002-017-10-AD. Comments must be received by 5:00 p.m., September 30, 2002. For further information or questions concerning this proposal, please contact Ray Henry Austin, Policy and Regulations Division, at (512) 239-6814.

TRD-200205405
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: August 16, 2002

◆ ◆ ◆
Texas State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy files this notice of intent to review Chapter 281, concerning Administrative Practice and Procedures, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

In conjunction with this review, the agency is proposing amendments to Chapter 281 published elsewhere in this issue of the *Texas Register*.

Comments regarding whether the reason for adopting the rule continues to exist, may be submitted to Steve Morse, R.Ph., Director of Compliance, Texas State Board of Pharmacy, 333 Guadalupe Street, Austin, Texas 78701. Comments must be received by 5 p.m., August 1, 2002.

TRD-200205420
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: August 19, 2002

Adopted Rule Reviews

◆ ◆ ◆
Comptroller of Public Accounts

Title 34, Part 1

The Comptroller of Public Accounts readopts, without changes, all sections of Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter B (relating to Natural Gas Production Tax), Subchapter C (relating to Crude Oil Production Tax), Subchapter L (relating to Motor Fuel Tax), Subchapter O (relating to State Sales and Use Tax, §§3.302 - 3.323), Subchapter W (relating to Amusement Machine Regulation and Tax), Subchapter Y (relating to Controlled Substances Tax), Subchapter HH (relating to Mixed Beverage Tax), and Subchapter JJ (relating to Cigarette and Tobacco Products Regulation). The review was conducted in accordance with the General Appropriations Act, House Bill 1, Article IX, §167, 75th Texas Legislature, and Government Code, §2001.039.

The proposed rule review was published in the September 14, 2001, issue of the *Texas Register* (26 TexReg 7131). No comments were received concerning the re-adoption of these sections. The comptroller has reviewed these sections, and determined that the reasons for adopting the sections continue to exist.

TRD-200205498
Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
Filed: August 21, 2002

◆ ◆ ◆
The Comptroller of Public Accounts readopts all sections of Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter GG (relating to Insurance Tax), without changes to §§3.811, 3.820, 3.822, and 3.828, and with changes to §§3.809, 3.830, 3.831, and 3.832. The text of the proposed amendments to 34 TAC §§3.809, 3.830, 3.831, and 3.832 will be published in the *Texas Register* at a later date. The review was conducted in accordance with the General Appropriations Act, House Bill 1, Article IX, §167, 75th Texas Legislature, and Government Code, §2001.039.

The proposed rule review was published in the September 14, 2001, issue of the *Texas Register* (26 TexReg 7131). No comments were received concerning the re-adoption of these sections. The comptroller has reviewed these sections, and determined that the reasons for adopting the sections continue to exist.

TRD-200205499
Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
Filed: August 21, 2002



The Comptroller of Public Accounts readopts, without changes, all sections of Texas Administrative Code, Title 34, Part 1, Chapter 7, Subchapter A (relating to General Rules), Subchapter B (relating to Board Meeting Guidelines and Requirements), Subchapter C (relating to Board Responsibilities), Subchapter D (relating to Executive Director), Subchapter E (relating to Application, Enrollment, Payment, and Fees), Subchapter F (relating to Tuition), Subchapter G (relating to Beneficiaries), Subchapter H (relating to Conversion), Subchapter I (relating to Refunds, Termination), Subchapter J (relating to Default). The review was conducted in accordance with the General Appropriations Act, House Bill 1, Article IX, §167, 75th Texas Legislature, and Government Code, §2001.039.

The proposed rule review was published in the September 14, 2001, issue of the *Texas Register* (26 TexReg 7131). No comments were received concerning the readoption of these sections. The comptroller has reviewed these sections, and determined that the reasons for adopting the sections continue to exist.

TRD-200205497
Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
Filed: August 21, 2002



Finance Commission of Texas

Title 7, Part 1

The Finance Commission of Texas (commission), on behalf of the Office of Consumer Credit Commissioner (agency), has completed the review Texas Administrative Code, Title 7, Part 1, Chapter 1, Subchapter A, (§§1.30-1.40 and §§1.101-1.107), relating to Regulated Loan Licenses, Subchapter D (§§1.401-1.407), relating to Licenses, Subchapter E (§§1.501-1.505), relating to Interest Charges in Loans, Subchapter F (§§1.601-1.605), relating to Alternate Charges for Consumer Loans, Subchapter G (§§1.701-1.708), relating to Interest and other Charges on Secondary Mortgage Loans, Subchapter H (§§1.751-1.761), relating to Refunds in Precomputed Loans, and Subchapter I (§§1.801-1.811), relating to Insurance, pursuant to §2001.039, Gov't Code.

Notice of the review of 7 TAC, Chapter 1, Subchapters A-I was published in the *Texas Register* as required on July 5, 2002, (27 TexReg 6057). The agency received no comments in response to this notice.

The agency believes that the reasons for initially adopting 7 TAC, Chapter 1, Subchapters A-I continue to exist. However, the agency determined that certain revisions are appropriate and necessary, including revisions to correct references that changed as a result of codification. Proposed new, amended, and repealed sections in Chapter 1, with discussion of the justification for proposed changes, were published in the July 5, 2002, issue of the *Texas Register*.

Subject to the proposed new, amended, and repealed sections in Chapter 1, the commission finds that the reasons for initially adopting these rules continue to exist, and readopts these sections without changes in accordance with the requirements of Government Code §2001.039.

TRD-200205398

Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Filed: August 16, 2002



Texas Department of Insurance

Title 28, Part 1

Pursuant to the notice of proposed rule review published in the April 12, 2002, *Texas Register*, (27 TexReg 3217), the Texas Department of Insurance has reviewed and considered for readoption, revision or repeal all sections as they existed on April 12, 2002, of the following chapters of Title 28, Part 1 of the Texas Administrative Code, in accordance with Texas Government Code, §2001.039: Chapter 1, General Administration; Chapter 5, Property and Casualty Insurance; Chapter 7, Corporate Financial Regulation; Chapter 8, Early Warning System for Insurers in Hazardous Condition; Chapter 9, Title Insurance; Chapter 11, Health Maintenance Organizations; Chapter 13, Miscellaneous Insurance; Chapter 15, Surplus Lines Insurance; Chapter 19, Agents Licensing; Chapter 21, Trade Practices; Chapter 23, Prepaid Legal Service; and, Chapter 26, Small Employer Health Insurance Regulations. The Texas Department of Insurance notes with regard to Chapter 19, Agents Licensing, that as a result of changes to licensing statutes enacted by the 77th Texas Legislature, in addition to and separate from this rule review process, Chapter 19, Agents Licensing, is undergoing review and revision to address changes necessitated by recent legislation.

The Texas Department of Insurance considered, among other things, whether the reasons for adoption of these rules continue to exist. TDI received no written comments regarding the review of TDI rules.

As a result of TDI's review, TDI determined that the reasons for adoption of several sections do not continue to exist. Therefore, TDI will consider for repeal sections in chapters 1, 7, 13, 19, 21. All notices of proposed repeal will be published in the *Texas Register*, as required by the Administrative Procedure Act.

TDI has determined that the reasons for adopting the remaining sections continue to exist and those sections are retained in their present form. However, other sections that were reviewed may be subsequently revised in accordance with TDI's internal procedures. Any such revisions will be accomplished in accordance with the Texas Administrative Procedure Act.

TRD-200205309
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: August 15, 2002



Texas State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy adopts the review of Chapter 295 (§295.15), concerning Administration of Immunizations and Vaccinations by a Pharmacist Under Written Protocol of a Physician, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

The agency finds the reason for the rule continues to exist.

TRD-200205421

Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: August 19, 2002



The Texas State Board of Pharmacy adopts the review of Chapter 301, concerning Fraud, Deceit, and Misrepresentation in the Practice of Pharmacy, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

In conjunction with this review, the agency has determined that the reason for the rule no longer exists and is adopting a repeal of Chapter 301 published elsewhere in this issue of the *Texas Register*.

TRD-200205422
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: August 19, 2002



The Texas State Board of Pharmacy adopts the review of Chapter 311, concerning Code of Conduct, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

In conjunction with this review, the agency is proposing amendments to Chapter 301 published elsewhere in this issue of the *Texas Register*.

The agency finds the reason for adopting the rule continues to exist.

TRD-200205423
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: August 19, 2002



TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 7 TAC §1.1216(b)(1)

“ITEMIZATION OF AMOUNT FINANCED

1. Amount financed: (2+3+4) \$ _____
2. Amount given to me directly \$ _____
3. Amount paid on my account (Net Balance - Prior Account) \$ _____
4. Amount paid to others on my behalf (A+B+C+D+E+F) \$ _____
(You may be retaining a portion of this amount.)
 - A. Cost of personal property insurance paid to insurance company \$ _____
 - B. Cost of single-interest insurance paid to insurance company \$ _____
 - C. Cost of optional credit insurance paid to insurance company or companies
Life \$ _____
Disability \$ _____
Involuntary Unemployment Insurance \$ _____
Total C: \$ _____
 - D. Non-Filing Insurance paid to insurance company \$ _____
 - E. Official fees paid to government agencies \$ _____
 - F. Payable to _____ \$ _____
Payable to _____ \$ _____
Payable to _____ \$ _____
Total F: \$ _____
5. Prepaid Finance Charge (Administrative Fee) \$ _____.”

Figure: 7 TAC §1.1216(b)(2)

“ITEMIZATION OF AMOUNT FINANCED

1. Amount financed: (2+3+4-5) \$ _____
2. Amount given to me directly \$ _____
3. Amount paid on my account (Net Balance - Prior Account) \$ _____
4. Amount paid to others on my behalf (A+B+C+D+E+F) \$ _____
(You may be retaining a portion of this amount.)
 - A. Cost of personal property insurance paid to insurance company \$ _____
 - B. Cost of single-interest insurance paid to insurance company \$ _____
 - C. Cost of optional credit insurance paid to insurance company or companies
Life \$ _____
Disability \$ _____
Involuntary Unemployment Insurance \$ _____
Total C: \$ _____
 - D. Non-Filing Insurance paid to insurance company \$ _____
 - E. Official fees paid to government agencies \$ _____
 - F. Payable to _____ \$ _____
Payable to _____ \$ _____
Payable to _____ \$ _____
Total F: \$ _____
5. Prepaid Finance Charge (Administrative Fee) \$ _____.”

Figure: 7 TAC §1.1216(g)(1)

"Interest will be calculated by using the add-on interest method. Add-on interest is calculated on the full amount of the cash advance and added as a lump sum to the cash advance for the full term of the loan. The interest charge will be:

- \$18.00 per \$100.00 on that portion of the cash advance that is \$1,500.00 or less; and
- \$8.00 per \$100.00 on that portion of the cash advance that is greater than \$1,500.00 through \$12,500.00.

You base the Finance Charge and the Total of Payments as if I will make each payment on the day it is due. I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. If I prepay my loan in full before the final payment is due I may save a portion of the Finance Charge. The amount I save will be figured using the scheduled installment earnings method as defined by the Texas Finance Code. I will not get a refund if the amount I save would be less than \$1.00."

Figure: 7 TAC §1.1216(g)(3)

“The annual rate of interest is: (1) 30% on the unpaid cash advance that is \$2,500.00 or less; (2) 24% on the unpaid cash advance that is greater than \$2,500.00 through \$5,250.00; and (3) 18% on the unpaid cash advance that is greater than \$5,250.00 through \$12,500.00. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not get a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.”

Figure: 7 TAC §1.1216(g)(5)

“The annual rate of interest is: (1) 30% on the unpaid cash advance that is \$2,500.00 or less; (2) 24% on the unpaid cash advance that is greater than \$2,500.00 through \$5,250.00; and (3) 18% on the unpaid cash advance that is greater than \$5,250.00 through \$12,500.00. This interest rate may not be the same as the Annual Percentage Rate. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment.”

Figure: 7 TAC §1.1216(k)

“PROPERTY INSURANCE: I must keep the collateral insured against damage or loss in the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. If I buy personal property insurance through you, the rate is not fixed or approved by the Texas Department of Insurance

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown in this contract. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. If you obtain collateral protection insurance, you will mail notice to my last known address.

Credit property insurance is required to obtain credit.

- | | | |
|--|----------|-------------|
| <input type="checkbox"/> Personal Property Insurance | \$ _____ | Term _____ |
| <input type="checkbox"/> Single Interest Insurance (Vehicle) | \$ _____ | Term _____” |

Figure: 7 TAC §1.1216(l)

“Credit insurance is optional.

Credit life insurance, credit disability insurance and involuntary unemployment insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost.

Credit Life, one buyer \$_____ Credit Life, both buyers \$_____
Term _____.

Credit Disability, one buyer \$_____ Credit Disability, both buyers \$_____
Term _____.

Credit Involuntary Unemployment Insurance, one buyer \$_____
Term _____.

If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance above.

Borrower's signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Co-Buyer's Signature: _____ Date: _____”

CONSUMER CREDIT DISCLOSURE - PROMISSORY NOTE

ACCOUNT / CONTRACT NO. _____
 CREDITOR / LENDER _____
 ADDRESS _____

DATE OF NOTE _____
 BORROWER _____
 ADDRESS _____

"I" and "me" and similar words mean each person who signs as a Borrower. "You" and "your" and similar words mean the Lender.

ANNUAL PERCENTAGE RATE
 The cost of my credit as a yearly rate.

%
FINANCE CHARGE
 The dollar amount the credit will cost me.

\$
Amount Financed
 The amount of credit provided to me or on my behalf.

\$
Total of Payments
 The amount I will have paid after I have made all payments as scheduled.

\$
My Payment Schedule will be

Number of Payments
 Amount of Payments
 When Payments Are Due

Security: You will have a security interest in the following described collateral _____
 If checked, Borrower is giving a security interest in:

Motor Vehicle Property Purchased with the Money from this Loan Personal Property Other

Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.

Prepayment: If I pay off early, I may be entitled to a refund of part of the Finance Charge.

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties

I promise to pay the total of Payments to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule. If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will

OPTION A

ITEMIZATION OF AMOUNT FINANCED

1. Amount Financed: (2+3+4)	\$ _____
2. Amount given to me directly	\$ _____
3. Amount paid on my account (Net Balance - Prior Account)	\$ _____

be 5% of the scheduled payment. If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. [Finance Charge Earnings and Refund Method clause]

If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules. I agree to pay you a fee of up to \$25 for a returned check. You can add the fee to the amount I owe or collect it separately.

4. Amount paid to others on my behalf (A + B + C + D + E + F)	\$ _____
(You may be retaining a portion of this amount.)	
A. Cost of personal property insurance paid to insurance company	\$ _____
B. Cost of single-interest insurance paid to insurance company	\$ _____
C. Cost of optional credit insurance paid to insurance company or companies	\$ _____
Life	\$ _____
Disability	\$ _____
Involuntary Unemployment Insurance	\$ _____
Total C:	\$ _____
D. Non-Filing Insurance paid to insurance company	\$ _____
E. Official fees paid to government agencies	\$ _____
F. Payable to: _____	\$ _____
Payable to: _____	\$ _____
Payable to: _____	\$ _____
Total F:	\$ _____
5. Prepaid Finance Charge (Administrative Fee)	\$ _____

I will be in default if:

- I do not timely make a payment;
- I break any promise I made in this agreement;
- I allow a judgment to be entered against me or the collateral;
- I sell, lease, or dispose of the collateral;
- I use the collateral for an illegal purpose; or
- you believe in good faith that I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan documents.

PROPERTY INSURANCE: I must keep the collateral insured against damage or loss in the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. If I buy personal property insurance through you, the rate is not fixed or approved by the Texas Department of Insurance.

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. If you obtain collateral protection insurance, you will mail notice to my last known address.

Credit property insurance is required to obtain credit.

Personal Property Insurance \$ _____ Term _____

Single Interest Insurance (Vehicle) \$ _____ Term _____

Credit insurance is optional.

Credit life insurance, credit disability insurance and involuntary unemployment insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost.

Credit Life, one buyer \$ _____ Credit Life, both buyers \$ _____ Term _____

Credit Disability, one buyer \$ _____ Credit Disability, both buyers \$ _____ Term _____

Credit Involuntary Unemployment Insurance, one buyer \$ _____ Term _____

If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Co-Buyer's Signature: _____ Date: _____

I agree:

1. You can mail any notice to me at my last address in your records. Your duty to give me notice will be satisfied when you mail it.
2. I promise that all information I gave you is true.
3. If I am in default, you may require me to repay the entire unpaid principal balance, and any accrued interest at once. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe. If you don't enforce your rights every time, you can still enforce them later. If this debt is referred to an attorney for collection, I will pay any attorney fees set by the court plus court costs.
4. I understand that you may seek payment from only me without first looking to any other Borrower.
5. I don't have to pay interest or other amounts that are more than the law allows.
6. If any part of this contract is declared invalid, the rest of the contract remains valid.
7. This written loan agreement is the final agreement between you and me and may not be changed by prior, current, or future agreements or statements between you and me. There are no oral agreements between us relating to this loan agreement. Any change to this agreement has to be in writing. Both you and I have to sign it.
8. If I am giving collateral for this loan, I will see the separate security agreement for more information and agreements.
9. Federal law and Texas law apply to this contract.

This lender is licensed and examined by the State of Texas B Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78750-4207, www.occ.state.tx.us, (512) 936-7600 B (800) 538-1579

I agree to the terms of this contract. I received a completed copy on _____.

X _____
Borrower
X _____
Borrower

Recibi la Forma Informe de Prestamo _____
I received the Spanish Disclosure.

CONSUMER CREDIT DISCLOSURE - PROMISSORY NOTE

ACCOUNT / CONTRACT NO. _____
 CREDITOR / LENDER _____
 ADDRESS _____

DATE OF NOTE _____
 BORROWER _____
 ADDRESS _____

"I" and "me" and similar words mean each person who signs as a Borrower. "You" and "your" and similar words mean the Lender.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. % \$	FINANCE CHARGE The dollar amount the credit will cost me. \$	Amount Financed The amount of credit provided to me or on my behalf. \$	Total of Payments The amount I will have paid after I have made all payments as scheduled. \$
--	---	--	--

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the following described collateral _____
 If checked, Borrower is giving a security interest in:
 Motor Vehicle Property Purchased with the Money from this Loan Personal Property Other
 Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.
 Prepayment: If I pay off early, I will not be entitled to a refund of part of the Finance Charge.
 Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

I promise to pay the cash advance plus the accrued interest to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule. If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment. If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. [Finance Charge Earnings and Refund Method clause]

If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules. I agree to pay you a fee of up to \$25 for a returned check. You can add the fee to the amount I owe or collect it separately.

I will be in default if:

- I do not timely make a payment;
- I break any promise I made in this agreement;
- I allow a judgment to be entered against me or the collateral;
- I sell, lease, or dispose of the collateral;
- I use the collateral for an illegal purpose; or
- you believe in good faith that I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan documents.

OPTION A

ITEMIZATION OF AMOUNT FINANCED

1. Amount Financed: (2+3+4)	\$ _____
2. Amount given to me directly	\$ _____
3. Amount paid on my account (Net Balance - Prior Account)	\$ _____
4. Amount paid to others on my behalf (A + B + C + D + E + F) (You may be retaining a portion of this amount.)	\$ _____
A. Cost of personal property insurance paid to insurance company	
	\$ _____
B. Cost of single-interest insurance paid to insurance company	
	\$ _____
C. Cost of optional credit insurance paid to insurance company or companies	
Life	\$ _____
Disability	\$ _____
Involuntary Unemployment Insurance	\$ _____
Total C:	\$ _____
D. Non-Filing Insurance paid to insurance company	\$ _____
E. Official fees paid to government agencies	\$ _____
F. Payable to: _____	\$ _____
Payable to: _____	\$ _____
Payable to: _____	\$ _____
Total F:	\$ _____
5. Prepaid Finance Charge (Administrative Fee)	\$ _____

PROPERTY INSURANCE: I must keep the collateral insured against damage or loss in the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. If I buy personal property insurance through you, the rate is not fixed or approved by the Texas Department of Insurance.

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. If you obtain collateral protection insurance, you will mail notice to my last known address.

Credit property insurance is required to obtain credit.

- Personal Property Insurance \$ _____ Term _____
 Single Interest Insurance (Vehicle) \$ _____ Term _____

Credit insurance is optional.

Credit life insurance, credit disability insurance and involuntary unemployment insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost.

- Credit Life, one buyer \$ _____ Credit Life, both buyers \$ _____ Term _____
 Credit Disability, one buyer \$ _____ Credit Disability, both buyers \$ _____ Term _____
 Credit Involuntary Unemployment Insurance, one buyer \$ _____ Term _____

If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Co-Buyer's Signature: _____ Date: _____

I agree:

1. You can mail any notice to me at my last address in your records. Your duty to give me notice will be satisfied when you mail it.
2. I promise that all information I gave you is true.
3. If I am in default, you may require me to repay the entire unpaid principal balance, and any accrued interest at once. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe. If you don't enforce your rights every time, you can still enforce them later. If this debt is referred to an attorney for collection, I will pay any attorney fees set by the court plus court costs.
4. I understand that you may seek payment from only me without first looking to any other Borrower.
5. I don't have to pay interest or other amounts that are more than the law allows.
6. If any part of this contract is declared invalid, the rest of the contract remains valid.
7. This written loan agreement is the final agreement between you and me and may not be changed by prior, current, or future agreements or statements between you and me. There are no oral agreements between us relating to this loan agreement. Any change to this agreement has to be in writing. Both you and I have to sign it.
8. If I am giving collateral for this loan, I will see the separate security agreement for more information and agreements.
9. Federal law and Texas law apply to this contract.

This lender is licensed and examined by the State of Texas B Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78750-4207, www.occc.state.tx.us, (512) 936-7600 B (800) 538-1579.

I agree to the terms of this contract. I received a completed copy on _____.

X _____
Borrower
X _____
Borrower

Recibi la Forma Informe de Prestamo _____
I received the Spanish Disclosure.

Figure: 7 TAC §1.1217(a)(9)

SECURITY AGREEMENT

ACCOUNT / CONTRACT NO. _____	DATE OF NOTE _____
CREDITOR / LENDER _____	BORROWER _____
ADDRESS _____	ADDRESS _____
_____	_____

"I" and "me" mean each person who signs as a Borrower. "You" mean the Lender/Secured Party.

We are entering into this security agreement at the same time that we are entering into a loan.

In exchange for the loan referenced above, I agree to the following terms and conditions:

1. To secure this loan, I give you a security interest in the collateral. The collateral includes the property listed below, improvements and attachments to the property, insurance refunds, and proceeds.
2. I own the collateral. I won't sell or transfer it without your written permission. I won't allow anyone else to have an interest in the collateral except you.
3. I will keep the collateral at my address shown above. I will promptly tell you in writing if I change my address. I won't permanently remove the collateral from Texas unless you give me written permission.
4. I will timely pay all taxes and license fees on the collateral. I will keep it in good repair. I won't use the collateral illegally.
5. Any change to this security agreement has to be in writing. Both you and I have to sign it.
6. Any default under my agreements with you will be a default of this security agreement.
7. If there is a default, you can take the collateral. You will only do this lawfully and without a breach of the peace. If you take my collateral, you will tell me how much I have to pay to get it back. If I don't pay you to get the collateral back, you can sell it or take other action allowed by law. You will send me notice at least 10 days before you sell it. My right to get the collateral back ends when you sell it. You can use the money you get from selling it to pay amounts the law allows and to reduce the amount I owe. If any money is left, you will pay it to me. If the money from the sale is not enough to pay all I owe, I must pay the rest of what I owe you plus interest.

DESCRIBE THE COLLATERAL COVERED BY THIS SECURITY AGREEMENT:

Borrower acknowledges receipt of a signed copy of this Security Agreement, signed this _____ day of _____, 20_____.

Accepted by Secured Party:

X _____
Borrower / Debtor

By: _____

X _____
Co-Borrower / Debtor

Name & Title: _____

Figure: 7 TAC §1.1226(b)(2)

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. %	FINANCE CHARGE The dollar amount the credit will cost me. \$	Amount Financed The amount of credit provided to me or on my behalf. \$	Total of Payments The amount I will have paid after I have made all payments as scheduled. \$
My Payment Schedule will be:			
<u>Number of Payments</u>	<u>Amount of Payments</u>	<u>When Payments Are Due</u>	

Security: You will have a security interest in my homestead.
Late Charge: (Scheduled Installment Earnings Method): If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.
Prepayment:(Scheduled Installment Earnings Method): If I pay off early, I may be entitled to a refund of part of the Finance Charge. I will not have to pay a penalty. (True Daily Earnings Method): If I pay off early, I will not have to pay a penalty.
Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Figure: 7 TAC §1.1226(b)(3)(A)

ITEMIZATION OF AMOUNT FINANCED		
1. Amount Financed: (2+3+4)		\$ _____
2. Amount given to me directly		\$ _____
3. Amount paid on my account (Net Balance - Prior Account)		\$ _____
4. Amount paid to others on my behalf (A + B + C +D + E) (You may be retaining a portion of this amount.)		\$ _____
A. Cost of hazard/property insurance paid to insurance company	\$ _____	
B. Cost of optional credit insurance paid to insurance company or companies	\$ _____	
Life	\$ _____	
Disability	\$ _____	
Total of B:		\$ _____
C. Title Insurance paid to insurance company		\$ _____
D. Official fees paid to government agencies		\$ _____
E. Payable to: _____	\$ _____	
Payable to: _____	\$ _____	
Payable to: _____	\$ _____	
Total of E:		\$ _____
5. Prepaid Finance Charge		\$ _____

Figure: 7 TAC §1.1226(b)(3)(B)

ITEMIZATION OF AMOUNT FINANCED	
1. Amount Financed: (2+3+4-5)	\$ _____
2. Amount given to me directly	\$ _____
3. Amount paid on my account (Net Balance - Prior Account)	\$ _____
4. Amount paid to others on my behalf (A + B + C +D + E) (You may be retaining a portion of this amount.)	\$ _____
A. Cost of hazard/property insurance paid to insurance company	\$ _____
B. Cost of optional credit insurance paid to insurance company or companies	\$ _____
Life	\$ _____
Disability	\$ _____
Total of B:	\$ _____
C. Title Insurance paid to insurance company	\$ _____
D. Official fees paid to government agencies	\$ _____
E. Payable to: _____	\$ _____
Payable to: _____	\$ _____
Payable to: _____	\$ _____
Total of E:	\$ _____
5. Prepaid Finance Charge	\$ _____

Figure: 7 TAC §1.1226(b)(8)(A)

“The annual rate of interest is ___%. This interest rate may be different from the Annual Percentage Rate. You figure the finance charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any points that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.”

Figure: 7 TAC §1.1226(b)(8)(B)

“The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any points that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.”

Figure: 7 TAC §1.1226(b)(8)(C)

“The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any points that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any charges I owe other than principal and interest.”

Figure: 7 TAC §1.1226(b)(10)

"I will be in default if:

- a. I do not timely make a payment to the person or place you direct;
- b. I break any promise I made in the Loan Agreement;
- c. I allow a lien to be entered against the homestead unless you agree in writing;
- d. I sell, lease, or dispose of the homestead;
- e. I use the homestead for an illegal purpose; or
- f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the Loan Agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default. You may not demand that I pay the loan in full solely because the market value of the homestead decreases or because I default under any indebtedness not secured by the homestead."

Figure: 7 TAC §1.1226(b)(11)

PROPERTY INSURANCE: I must keep my homestead insured against damage or loss in at least the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas.

If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. We will insure the homestead for the lesser amount of the value of the property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

Credit property insurance is not required to obtain credit.

Property Insurance \$ _____ Term _____

Figure: 7 TAC §1.1226(b)(12)

“Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

Credit Life, one borrower \$ _____ Credit Life, both borrowers \$ _____ Term _____
 Credit Disability, one borrower \$ _____ Credit Disability, both borrowers \$ _____ Term _____

If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance above.

Borrower’s Signature: _____ Date: _____

Co-Borrower’s Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

Premium Due with the First Month’s Loan Payment	First Year Premium	Insurance Type:	_____	_____
			Borrower’s Signature	Date
\$	\$			
\$	\$			
\$	\$		_____	_____
			Co- Borrower’s Signature	Date

The first year’s premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums. ** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

- (1) your receipt of my written request for cancellation;
- (2) cancellation under the insurance certificate or policy;
- (3) payment in full of my loan; and
- (4) my death.

** Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed ((four)) times the first month premium.”

Figure: 7 TAC §1.1226(c)(1)(I)

The Riders include (check box as applicable):

- Texas Home Equity Condominium Rider
- Texas Home Equity Planned Unit Development Rider
- Other: _____

Figure: 7 TAC §1.1226(c)(3)

"I give to the Trustee, in trust, with power of sale, My Homestead located in _____
County at (Street Address) (City) (State) (Zip Code) and further described as:

(Legal Description)

The security interest in My Homestead includes existing and future improvements, easements, fixtures, attachments, replacements and additions to the property, insurance refunds, and proceeds. To the extent required by law, the security interest is limited to homestead property. No additional real or personal property secures the Loan Agreement.

This Security Document secures:

- a. repayment of the Note, and all extensions and modifications of the Note; and
- b. the completion of my promises and agreements under the Loan Agreement.

I warrant that I own My Homestead and have the right to grant you an interest in it. I also warrant that My Homestead is free of any lien, except liens that are publicly recorded. I promise that I will generally defend the title to My Homestead. I will be responsible for your losses that result from a conflicting ownership right in My Homestead. Any default under my agreements with you will be a default of this Security Document."

Figure: 7 TAC §1.1226(c)(5)

"You and I promise:

I will timely pay the principal, interest, and any other amounts due under the Loan Agreement. I will comply with the requirements of my escrow account under the Loan Agreement. I will make payments in U.S. currency. If any check is returned to you unpaid, you may select the form of future payments including:

- a. cash;
- b. money order;
- c. certified check, bank check, treasurer's check or cashier's check drawn upon an institution whose deposits are federally insured; or
- d. Electronic Funds Transfer.

I will make payments to the location as you direct. You will apply my payments against the loan only when they are received at the designated location. You may change the location for payments if you give me notice.

You may return any partial payment that does not bring the account current. You may accept any payment or partial payment that does not bring the account current without losing your rights to refuse full or partial payments in the future. I will not use any offset or claim against you to relieve me from my duty to make payments under the Loan Agreement."

Figure: 7 TAC §1.1226(c)(6)

"I will pay you an amount ("Funds") for:

- a. taxes and assessments and other items that can take priority over your security interest in My Homestead under the Loan Agreement;
- b. leasehold payments or Ground Rents on My Homestead, if any; and
- c. premiums for any insurance you require under the Loan Agreement.

These items are called "Escrow Items." At any time during the term of the Loan Agreement, you may require me to pay Community Association Dues, Fees, and Assessments, if any, as an Escrow Item.

I will promptly give you all notices of amounts to be paid. I will pay you the Funds for Escrow Items unless you, at any time, waive my duty to pay you. Any escrow waiver must be in writing. If you waive my duty to pay you the Funds, I will pay, at your direction, the amounts due for waived Escrow Items. If you require, I will give you receipts showing timely payment. My duty to make Escrow Item payments and to provide receipts is an independent promise in the Loan Agreement.

If you grant me an escrow waiver, you may require me to pay the waived Escrow Items. If I fail to directly pay the waived Escrow Items, you may use any right given to you in the Loan Agreement. You may pay waived Escrow Items and require me to repay you. You may cancel the waiver for Escrow Items at any time by a notice that complies with the Loan Agreement. If you cancel the waiver, I will pay you all Funds that are then required under this Section.

At any time you may collect and hold Funds in an amount:

- a. to permit you to apply the Funds at the time specified under RESPA, and
- b. not to exceed the maximum amount you may require under RESPA.

You will estimate the amount of Funds due on the basis of current data and reasonable estimates of future expenses for Escrow Items or otherwise, according to Applicable Law. The Funds will be held in an institution whose deposits are federally insured (including you, if your deposits are insured) or in any Federal Home Loan Bank.

You will timely pay Escrow Items as required by RESPA. You will not charge me a fee for maintaining or handling my escrow account. You are not required to pay me any interest on the amounts in my escrow account. You will give me an annual accounting of the Funds as required by RESPA. If there is a surplus in my escrow account, you will follow RESPA. If there is a shortage or deficiency, as defined by RESPA, you will notify me, and I will pay you the amount necessary to make up the shortage or deficiency. I will repay the shortage or deficiency in no more than twelve monthly payments. You will promptly return to me any Funds after I paid the Loan Agreement in full."

Figure: 7 TAC §1.1226(c)(7)

"I will timely pay all taxes, assessments, charges, and fines relating to My Homestead that can take priority over this Security Document. I also will timely pay leasehold payments or Ground Rents on My Homestead, if any, and Community Association Dues, Fees, and Assessments, if any. If these items are Escrow Items, I will pay them as required by the Loan Agreement. I will promptly satisfy any lien that has priority over this Security Document unless I:

- a. agree in writing to pay the amount secured by the lien in a manner acceptable to you and only so long as I comply with my agreement;
- b. contest the lien in good faith by stopping the enforcement of the lien through legal proceedings (this contest must be satisfactory to you); or
- c. obtain an agreement from the holder of the lien that is satisfactory to you.

If you determine that any part of My Homestead is subject to a lien that can take priority over this Security Document, you may give me a notice identifying the lien. I will satisfy the lien or take one or more of the actions described above in this section within 10 days of the date of the notice."

"I will insure the current and future improvements to My Homestead against loss by fire, hazards included within the term "extended coverage," and any other hazards including earthquakes and floods, as you may require. I will keep this insurance in the amounts (including deductible levels) and for the periods that you require. You may change these insurance requirements during the term of the Loan Agreement. I have the right to choose an insurance carrier that is acceptable to you. You will exercise your right to disapprove reasonably.

I will pay any fee charged by the Federal Emergency Management Agency for the review of any flood zone determination. You may require me to pay either:

- a. a one-time charge for flood zone determination, certification and tacking services; or
- b. a one-time charge for flood zone determination and certification services; and subsequent charges each time re-mappings or similar changes occur that reasonably might affect the determination or certification.

If I do not keep any required insurance, you may obtain insurance at your option and at my expense. You are not required to purchase any type or amount of insurance. Any insurance you buy will always protect you, but may not protect me, my equity in My Homestead, my contents in My Homestead or protect me from certain hazards or liability. I understand that this insurance may cost significantly more than insurance I can purchase. I will owe you for the cost of any insurance that you buy under this section. Interest will be charged on this amount at the interest rate used by the Note. The interest will be charged from the date you made the payment. You will give me notice of the amounts I owe under this Section.

You may disapprove any insurance policy or renewal. Any insurance policy must include a standard mortgage clause, and must name you as mortgagee or a loss payee. I will give you all insurance premium receipts and renewal notices, if you request. If I obtain any optional insurance to cover damage or destruction of My Homestead, I will name you as a loss payee. In the event of loss, I will give notice to you and the insurance company. You may file a claim if I do not file one promptly. You will apply insurance proceeds to repair or restore My Homestead unless your interest will be reduced or it will be economically unreasonable to perform the work. You may hold the insurance proceeds until you have had an opportunity to inspect the work and you consider the work to be acceptable. The insurance proceeds may be given in a single payment or multiple payments as the work is completed. You will not pay any interest on the insurance proceeds. If I hire a public adjuster or other third party, I am responsible for the fee. It will not be paid from the insurance proceeds. The insurance proceeds will be applied to the amount I owe if your interest will be reduced or if the work will be economically unreasonable to perform. You will pay me any excess insurance proceeds. You will apply insurance proceeds in the order provided by the Loan Agreement.

If I abandon My Homestead you may file, negotiate, and settle any insurance claim. If the insurance company offers to settle a claim and I do not respond within thirty days to a notice from you, then you may settle the claim. The 30-day period will begin when the notice is given. If I abandon My Homestead, fail to respond to the offer of settlement, or you foreclose on My Homestead, I assign to you:

- a. my rights to any insurance proceeds in an amount not greater than what I owe; and
- b. any of my other rights under insurance policies covering My Homestead.

You may apply the proceeds to repair or restore My Homestead or to the amount that I owe."

Figure: 7 TAC §1.1226(c)(11)

"I commit actual fraud under Section 50(a)(6)(c), Article XVI of the Texas Constitution if I or any person acting at my direction or with my knowledge or consent:

- a. gives you materially false, misleading, or inaccurate information or statements; or
- b. fails to provide material information regarding the loan; or
- c. commits any other action or inaction that is determined to be actual fraud.

Material representations include statements concerning my occupancy of My Homestead as a Texas homestead, the statements and promises contained in any document that I sign in connection with the Loan Agreement, and the execution of an acknowledgment of fair market value of My Homestead as described in the Loan Agreement. If I commit actual fraud I will be in default of the Loan Agreement and may be held personally liable."

Figure: 7 TAC §1.1226(c)(12)

“You may do whatever is reasonable to protect your interest in My Homestead, including protecting or assessing the value of My Homestead, and securing or repairing My Homestead. You may do this when:

- a. I fail to perform the promises and agreements contained in the Loan Agreement;
- b. a legal proceeding might significantly affect your interest in My Homestead or rights under the Loan Agreement (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may have priority over the Loan Agreement or to enforce laws or regulations); or
- c. I abandon My Homestead.

In order to protect your interest in My Homestead, you may:

- a. pay amounts that are secured by a lien on My Homestead which has or will have priority over the Loan Agreement;
- b. appear in court; or
- c. pay reasonable attorneys' fees.

You may enter My Homestead to secure it. To secure My Homestead, you may make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. You have no duty to secure My Homestead. You are not liable for failing to take any action listed in this Section. Any amounts you pay under this Section will become my additional debt secured by the Loan Agreement. These amounts will earn interest at the rate specified in the Loan Agreement. The interest will begin on the date the amounts are paid. You will give me notice requesting payment of these amounts. If the Loan Agreement is on a leasehold, I will comply with the lease.”

Figure: 7 TAC §1.1226(c)(13)

“Any Miscellaneous Proceeds will be assigned and paid to you. If My Homestead is damaged, Miscellaneous Proceeds will be applied to restore or repair My Homestead. You will only do this if your interest in My Homestead will not be reduced and if the work will be economically reasonable to perform. You will have the right to hold Miscellaneous Proceeds until you inspect My Homestead to ensure the work has been completed to your satisfaction. You must make the inspection promptly. You may release proceeds for the work in a single payment or in multiple payments as the work is completed. You are not required to pay me any interest on the Miscellaneous Proceeds. The Miscellaneous Proceeds will be applied to the amount I owe if your interest in My Homestead will be reduced or the work will be economically unreasonable to perform. You will pay me any excess Miscellaneous Proceeds. You will apply Miscellaneous Proceeds in the order provided by the Loan Agreement.

You will apply all Miscellaneous Proceeds to the amount I owe in the event of a total taking, destruction, or loss in value of My Homestead. You will apply the Miscellaneous Proceeds even if all payments are current. You will give any excess Miscellaneous Proceeds to me.

A partial loss can include a taking, destruction, or loss in value. In the event of a partial loss, the Miscellaneous Proceeds will be applied in one of two ways:

- a. If the fair market value of My Homestead immediately before the partial loss is less than the amount I owe immediately before the partial loss, then you will apply all Miscellaneous Proceeds to the amount I owe even if all payments are current.
- b. If the fair market value of My Homestead immediately before the partial loss is equal to or greater than the amount I owe immediately before the partial loss, then you will apply Miscellaneous Proceeds to the amount I owe in the following manner:
 1. The amount of Miscellaneous Proceeds multiplied by the result of,
 2. The amount I owe immediately before the partial loss divided by the fair market value of My Homestead immediately before the partial loss.

You and I can agree otherwise in writing. You will give any excess Miscellaneous Proceeds to me.

If I abandon My Homestead you may apply Miscellaneous Proceeds either to restore or repair My Homestead, or to the amount I owe.

Damage to My Homestead caused by a third party may result in a civil proceeding. If you give me notice that the third party offers to settle a claim for damages to My Homestead and I fail to respond to you within thirty days, you may accept the offer and apply the Miscellaneous Proceeds either to restore or repair My Homestead or to the amount I owe. If the proceeding results in an award of damages, you will apply the Miscellaneous Proceeds according to this Section.”

Figure: 7 TAC §1.1226(c)(15)

"I understand that you may seek payment from me without first looking to any other person who signed the Note. Any person who signs this Security Document, but not the Note:

- a. has no duty to pay the sums secured by this Security Document;
- b. is not a surety or guarantor;
- c. only grants the person's interest in My Homestead under the terms of this Security Document; and
- d. grants the person's interest in My Homestead to comply with the requirements of Section 50(a)(6)(A), Article XVI of the Texas Constitution.

The lien against My Homestead is a voluntary lien and is a written agreement that shows the consent of each owner and each owner's spouse. You and I may extend, modify, or make any arrangements with respect to the terms of the Loan Agreement. Upon your approval, my successor who assumes my duties in writing will receive all of my rights and benefits under the Loan Agreement. I still will be responsible under the Loan Agreement unless you release me in writing. The Loan Agreement will extend to your assigns or successors."

Figure: 7 TAC §1.1226(c)(16)

“If an Applicable Law that sets a maximum charge is finally interpreted so that the interest, loan charges, or fees collected or to be collected with the Loan Agreement exceed the permitted amount, then you will:

- a. reduce the amount to the amount permitted; or
- b. refund the excessive amount to the me.

You may chose to apply this refund to the amount I owe or pay it directly to me. If you apply the refund to the amount I owe, the refund will be treated as a partial prepayment.

If I default, you will be able to charge me reasonable fees paid to an attorney who is not your employee to protect your interest in My Homestead.”

Figure: 7 TAC §1.1226(c)(19)

“As used in the Loan Agreement:

- a. words in the singular will mean and include the plural and vice versa; and
- b. the word "may" gives sole discretion without imposing any duty to take action.”

Figure: 7 TAC §1.1226(c)(22)

"I have the right to stop you from enforcing the Loan Agreement any time before the earliest of:

- a. 5 days before sale of My Homestead under any power of sale included in the Loan Agreement;
- b. the day required by Applicable Law for the termination of my right to reinstate; or
- c. the entry of a judgment enforcing the Loan Agreement.

I can stop the enforcement of the Loan Agreement and reinstate the Loan Agreement if all the following conditions are met:

- a. You are paid what I owe under the Loan Agreement as if no acceleration had occurred;
- b. I cure any default of any promise or agreement;
- c. You are paid all expenses allowed by Applicable Law, including reasonable attorneys' fees and other fees incurred for the purpose of protecting your interest in My Homestead and rights under the Loan Agreement;
- d. I comply with any reasonable requirement to assure you that your interest in My Homestead will remain intact; and
- e. I comply with any reasonable requirement to assure you that my ability to pay what I owe will remain intact.

You may require me to pay for the reinstatement in one or more of the following forms:

- a. cash;
- b. money order;
- c. certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are federally insured; or
- d. Electronic Funds Transfer.

Upon reinstatement, the Loan Agreement will remain effective as if no acceleration had occurred. However, this right to reinstate will not apply if I sell or transfer any interest in My Homestead without your permission."

Figure: 7 TAC §1.1226(c)(23)

"A full or partial interest in the Loan Agreement can be sold one or more times without prior notice to me. The sale may result in a change of the company servicing or handling the Loan Agreement. The company servicing or handling the Loan Agreement will collect my monthly payment and will comply with other servicing conditions required by the Loan Agreement or Applicable Law. In some cases, the company servicing or handling the Loan Agreement may change even if the Loan Agreement is not sold. If the company servicing or handling the Loan Agreement is changed, I will be given written notice of the change. The notice will state the name and address of the new company, the address to which my payments should be made, and any other information required by RESPA. If a different company services the Loan Agreement, the servicing duties to me will be transferred.

You or I must give notice of any violation of the Loan Agreement to the other and the opportunity to address the alleged violation before starting or joining any legal action. You and I will give each other a reasonable amount of time to address the alleged violation. If the law provides a specified time period that must be given to address a violation, that time period will be a reasonable time for purposes of this paragraph. Any notice of acceleration and opportunity to cure under the Loan Agreement will satisfy the notice and opportunity to address the alleged violation provisions of this Section.

You and I intend to strictly follow the provisions of the Texas Constitution that relate to the Loan Agreement (Section 50(a)(6), Article XVI of the Texas Constitution).

No agreement between you and me or any third party will limit your ability to comply with your duties under the Loan Agreement and the Applicable Law. The Loan Agreement is being made on the condition that you have a reasonable amount of time to correct any violation of Applicable Law. I will notify you of any violation and give you a reasonable amount of time to comply before taking any action. I will cooperate with your reasonable effort to correct the Loan Agreement. You will forfeit all principal and interest as required by Applicable Law if you have:

- a. received my notice;
- b. had a reasonable amount of time to correct the violation; and
- c. failed to correct the violation.

You and I are limiting all agreements so that all current or future interest or fees in connection with this Loan Agreement will not be greater than the highest amount allowed by Applicable Law.

You and I intend to conform the Loan Agreement to the provisions of the Texas Constitution and Texas law. If any promise, payment, duty or provision of the Loan Agreement is in conflict with the Applicable Law, then the promise, payment, duty or provision will be corrected or removed. This correction will be automatic and will not require any amendment or new document. Your right to correct any violation will survive my paying off the Loan Agreement. My right to correct will override any conflicting provision of the Loan Agreement.

Your right-to-comply as provided in this Section will survive the payoff of the Loan Agreement. The provisions of this Section will supersede any inconsistent provision of the Loan Agreement."

Figure: 7 TAC §1.1226(c)(24)

“Hazardous Substances

- a. “Hazardous Substances” means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials;
- b. “Environmental Law” means federal laws and laws of the jurisdiction where My Homestead is located that relate to health, safety or environmental protection;
- c. “Environmental Cleanup” includes any response action, remedial action, or removal action, as defined in Environmental Law; and
- d. “Environmental Condition” means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in My Homestead. I will not do or allow anyone else to do, anything affecting My Homestead

- a. that is in violation of any Environmental Law,
- b. that creates an Environmental Condition, or
- c. that, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of My Homestead.

The presence, use, or storage on My Homestead of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and for the maintenance of My Homestead are allowed. This includes Hazardous Substances found in consumer products.

I will promptly give you written notice of:

- a. any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving My Homestead and any Hazardous Substance or Environmental Law of which I have actual knowledge;
- b. any Environmental Condition, including any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and
- c. any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of My Homestead.

If I learn that, or am notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting My Homestead is necessary, I promptly will take all necessary remedial actions in accordance with Environmental Law. You will have no obligation for an Environmental Cleanup.”

Figure: 7 TAC §1.1226(c)(25)

“You will give me notice prior to acceleration if I am in default under the Loan Agreement. The notice will specify:

- a. the default;
- b. the action required to cure the default;
- c. a date, not less than 21 days from the date you give me notice, to cure the default; and
- d. that my failure to cure the default on or before the specified date will result in acceleration of all that I owe under the Loan Agreement and sale of My Homestead.

You will inform me of my right to reinstate after acceleration and my right to bring a court action to contest the alleged default or to assert any other defense to the acceleration and sale. If the default is not cured before the specified date, you have the option to require immediate payment in full of all I owe. If you are not paid all I owe, you may sell My Homestead or seek other remedies allowed by Applicable Law without further notice. You may collect your reasonable expenses incurred in seeking the remedies provided in this Section. These expenses may include court costs, attorneys’ fees, and costs of title search.

This lien against My Homestead may be foreclosed upon only by a court order. You may, at your option, follow any rules of civil procedure for expedited foreclosure proceedings related to the foreclosure of liens under Section 50(a)(6), Article XVI of the Texas Constitution (“Rules”). The power of sale granted by the Loan Agreement will be exercised according to the Rules. I understand the power of sale is not a confession of judgment or a power of attorney to confess judgment or an appearance by me in a judicial proceeding.”

Figure: 7 TAC §1.1226(c)(26)

“You have a fully enforceable lien on My Homestead. Your remedies for my default include an efficient means of foreclosure under the law. You and the Trustee have all powers to conduct a foreclosure except as limited by the Texas Supreme Court. If you choose to use the power of sale, you will give me notice of the time, place and terms of the sale by posting and filing notice at least 21 days before the sale as provided by law. You will give me notice by mail as required by law. The sale will be conducted at a public place. The sale will be held:

- a. on the first Tuesday of a month;
- b. at a time stated in the notice or no later than 3 hours after the time; and
- c. between 10:00 a.m. and 4:00 p.m.

I allow the Trustee to sell My Homestead to the highest bidder for cash in one or more parcels and in any order the Trustee determines. You may purchase My Homestead at any sale. The Rules will prevail in a conflict between the procedures and the Rules. If a conflict arises, the conflicting provision will be corrected in order to comply.

Trustee will give a Trustee’s deed to the foreclosure sale purchaser. A Trustee’s deed will convey:

- a. good title to My Homestead that cannot be defeated; and
- b. title with promises of general warranty from me.

I will defend the purchaser’s title to My Homestead against all claims and demands. The description of facts contained in the Trustee’s deed will be sufficient to legally prove the truth of the statements made in the deed. Trustee will apply the proceeds of the sale in the following order:

- a. to all expenses of the sale, including court costs and reasonable Trustee's and attorneys' fees;
- b. what I owe; and
- c. any excess to the person or persons legally entitled to it.

If My Homestead is sold through a foreclosure sale governed by this Section, I or any person in possession of My Homestead through me, will give up possession of My Homestead without delay. A person who does not give up possession is a holdover and may be removed by a court order.”

Figure: 7 TAC §1.1226(c)(28)

“You are entitled to all rights, superior title, liens and equities owned or claimed by any grantor or holder of any liens and debts due before the signing of the Loan Agreement. You are entitled to these rights whether you acquire the liens or debts by assignment or the holder releases them upon payment.

Each person who signs the Security Document is responsible for each promise and duty in the Security Document, subject to limitation of personal liability described below. The Texas Constitution provides that the Loan Agreement is given without personal liability against each owner of My Homestead and against the spouse of each owner. Personal liability may be obtained if the Loan Agreement was obtained by actual fraud. This means that, unless actual fraud is found by a court, you are only able to enforce your rights under the Loan Agreement against My Homestead. You are not able to seek personal liability against the owner of My Homestead or the spouse of an owner. If the Loan Agreement is obtained by actual fraud, then I will be personally liable for the payment of any amounts due under the Loan Agreement. This means that a personal judgment could be obtained against me for a deficiency as a result of a foreclosure sale of My Homestead. A personal judgment would subject my other assets for the payment of the debt.

Unless prohibited by the Texas Constitution, this Section will not:

- a. impair in any way the Loan Agreement or your right to collect all that I owe under the Loan Agreement;
- b. affect your right to any promise or condition of the Loan Agreement.”

Figure: 7 TAC §1.226(c)(32)

“One or more Trustees acting alone or together may exercise or perform all rights, remedies and duties of the Trustee under the Loan Agreement. You may remove or change any Trustee (e.g., add one or more Trustees or appoint a successor Trustee to any Trustee). This removal or change of Trustee must be in writing and may be:

- a. at your option;
- b. with or without cause; and
- c. by power of attorney or otherwise.

The substitute, additional or successor Trustee will receive, without any further act, the title, rights, remedies, powers and duties under the Loan Agreement and Applicable Law.

Trustee may rely, without liability, upon any notice, request, consent, demand, statement or other document reasonably believed by Trustee to be valid. Trustee will not be liable for any act or omission unless the act or omission is willful.”ⁱ

Figure: 7 TAC §1.1226(c)(33)

"I agree that you waive all terms in any of your current or future loan documentation that:

- a. creates a default of the Loan Agreement by a default of another obligation that is not secured by My Homestead;
- b. provides for collateral other than My Homestead (including cross collateralization or dragnet provisions);
- c. creates personal liability for me for the Loan Agreement (unless this loan was obtained by actual fraud); or
- d. creates a personal guaranty."

Figure: 7 TAC §1.1226(c)(35)

BY SIGNING BELOW, I accept and agree to the terms and promises contained in the Loan Agreement and in any Rider I sign which is recorded with it. [DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. THIS DOCUMENT MUST BE SIGNED AT THE OFFICE OF LENDER, AN ATTORNEY AT LAW OR A TITLE COMPANY. I MUST RECEIVE A COPY OF ANY DOCUMENT I SIGN.]

I MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THE LOAN AGREEMENT WITHOUT PENALTY OR CHARGE.

_____ (seal)
-Borrower

Printed Name: _____
(Please Complete)

_____ (seal)
-Borrower

_____ (seal)
-Borrower

_____ (seal)
-Borrower

(Acknowledgment on following page)

THIS IS AN EXTENSION OF CREDIT AS DEFINED BY SECTION 50(a)(6),
ARTICLE XVI OF THE TEXAS CONSTITUTION

TEXAS HOME EQUITY NOTE
(Fixed Rate – Second Lien)

ACCOUNT/CONTRACT NO. _____
CREDITOR/LENDER _____
ADDRESS _____

DATE OF NOTE _____
BORROWER _____
ADDRESS _____

A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder."

The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. _____ %	FINANCE CHARGE The dollar amount the credit will cost me. \$ _____	Amount Financed The amount of credit provided to me or on my behalf. \$ _____	Total of Payments The amount I will have paid after I have made all payments as scheduled. \$ _____	ITEMIZATION OF AMOUNT FINANCED 1. Amount Financed (2+3+4) \$ _____ 2. Amount given to me directly \$ _____ 3. Amount paid on my account (Net Balance-Prior Account) \$ _____ 4. Amount paid to others on my behalf \$ _____ (A+B+C+D+E) A. Cost of hazard/property insurance paid to insurance company \$ _____ B. Cost of optional credit insurance paid to insurance company or companies \$ _____ Life \$ _____ Disability \$ _____ Total B: \$ _____ C. Title Insurance paid to insurance company \$ _____ D. Official fees paid to government agencies \$ _____ E. Payable to: \$ _____ Payable to: \$ _____ Payable to: \$ _____ Total E: \$ _____ 5. Prepaid Finance Charge \$ _____								
My Payment Schedule will be:												
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;">Number of Payments</th> <th style="width: 30%;">Amount of Payments</th> <th style="width: 40%;">When Payments Are Due</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Number of Payments	Amount of Payments	When Payments Are Due									
Number of Payments	Amount of Payments	When Payments Are Due										
Security: You will have a security interest in my homestead. Late Charge: (Scheduled Installment Earnings Method): If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment. Prepayment: (Scheduled Installment Earnings Method): If I pay off early, I may be entitled to a refund of part of the Finance Charge. I will not have to pay a penalty. (True Daily Earnings Method): If I pay off early, I will not have to pay a penalty. Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.												

1. **BORROWER'S PROMISE TO PAY**

This loan is an Extension of Credit defined by Section 50(a)(6), Article XVI of the Texas Constitution. Scheduled Installment Earnings Method: I promise to pay the Total of Payments to the order of you. I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule. True Daily Earnings Method: I promise to pay the cash advance plus the accrued interest to the order of you. I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

2. **LATE CHARGE**

Scheduled Installment Earnings Method: If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment.

3. **AFTER MATURITY INTEREST**

If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

4. **PREPAYMENT**

Scheduled Installment Earnings Method: I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. True Daily Earnings Method: I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

5. FINANCE CHARGE AND REFUND METHOD

For contracts using Scheduled Installment Earnings Method - Section 342.301 rate loans: The annual rate of interest is ____%. This interest rate may be different from the Annual Percentage Rate. You figure the finance charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The Administrative Fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any points that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using Scheduled Installment Earnings Method with prepayments option - Section 342.301 rate loans: The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The Administrative Fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any points that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using True Daily Earnings Method - Section 342.301 rate loans: The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The Administrative Fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any points that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any charges I owe other than principal and interest..

6. DISHONORED CHECK FEE

I agree to pay you a fee of up to \$25 for a returned check. You may add the fee to the amount I owe or collect it separately.

7. DEFAULT

I will be in default if:

- a. I do not timely make a payment to the person or place you direct;
- b. I break any promise I made in the Loan Agreement;
- c. I allow a lien to be entered against the homestead unless you agree in writing;
- d. I sell, lease, or dispose of the homestead;
- e. I use the homestead for an illegal purpose; or
- f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the Loan Agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default. You may not demand that I pay the loan in full solely because the market value of the homestead decreases or because I default under any indebtedness not secured by the homestead.

8. PROPERTY INSURANCE

PROPERTY INSURANCE: I must keep my homestead insured against damage or loss in at least the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas.

If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. We will insure the homestead for the lesser amount of the value of the property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

Credit property insurance is not required to obtain credit.

Property Insurance \$ _____ Term _____

9. CREDIT INSURANCE

Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

Credit Life, one borrower \$ _____ Credit Life, both borrowers \$ _____ Term _____
 Credit Disability, one borrower \$ _____ Credit Disability, both borrowers \$ _____ Term _____

If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

_____ Borrower's Signature Date

Premium Due with the First Month's Loan Payment	First Year Premium	Insurance Type:
\$ _____	\$ _____	
\$ _____	\$ _____	
\$ _____	\$ _____	

_____ Co-Borrower's Signature Date

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums. ** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

- (1) your receipt of my written request for cancellation;
- (2) cancellation under the insurance certificate or policy;
- (3) payment in full of my loan; and
- (4) my death

**Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed ((four)) times the first month premium.

10. MAILING OF NOTICES TO BORROWER

You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it by first class mail.

11. DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION

If all or any interest in the homestead is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law.

If you exercise this option, you will give me notice of acceleration (i.e., payment of all I owe at once). This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement.

12. NO WAIVER OF LENDER'S RIGHTS

If you don't enforce your rights every time, you can still enforce them later.

13. COLLECTION EXPENSES

If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by law, including Section 50(a)(6), Article XVI of the Texas Constitution. These expenses include, for example, reasonable attorneys' fees. I understand that these fees are not for maintaining or servicing this Loan Agreement.

14. JOINT LIABILITY

I understand that you may seek payment from only me without first looking to any other Borrower. You can enforce your rights under this Loan Agreement solely against the homestead. This Loan Agreement is made without personal liability against each owner of the homestead and against the spouse of each owner unless the owner or spouse obtained this loan by actual fraud.

If this loan is obtained by actual fraud, I will be personally liable for the debt, including a judgment for any deficiency that results from your sale of the homestead for an amount less than is owed under this Loan Agreement.

15. USURY SAVINGS CLAUSE

I do not have to pay interest or other amounts that are more than the law allows.

16. SAVINGS CLAUSE

If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with law, that law will control. The part of the Loan Agreement that conflicts with the law will be modified to comply with the law. The rest of the Loan Agreement remains valid.

17. PRIOR AGREEMENTS

This written Loan Agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between us relating to this Loan Agreement. Any change to this agreement must be in writing. Both you and I have to sign written agreements.

18. HOMESTEAD IS SUBJECT TO THE LIEN OF THE SECURITY DOCUMENT

The homestead described above by the property address is subject to the lien of the Security Document. I will see the separate Security Document for more information about my rights and responsibilities.

19. APPLICATION OF LAW

Federal law and Texas law apply to this Loan Agreement. The Texas Constitution will be applied to resolve any conflict between the Texas Constitution and any other law.

20. COMPLAINTS AND INQUIRIES NOTICE

This lender is licensed and examined by the State of Texas – Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems.

Office of Consumer Credit commissioner
2601 North Lamar Boulevard, Austin, Texas 78705-4207
www.occc.state.tx.us
(512) 936-7600 – (800) 538-1579

21. COLLATERAL

The homestead described above by the property address is subject to the lien of the Security Document.

Do not sign if there are blanks left to be completed in this document. This document must be signed at the office of the Lender, an attorney at law, or a title company.

I must receive a copy of this document after I have signed it. I agree to the terms of this loan agreement.

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower
(Sign Original Only)

THIS SECURITY DOCUMENT SECURES AN EXTENSION OF CREDIT AS DEFINED BY SECTION 50(a)(6), ARTICLE XVI OF THE TEXAS CONSTITUTION.

TEXAS HOME EQUITY SECURITY DOCUMENT (Second Lien)

This Security Document is not intended to finance Borrower's acquisition of the Property.

DEFINITIONS

(A) "Loan Agreement" means the Note, Security Document, deed of trust, any other related document, or any combination of those documents, under which you have extended credit to me.

(B) "Security Document" means this document, which is dated _____, together with all Riders to this document.

(C) "I" or "me" means _____, the grantor under this Security Document and the person who signed the Note ("Borrower").

(D) "You" means _____, the Lender and any holder entitled to receive payments under the Note. Your address is _____. You are the beneficiary under this Security Document.

(E) "Trustee" is _____. Trustee's address is _____.

(F) "Note" means the promissory Note signed by me and dated _____. The Note states that the amount I owe you is _____ Dollars (U.S. \$____) plus interest. I have promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than _____.

(G) "My Homestead" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Extension of Credit" means the debt evidenced by the Note, as defined by Section 50(a)(6), Article XVI of the Texas Constitution and all the documents executed in connection with the debt.

(I) "Riders" means all Riders to this Security Document that I execute. The Riders include (*check box as applicable*):

- Texas Home Equity Condominium Rider
- Texas Home Equity Planned Unit Development Rider
- Other: _____

(J) "Applicable Law" means all controlling applicable federal, Texas and local constitutions, statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on me or My Homestead by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section ____ of this Security Document.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than proceeds paid under my insurance) for: (i) damage or destruction of My Homestead; (ii) condemnation or other taking of all or any part of My Homestead; (iii) conveyance instead of condemnation; or (iv) misrepresentations or omissions related to the value or condition of My Homestead.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note plus (ii) any amounts under this Security Document.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Document, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of me" means any party that has taken title to My Homestead, whether or not that party has assumed my obligations under the Loan Agreement.

(R) "Ground Rents" means amounts I owe if I rented the real property under the buildings covered by this Security Document. Such an arrangement usually takes the form of a long-term "ground lease."

SECURED AGREEMENT

To secure this loan, I give you a security interest in My Homestead including existing and future improvements, easements, fixtures, attachments, replacements and additions to the property, insurance refunds, and proceeds. This security interest is intended to be limited to the homestead property and not other collateral, as required under the Texas Constitution.

TRANSFER OF RIGHTS IN THE PROPERTY

I give to the Trustee, in trust, with power of sale, My Homestead located in _____ County at (Street Address) (City) (State)(Zip Code) and further described as:

(Legal Description)

The security interest in My Homestead includes existing and future improvements, easements, fixtures, attachments, replacements and additions to the property, insurance refunds, and proceeds. To the extent required by law, the security interest is limited to homestead property. No additional real or personal property secures the Loan Agreement.

This Security Document secures:

- a. repayment of the Note, and all extensions and modifications of the Note; and
- b. the completion of my promises and agreements under the Loan Agreement.

I warrant that I own My Homestead and have the right to grant you an interest in it. I also warrant that My Homestead is free of any lien, except liens that are publicly recorded. I promise that I will generally defend the title to My Homestead. I will be responsible for your losses that result from a conflicting ownership right in My Homestead. Any default under my agreements with you will be in default of this Security Document.

YOU AND I PROMISE:

LATE CHARGES AND PREPAYMENT

I will timely pay the principal, interest, and any other amounts due under the Loan Agreement. I will comply with the requirements of my escrow account under the Loan Agreement. I will make payments in U.S. currency. If any check is returned to you unpaid, you may select the form of future payments including:

- a. cash;
- b. money order;
- c. certified check, bank check, treasurer's check or cashier's check drawn upon an institution whose deposits are federally insured; or
- d. Electronic Funds Transfer.

I will make payments to the location as you direct. You will apply my payments against the loan only when they are received at the designated location. You may change the location for payments if you give me notice.

You may return any partial payment that does not bring the account current. You may accept any payment or partial payment that does not bring the account current without losing your rights to refuse full or partial payments in the future. I will not use any offset or claim against you to relieve me from my duty to make payments under the Loan Agreement.

FUNDS FOR ESCROW ITEMS

I will pay you an amount ("Funds") for:

- a. taxes and assessments and other items that can take priority over your security interest in My Homestead under the Loan Agreement;
- b. leasehold payments or Ground Rents on My Homestead, if any; and
- c. premiums for any insurance you require under the Loan Agreement.

These items are called "Escrow Items." At any time during the term of the Loan Agreement, you may require me to pay Community Association Dues, Fees, and Assessments, if any, as an Escrow Item.

I will promptly give you all notices of amounts to be paid. I will pay you the Funds for Escrow Items unless you, at any time, waive my duty to pay you. Any escrow waiver must be in writing. If you waive my duty to pay you the Funds, I will pay, at your direction, the amounts due for waived Escrow Items. If you require, I will give you receipts showing timely payment. My duty to make Escrow Item payments and to provide receipts is an independent promise in the Loan Agreement.

If you grant me an escrow waiver, you may require me to pay the waived Escrow Items. If I fail to directly pay the waived Escrow Items, you may use any right given to you in the Loan Agreement. You may pay waived Escrow Items and require me to repay you. You may cancel the waiver for Escrow Items at any time by a notice that complies with the Loan Agreement. If you cancel the waiver, I will pay you all Funds that are then required under this Section.

At any time you may collect and hold Funds in an amount:

- a. to permit you to apply the Funds at the time specified under RESPA, and
- b. not to exceed the maximum amount you may require under RESPA.

You will estimate the amount of Funds due on the basis of current data and reasonable estimates of future expenses for Escrow Items or otherwise, according to Applicable Law. The Funds will be held in an institution whose deposits are federally insured (including you, if your deposits are insured) or in any Federal Home Loan Bank.

You will timely pay Escrow Items as required by RESPA. You will not charge me a fee for maintaining or handling my escrow account. You are not required to pay me any interest on the amounts in my escrow account. You will give me an annual accounting of the Funds as required by RESPA. If there is a surplus in my escrow account, you will follow RESPA. If there is a shortage or deficiency, as defined by RESPA, you will notify me, and I will pay you the amount necessary to make up the shortage or deficiency. I will repay the shortage or deficiency in no more than twelve monthly payments. You will promptly return to me any Funds after I paid the Loan Agreement in full.

CHARGES AND LIENS

I will timely pay all taxes, assessments, charges, and fines relating to My Homestead that can take priority over this Security Document. I also will timely pay leasehold payments or Ground Rents on My Homestead, if any, and Community Association Dues, Fees, and Assessments, if any. If these items are Escrow Items, I will pay them as required by the Loan Agreement. I will promptly satisfy any lien that has priority over this Security Document unless I:

- a. agree in writing to pay the amount secured by the lien in a manner acceptable to you and only so long as I comply with my agreement;
- b. contest the lien in good faith by stopping the enforcement of the lien through legal proceedings (this contest must be satisfactory to you); or
- c. obtain an agreement from the holder of the lien that is satisfactory to you.

If you determine that any part of My Homestead is subject to a lien that can take priority over this Security Document, you may give me a notice identifying the lien. I will satisfy the lien or take one or more of the actions described above in this section within 10 days of the date of the notice.

PROPERTY INSURANCE

I will insure the current and future improvements to My Homestead against loss by fire, hazards included within the term "extended coverage," and any other hazards including earthquakes and floods, as you may require. I will keep this insurance in the amounts (including deductible levels) and for the periods that you require. You may change these insurance requirements during the term of the Loan Agreement. I have the right to choose an insurance carrier that is acceptable to you. You will exercise your right to disapprove reasonably.

I will pay any fee charged by the Federal Emergency Management Agency for the review of any flood zone determination. You may require me to pay either:

- a. a one-time charge for flood zone determination, certification and tracking services; or
- b. a one-time charge for flood zone determination and certification services; and subsequent charges each time re-mappings or similar changes occur that reasonably might affect the determination or certification.

If I do not keep any required insurance, you may obtain insurance at your option and at my expense. You are not required to purchase any type or amount of insurance. Any insurance you buy will always protect you, but may not protect me, my equity in My Homestead, my contents in My Homestead or protect me from certain hazards or liability. I understand that this insurance may cost significantly more than insurance I can purchase. I will owe you for the cost of any insurance that you buy under this section. Interest will be charged on this amount at the interest rate used by the Note. The interest will be charged from the date you made the payment. You will give me notice of the amounts I owe under this Section.

You may disapprove any insurance policy or renewal. Any insurance policy must include a standard mortgage clause, and must name you as mortgagee or a loss payee. I will give you all insurance premium receipts and renewal notices, if you request. If I obtain any optional

insurance to cover damage or destruction of My Homestead, I will name you as a loss payee. In the event of loss, I will give notice to you and the insurance company. You may file a claim if I do not file one promptly. You will apply insurance proceeds to repair or restore My Homestead unless your interest will be reduced or it will be economically unreasonable to perform the work. You may hold the insurance proceeds until you have had an opportunity to inspect the work and you consider the work to be acceptable. The insurance proceeds may be given in a single payment or multiple payments as the work is completed. You will not pay any interest on the insurance proceeds. If I hire a public adjuster or other third party, I am responsible for the fee. It will not be paid from the insurance proceeds. The insurance proceeds will be applied to the amount I owe if your interest will be reduced or if the work will be economically unreasonable to perform. You will pay me any excess insurance proceeds. You will apply insurance proceeds in the order provided by the Loan Agreement.

If I abandon My Homestead you may file, negotiate, and settle any insurance claim. If the insurance company offers to settle a claim and I do not respond within thirty days to a notice from you, then you may settle the claim. The 30-day period will begin when the notice is given. If I abandon My Homestead, fail to respond to the offer of settlement, or you foreclose on My Homestead, I assign to you:

- a. my rights to any insurance proceeds in an amount not greater than what I owe; and
- b. any of my other rights under insurance policies covering My Homestead.

You may apply the proceeds to repair or restore My Homestead or to the amount that I owe.

HOMESTEAD

I now occupy and use the property secured by this Security Document as my Texas homestead.

PRESERVATION, MAINTENANCE, PROTECTION, AND INSPECTION OF THE PROPERTY

I will not destroy, damage or impair My Homestead, allow it to deteriorate, or commit waste. Whether or not I live in My Homestead, I will maintain it in order to prevent it from deteriorating or decreasing in value due to its condition. I will promptly repair the damage to My Homestead to avoid further deterioration or damage unless you and I agree in writing that it is economically unreasonable. I will be responsible for repairing or restoring My Homestead only if you release the insurance or condemnation proceeds for the damage to or the taking of My Homestead. You may release proceeds for the repairs and restoration in a single payment or in a series of payments as the work is completed. I still am obligated to complete repairs or restoration of My Homestead even if there are not enough proceeds to complete the work. You or your agent may inspect My Homestead. You may inspect the interior of My Homestead with reasonable cause. You will give me notice stating reasonable cause when or before the interior inspection occurs.

CONDITIONS CAUSING ACTUAL FRAUD

I commit actual fraud under Section 50(a)(6)(c), Article XVI of the Texas Constitution if I or any person acting at my direction or with my knowledge or consent:

- a. gives you materially false, misleading, or inaccurate information or statements;
- b. fails to provide material information regarding the loan; or
- c. commits any other action or inaction that is determined to be actual fraud.

Material representations include statements concerning my occupancy of My Homestead as a Texas homestead, the statements and promises contained in any document that I sign in connection with the Loan Agreement, and the execution of an acknowledgment of fair market value of My Homestead as described in the Loan Agreement. If I commit actual fraud I will be in default of the Loan Agreement and may be held personally liable.

PROTECTION OF LENDER'S INTEREST IN THE PROPERTY AND RIGHTS UNDER THE SECURITY DOCUMENT

You may do whatever is reasonable to protect your interest in My Homestead, including protecting or assessing the value of My Homestead, and securing or repairing My Homestead. You may do this when:

- a. I fail to perform the promises and agreements contained in the Loan Agreement;
- b. a legal proceeding might significantly affect your interest in My Homestead or rights under the Loan Agreement (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may have priority over the Loan Agreement or to enforce laws or regulations); or
- c. I abandon My Homestead.

In order to protect your interest in My Homestead, you may:

- a. pay amounts that are secured by a lien on My Homestead which has or will have priority over the Loan Agreement;
- b. appear in court; or
- c. pay reasonable attorneys' fees.

You may enter My Homestead to secure it. To secure My Homestead, you may make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. You have no duty to secure My Homestead. You are not liable for failing to take any action listed in this Section. Any amounts you pay

under this Section will become my additional debt secured by the Loan Agreement. These amounts will earn interest at the rate specified in the Loan Agreement. The interest will begin on the date the amounts are paid. You will give me notice requesting payment of these amounts. If the Loan Agreement is on a leasehold, I will comply with the lease.

ASSIGNMENT OF MISCELLANEOUS PROCEEDS AND FORFEITURE

Any Miscellaneous Proceeds will be assigned and paid to you. If My Homestead is damaged, Miscellaneous Proceeds will be applied to restore or repair My Homestead. You will only do this if your interest in My Homestead will not be reduced and if the work will be economically reasonable to perform. You will have the right to hold Miscellaneous Proceeds until you inspect My Homestead to ensure the work has been completed to your satisfaction. You must make the inspection promptly. You may release proceeds for the work in a single payment or in multiple payments as the work is completed. You are not required to pay me any interest on the Miscellaneous Proceeds. The Miscellaneous Proceeds will be applied to the amount I owe if your interest in My Homestead will be reduced or the work will be economically unreasonable to perform. You will pay me any excess Miscellaneous Proceeds. You will apply Miscellaneous Proceeds in the order provided by the Loan Agreement.

You will apply all Miscellaneous Proceeds to the amount I owe in the event of a total taking, destruction, or loss in value of My Homestead. You will apply the Miscellaneous Proceeds even if all payments are current. You will give any excess Miscellaneous Proceeds to me.

A partial loss can include a taking, destruction, or loss in value. In the event of a partial loss, the Miscellaneous Proceeds will be applied in one of two ways:

- a. If the fair market value of My Homestead immediately before the partial loss is less than the amount I owe immediately before the partial loss, then you will apply all Miscellaneous Proceeds to the amount I owe even if all payments are current.
- b. If the fair market value of My Homestead immediately before the partial loss is equal to or greater than the amount I owe immediately before the partial loss, then you will apply Miscellaneous Proceeds to the amount I owe in the following manner:
 1. The amount of Miscellaneous Proceeds multiplied by the result of,
 2. The amount I owe immediately before the partial loss divided by the fair market value of My Homestead immediately before the partial loss.

You and I can agree otherwise in writing. You will give any excess Miscellaneous Proceeds to me.

If I abandon My Homestead you may apply Miscellaneous Proceeds either to restore or repair My Homestead, or to the amount I owe.

Damage to My Homestead caused by a third party may result in a civil proceeding. If you give me notice that the third party offers to settle a claim for damages to My Homestead and I fail to respond to you within thirty days, you may accept the offer and apply the Miscellaneous Proceeds either to restore or repair My Homestead or to the amount I owe. If the proceeding results in an award of damages, you will apply the Miscellaneous Proceeds according to this Section.

FORBEARANCE NOT A WAIVER

My successors and I will not be released from liability if you extend the time for payment or modify the payment schedule. If I pay late, you will not have to sue me or my successor to require timely future payments. You may refuse to extend time for payment or modify this Loan Agreement even if I request it. If you do not enforce your rights every time, you may enforce them later.

JOINT AND SEVERAL LIABILITY, SECURITY DOCUMENT EXECUTION, SUCCESSORS OBLIGATED

I understand that you may seek payment from me without first looking to any other person who signed the Note. Any person who signs this Security Document, but not the Note:

- a. has no duty to pay the sums secured by this Security Document;
- b. is not a surety or guarantor;
- c. only grants the person's interest in My Homestead under the terms of this Security Document; and
- d. grants the person's interest in My Homestead to comply with the requirements of Section 50(a)(6)(A), Article XVI of the Texas Constitution.

The lien against My Homestead is a voluntary lien and is a written agreement that shows the consent of each owner and each owner's spouse. You and I may extend, modify, or make any arrangements with respect to the terms of the Loan Agreement. Upon your approval, my successor who assumes my duties in writing will receive all of my rights and benefits under the Loan Agreement. I still will be responsible under the Loan Agreement unless you release me in writing. The Loan Agreement will extend to your assigns or successors.

EXTENSION OF CREDIT CHARGES

If an Applicable Law that sets a maximum charge is finally interpreted so that the interest, loan charges, or fees collected or to be collected with the Loan Agreement exceed the permitted amount, then you will:

- a. reduce the amount to the amount permitted; or
- b. refund the excessive amount to the me.

You may chose to apply this refund to the amount I owe or pay it directly to me. If you apply the refund to the amount I owe, the refund will be treated as a partial prepayment.

If I default, you will be able to charge me reasonable fees paid to an attorney who is not your employee to protect your interest in My Homestead.

DELIVERY OF NOTICES

Under the Loan Agreement, you and I will give notices to each other in writing. Any notice under the Loan Agreement will be considered given to me when it is mailed by first class mail or when actually delivered to me at my address if given by another means. You will give notice to My Homestead address unless I provide you a different address. I will notify you promptly of any change of address. I will comply with any reasonable procedure for giving a change of address that you provide. There will only be one address for notice under the Loan Agreement. Notice to me will be considered notice to all persons who are obligated under the Loan Agreement unless Applicable Law requires a separate notice. I may give you notice by delivering or mailing it by first class mail to the address provided by you, unless you require a different procedure. You, however, will not receive notice under the Loan Agreement until you actually receive it. Legal requirements governing notices subject to the Loan Agreement will prevail over conditions in the Loan Agreement.

GOVERNING LAW AND SEVERABILITY

The Loan Agreement will be governed by Texas and federal law. If any provision in the Loan Agreement conflicts with any legal requirement, all non-conflicting provisions will remain effective.

RULES OF CONSTRUCTION

As used in the Loan Agreement:

- a. words in the singular will mean and include the plural and vice versa; and
- b. the word "may" gives sole discretion without imposing any duty to take action.

LOAN AGREEMENT COPIES

At the time the Loan Agreement is made, you will give me copies of all documents I sign.

TRANSFER OF INTEREST IN PROPERTY

Interest in My Homestead" means any legal or beneficial interest. This term includes those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement (the intent of which is the transfer of title by me at a future date to a purchaser). If any part of My Homestead is sold or transferred without your prior written permission, you may require immediate payment of all I owe. You will not exercise this option if disallowed by Applicable Law. If you accelerate, you will give me notice. The notice of acceleration will allow me at least 21 days from the date the notice is given to pay all I owe. If I fail to timely pay all I owe, you may pursue any remedy allowed by the Loan Agreement without further notice or demand.

BORROWER'S RIGHT TO REINSTATE AFTER ACCELERATION

I have the right to stop you from enforcing the Loan Agreement any time before the earliest of:

- a. 5 days before sale of My Homestead under any power of sale included in the Loan Agreement;
- b. the day required by Applicable Law for the termination of my right to reinstate; or
- c. the entry of a judgment enforcing the Loan Agreement.

I can stop the enforcement of the Loan Agreement and reinstate the Loan Agreement if all the following conditions are met:

- a. You are paid what I owe under the Loan Agreement as if no acceleration had occurred;
- b. I cure any default of any promise or agreement;
- c. You are paid all expenses allowed by Applicable Law, including reasonable attorneys' fees and other fees incurred for the purpose of protecting your interest in My Homestead and rights under the Loan Agreement;
- d. I comply with any reasonable requirement to assure you that your interest in My Homestead will remain intact; and
- e. I comply with any reasonable requirement to assure you that my ability to pay what I owe will remain intact.

You may require me to pay for the reinstatement in one or more of the following forms:

- a. cash;
- b. money order;
- c. certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are federally insured; or
- d. Electronic Funds Transfer.

Upon reinstatement, the Loan Agreement will remain effective as if no acceleration had occurred. However, this right to reinstate will not apply if I sell or transfer any interest in My Homestead without your permission.

SALE OF NOTE, CHANGE OF LOAN SERVICER, NOTICE OF GRIEVANCE, LENDER'S RIGHT TO COMPLY

A full or partial interest in the Loan Agreement can be sold one or more times without prior notice to me. The sale may result in a change of the company servicing or handling the Loan Agreement. The company servicing or handling the Loan Agreement will collect my monthly payment and will comply with other servicing conditions required by the Loan Agreement or Applicable Law. In some cases, the company servicing or handling the Loan Agreement may change even if the Loan Agreement is not sold. If the company servicing or handling the Loan Agreement is changed, I will be given written notice of the change. The notice will state the name and address of the new company, the address to which my payments should be made, and any other information required by RESPA. If a different company services the Loan Agreement, the servicing duties to me will be transferred.

You or I must give notice of any violation of the Loan Agreement to the other and the opportunity to address the alleged violation before starting or joining any legal action. You and I will give each other a reasonable amount of time to address the alleged violation. If the law provides a specified time period that must be given to address a violation, that time period will be a reasonable time for purposes of this paragraph. Any notice of acceleration and opportunity to cure under the Loan Agreement will satisfy the notice and opportunity to address the alleged violation provisions of this Section.

You and I intend to strictly follow the provisions of the Texas Constitution that relate to the Loan Agreement (Section 50(a)(6), Article XVI of the Texas Constitution).

No agreement between you and me or any third party will limit your ability to comply with your duties under the Loan Agreement and the Applicable Law. The Loan Agreement is being made on the condition that you have a reasonable amount of time to correct any violation of Applicable Law. I will notify you of any violation and give you a reasonable amount of time to comply before taking any action. I will cooperate with your reasonable effort to correct the Loan Agreement. You will forfeit all principal and interest as required by Applicable Law if you have:

- a. received my notice;
- b. had a reasonable amount of time to correct the violation; and
- c. failed to correct the violation.

You and I are limiting all agreements so that all current or future interest or fees in connection with this Loan Agreement will not be greater than the highest amount allowed by Applicable Law.

You and I intend to conform the Loan Agreement to the provisions of the Texas Constitution and Texas law. If any promise, payment, duty or provision of the Loan Agreement is in conflict with the Applicable Law, then the promise, payment, duty or provision will be corrected or removed. This correction will be automatic and will not require any amendment or new document. Your right to correct any violation will survive my paying off the Loan Agreement. My right to correct will override any conflicting provision of the Loan Agreement.

Your right-to-comply as provided in this Section will survive the payoff of the Loan Agreement. The provisions of this Section will supersede any inconsistent provision of the Loan Agreement.

HAZARDOUS SUBSTANCES

Hazardous Substance

- a. "Hazardous Substances" means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials;
- b. "Environmental Law" means federal laws and laws of the jurisdiction where My Homestead is located that relate to health, safety or environmental protection;
- c. "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and
- d. "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in My Homestead. I will not do or allow anyone else to do, anything affecting My Homestead

- a. that is in violation of any Environmental Law,
- b. that creates an Environmental Condition, or
- c. that, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of My Homestead.

The presence, use, or storage on My Homestead of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and for the maintenance of My Homestead are allowed. This includes Hazardous Substances found in consumer products.

I will promptly give you written notice of:

- a. any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving My Homestead and any Hazardous Substance or Environmental Law of which I have actual knowledge;
- b. any Environmental Condition, including any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and
- c. any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of My Homestead.

If I learn that, or am notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting My Homestead is necessary, I promptly will take all necessary remedial actions in accordance with Environmental Law. You will have no obligation for an Environmental Cleanup.

ACCELERATION AND REMEDIES

You will give me notice prior to acceleration if I am in default under the Loan Agreement. The notice will specify:

- a. the default;
- b. the action required to cure the default;
- c. a date, not less than 21 days from the date you give me notice, to cure the default; and
- d. that my failure to cure the default on or before the specified date will result in acceleration of all that I owe under the Loan Agreement and sale of My Homestead.

You will inform me of my right to reinstate after acceleration and my right to bring a court action to contest the alleged default or to assert any other defense to the acceleration and sale. If the default is not cured before the specified date, you have the option to require immediate payment in full of all I owe. If you are not paid all I owe, you may sell My Homestead or seek other remedies allowed by Applicable Law without further notice. You may collect your reasonable expenses incurred in seeking the remedies provided in this Section. These expenses may include court costs, attorneys' fees, and costs of title search.

This lien against My Homestead may be foreclosed upon only by a court order. You may, at your option, follow any rules of civil procedure for expedited foreclosure proceedings related to the foreclosure of liens under Section 50(a)(6), Article XVI of the Texas Constitution ("Rules"). The power of sale granted by the Loan Agreement will be exercised according to the Rules. I understand the power of sale is not a confession of judgment or a power of attorney to confess judgment or an appearance by me in a judicial proceeding.

POWER OF SALE

You have a fully enforceable lien on My Homestead. Your remedies for my default include an efficient means of foreclosure under the law. You and the Trustee have all powers to conduct a foreclosure except as limited by the Texas Supreme Court. If you choose to use the power of sale, you will give me notice of the time, place and terms of the sale by posting and filing notice at least 21 days before the sale as provided by law. You will give me notice by mail as required by law. The sale will be conducted at a public place. The sale will be held:

- a. on the first Tuesday of a month;
- b. at a time stated in the notice or no later than 3 hours after the time; and
- c. between 10:00 a.m. and 4:00 p.m.

I allow the Trustee to sell My Homestead to the highest bidder for cash in one or more parcels and in any order the Trustee determines. You may purchase My Homestead at any sale. The Rules will prevail in a conflict between the procedures and the Rules. If a conflict arises, the conflicting provision will be corrected in order to comply.

Trustee will give a Trustee's deed to the foreclosure sale purchaser. A Trustee's deed will convey:

- a. good title to My Homestead that cannot be defeated; and
- b. title with promises of general warranty from me.

I will defend the purchaser's title to My Homestead against all claims and demands. The description of facts contained in the Trustee's deed will be sufficient to legally prove the truth of the statements made in the deed. Trustee will apply the proceeds of the sale in the following order:

- a. to all expenses of the sale, including court costs and reasonable Trustee's and attorneys' fees;
- b. what I owe; and
- c. any excess to the person or persons legally entitled to it.

If My Homestead is sold through a foreclosure sale governed by this Section, I or any person in possession of My Homestead through me, will give up possession of My Homestead without delay. A person who does not give up possession is a holdover and may be removed by a court order.

RELEASE

You will cancel and return the Note to and give me, in recordable form, a release of lien securing the Loan Agreement or a copy of any endorsement of the Note and assignment of the lien to a lender that is refinancing the Loan Agreement. I will pay only the cost of recording the release of lien. My acceptance of the release or endorsement and assignment will end all of your duties under section 50(a)(6), Article XVI of the Texas Constitution.

NON-RECOURSE LIABILITY

You are entitled to all rights, superior title, liens and equities owned or claimed by any grantor or holder of any liens and debts due before the signing of the Loan Agreement. You are entitled to these rights whether you acquire the liens or debts by assignment or the holder releases them upon payment.

Each person who signs the Security Document is responsible for each promise and duty in the Security Document, subject to limitation of personal liability described below. The Texas Constitution provides that the Loan Agreement is given without personal liability against each owner of My Homestead and against the spouse of each owner. Personal liability may be obtained if the Loan Agreement was obtained by actual fraud. This means that, unless actual fraud is found by a court, you are only able to enforce your rights under the Loan Agreement against My Homestead. You are not able to seek personal liability against the owner of My Homestead or the spouse of an owner. If the Loan Agreement is obtained by actual fraud, then I will be personally liable for the payment of any amounts due under the Loan Agreement. This means that a personal judgment could be obtained against me for a deficiency as a result of a foreclosure sale of My Homestead. A personal judgment would subject my other assets for the payment of the debt.

Unless prohibited by the Texas Constitution, this Section will not:

- a. impair in any way the Loan Agreement or your right to collect all that I owe under the Loan Agreement;
- b. affect your right to any promise or condition of the Loan Agreement.

PROCEEDS

I am not required to apply the proceeds of the Loan Agreement to repay another debt except a debt secured by My Homestead or a debt to another lender.

NO ASSIGNMENT OF WAGES

I have not assigned wages as security for the Loan Agreement.

ACKNOWLEDGMENT OF FAIR MARKET VALUE

You and I agreed in writing to the fair market value of My Homestead on the date of the Loan Agreement.

TRUSTEES AND TRUSTEE LIABILITY

One or more Trustees acting alone or together may exercise or perform all rights, remedies and duties of the Trustee under the Loan Agreement. You may remove or change any Trustee (e.g., add one or more Trustees or appoint a successor Trustee to any Trustee). This removal or change of Trustee must be in writing and may be:

- a. at your option;
- b. with or without cause; and
- c. by power of attorney or otherwise.

The substitute, additional or successor Trustee will receive, without any further act, the title, rights, remedies, powers and duties under the Loan Agreement and Applicable Law.

Trustee may rely, without liability, upon any notice, request, consent, demand, statement or other document reasonably believed by Trustee to be valid. Trustee will not be liable for any act or omission unless the act or omission is willful.

WAIVER OF ADDITIONAL COLLATERAL

I agree that you waive all terms in any of your current or future loan documentation that:

- a. creates a default of the Loan Agreement by a default of another obligation that is not secured by My Homestead;
- b. provides for collateral other than My Homestead (including cross collateralization or dragnet provisions);
- c. creates personal liability for me for the Loan Agreement (unless this loan was obtained by actual fraud); or
- d. creates a personal guaranty.

DEFAULT

Any default of my agreements with you will be a default of this Security document.

BY SIGNING BELOW, I accept and agree to the terms and promises contained in the Loan Agreement and in any Rider I sign which is recorded with it.

(DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. THIS DOCUMENT MUST BE SIGNED AT THE OFFICE OF LENDER, AN ATTORNEY AT LAW OR A TITLE COMPANY. I MUST RECEIVE A COPY OF ANY DOCUMENT I SIGN.)

I MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THE LOAN AGREEMENT WITHOUT PENALTY OR CHARGE.

_____ (seal)
-Borrower

Printed Name: _____
(Please Complete)

_____ (seal)
-Borrower

_____ (seal)
-Borrower

_____ (seal)
-Borrower

(Acknowledgment on following page)

Figure: 22 TAC §185.23(d)(9)

TEXAS STATE BOARD OF PHYSICIAN ASSISTANT EXAMINERS

P.O. Box 2018, MC-263

Austin, Texas 78768-2018

PROFESSIONAL LIABILITY CLAIMS REPORT

FILE ONE REPORT FOR EACH DEFENDANT PHYSICIAN ASSISTANT

PART I COMPLETE FOR ALL CLAIMS OR COMPLAINTS AND FILE WITH THE TEXAS STATE BOARD OF PHYSICIAN ASSISTANT EXAMINERS WITHIN 30 DAYS FROM RECEIPT OF COMPLAINT OR CLAIM. INCLUDE COPY OF CLAIM LETTER AND/OR PLAINTIFF'S COMPLAINT.

1. Name and address of insurer:

2. Defendant physician assistant:

License number: _____

3. Plaintiff's name:

4. Policy number:

5. Date claim reported to insurer/self-insured physician assistant:

6. Type of complaint: _____ claim only _____ lawsuit

7. Initial reserve amount after investigation:

(If this is not determined within 30 days, report this data within 105 days of filing the Part I report with the board)

Person completing this report (SIGNATURE)

Person completing this report (PRINT NAME)

Phone number

PART II COMPLETE AFTER DISPOSITION OF THE CLAIM AS DEFINED IN 22 T.A.C., INCLUDING DISMISSALS OR SETTLEMENTS. FILE WITH THE TEXAS STATE BOARD OF PHYSICIAN ASSISTANT EXAMINERS WITHIN 105 DAYS AFTER DISPOSITION OF THE CLAIM. A COPY OF A COURT ORDER OR SETTLEMENT AGREEMENT MAY BE USED.

8. Date of disposition: _____

9. Type of Disposition:

_____ (1) Settlement

_____ (2) Judgment after trial

_____ (3) Other (please specify)

10. Amount of indemnity agreed upon or ordered on behalf of this defendant:

\$_____. Note: If percentage of fault was not determined by the court or insurer in the case of multiple defendants, the insurer may report the total amount paid for the claim followed by a slash and the number of insured defendants. (Example: \$100,000/3)

11. Appeal, if known: ____ Yes ____ No. If yes, which party:

Person completing this report (SIGNATURE)

Person completing this report (PRINT NAME)

Phone number

Figure: 40 TAC §54.216(a)

Full Contract	Year Percentage
First year	75%
Second year	74%
Third year	72%
Fourth year	69%
Fifth year	65%
Sixth year	60%
Subsequent years	50%

Figure: 40 TAC §54.312

Report:	Received by:
First quarter	December 30
Second quarter	March 30
Third quarter	June 30

Figure: 40 TAC §54.1011

Report:	Received by:
First quarter	December 30
Second quarter	March 30
Third quarter	June 30

Figure: 40 TAC §54.1614(a)

Full Contract	Year Percentage
First year	75%
Second year	74%
Third year	72%
Fourth year	69%
Fifth year	65%
Sixth year	60%
Subsequent years	50%

Figure: 40 TAC §54.1712

Report:	Received by:
First quarter	December 30
Second quarter	March 30
Third quarter	June 30

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.

Office of the Attorney General

Texas Clean Air Act and Texas Solid Waste Disposal Act Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code. Before the State may settle a judicial enforcement action under the Health and Safety 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: *Harris County, Texas and the State of Texas acting by and through the Texas Natural Resource Conservation Commission, A Necessary and Indispensable Party-Plaintiff v. Jason House and Joshua House, d/b/a Compost Works, and JLH Land Investments Corporation*, Cause No. 2002-07696 in the 125th District Court, Travis County, Texas.

Nature of Defendant's Operations: Defendants Jason House and Joshua House, and JLH Land Investments Corporation for alleged violations relating to illegal outdoor burning and also for alleged violations related to the accumulation and storage of municipal solid waste at the Site. The suit seeks a permanent injunction, civil penalties, and attorney's fees.

Proposed Agreed Judgment: The Permanent Injunction permanently enjoins all Defendants from accepting solid waste at the site, from doing business at the site that is related to Chapter 232 of the Texas Administrative Code including but not limited to recycling, composting and mulching. Further, the Defendants are to properly dispose of the Solid waste currently on the site within sixty (60) days of the date the Court signs the Judgment. Defendant shall pay \$56,802.00 in civil penalties, \$13,000.00 in attorney fees and \$198.00 in court costs.

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 Terry N. Peterson, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin,

Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

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

TRD-200205451

Susan D. Gusky

Assistant Attorney General

Office of the Attorney General

Filed: August 20, 2002

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Coastal Coordination Council

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

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were deemed administratively complete for the following projects(s) during the period of August 9, 2002, through August 15, 2002. The public comment period for these projects will close at 5:00 p.m. on September 20, 2002.

FEDERAL AGENCY ACTIONS:

Applicant: Byron H. Davis; Location: The project is located south of Dollar Bay and the Texas City Rainwater Channel on the northern side of Texas City in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Texas City, Texas. Approximate UTM Coordinates: Zone 15; Easting: 315000; Northing: 3255100. Project Description: The applicant has requested an amendment to fill 4 adjacent freshwater wetlands totaling approximately 1.23

acres during development of a 107-lot residential subdivision. Approximately 100,000 cubic yards of fill material would be mechanically excavated from a proposed 7.4-acre compensatory mitigation area adjacent to the Texas City Rainwater Channel and would be used to raise the elevation on the 97-acre tract. The applicant would also fill 7 isolated wetlands totaling approximately 4.7 acres. Stockpiled topsoil from the wetlands would be placed in the excavated compensatory mitigation area to provide a seed source for the creation of 7.4 acres of wetland habitat. The compensatory mitigation area would have 70% areal coverage of wetland vegetation within 2 years after initial creation. An 8-acre lake would be created in the proposed subdivision to contain rainfall runoff. Native wetland plants would be planted on the 8-foot-wide shelf to provide fish and wildlife habitat. The lake would drain into the Texas City Rainfall Channel via a drop structure. The drainage pipe would outfall onto a solid bed of concrete riprap. CCC Project No.: 02-0238-F1; Type of Application: U.S.A.C.E. permit application #20852(04) is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: TEPPCO; Location: The project is located in wetlands near Cedar Bayou approximately 1 mile north of Interstate 10 and 1.8 miles west of State Highway 146 in Mont Belvieu in Chambers County, Texas. The project site is in a heavy industrial-use area that is isolated and accessible by gated private roads. The TEPPCO Mont Belvieu South Terminal Facility Office is at 10943 Highway 146 North. The project can be located on the U.S.G.S. quadrangle map entitled Mont Belvieu, Texas. Approximate UTM Coordinates: Zone 15; Easting: 314000; Northing: 3302000. Project Description: The applicant proposes to fill approximately 5.34 acres of adjacent wetlands during activities associated with construction of a proposed leveed, double-lined, 24.5-acre Brine Pond No. 5. The brine pond would store brine used to manage placement or removal of hydrocarbon product within an existing underground hydrocarbon storage facility. The applicant proposes to excavate an 8.7-acre borrow pit to obtain clay for construction of a proposed 1.5-acre access road, 0.1-acre pump pad, and the brine pond. Soil would be removed within the footprint of the proposed brine pond and shaped into the embankment. The interior of the brine pond would be graded and sloped to provide drainage for 2 high-density polypropylene liners and a leak detection system. An access road would be constructed around the perimeter of the brine pond to service flare, brine pipeline, and pump equipment areas. As compensatory mitigation, the entire 8.7-acre borrow pit would be converted to freshwater wetlands. CCC Project No.: 02-0239-F1; Type of Application: U.S.A.C.E. permit application #22602 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387). NOTE: The CMP consistency review for this project may be conducted by the Railroad Commission of Texas as part of its certification under §401 of the Clean Water Act.

Applicant: Williams Production; Location: The project is located in wetlands adjacent to Taylor Bayou approximately 8.5 miles east of Winnie, Texas on Highway 73 in Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Alligator Hole Marsh, Texas. Approximate UTM Coordinates: Zone 15; Easting: 383709; Northing: 3301416. Project Description: The applicant proposes to construct a well site to explore and drill for oil and gas. Board mats would be used to construct a 400-foot by 400-foot drilling pad. A ring levee would be constructed with fill material excavated from adjacent locations. A 32-foot-long by 12-foot-wide access road would be required. The road would be required to be built up using excavated material from the adjacent areas. The impact area for the project is approximately 3.67 acres. CCC Project No.: 02-0246-F1; Type of Application: U.S.A.C.E. permit application #22731 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §125-1387). NOTE:

The CMP consistency review for this project may be conducted by the Railroad Commission of Texas as part of its certification under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, 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-200205470
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: August 21, 2002

Comptroller of Public Accounts

Correction of Error

The Comptroller of Public Accounts proposed amendments to 34 TAC §5.57, concerning the use of credit cards by state agencies. The proposal was published in the August 9, 2002, issue of the *Texas Register* (27 TexReg 7049).

Due to an error by the Texas Register, incorrect text was published in subsection (g)(6)(C) on page 7050. The subparagraph should read as follows.

(C) Family Code, §231.007.

TRD-200205571

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in 303.003, 303.009, and 304.003, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 08/26/02 - 09/01/02 is 18% for Consumer ¹/Agricultural/Commercial ²/credit thru \$250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 08/26/02 - 09/01/02 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 09/01/02 - 09/30/02 is 10% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 09/01/02 - 09/30/02 is 10% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-200205446

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 20, 2002

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Credit Union Department

Application(s) to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from Lone Star Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit persons who live and/or work in and business entities within the geographical boundaries identified as: Highway 75 (Central Expressway) North from Highway Interstate 30, to Woodall Rodgers Freeway, then Southwest to Highway Interstate 35E (Stemmons Freeway) then, South to Highway Interstate 30, to be eligible for membership in the credit union.

An application was received from Members Choice Credit Union, Houston, Texas to expand its field of membership. The proposal would permit employees of ConocoPhillips and its subsidiaries, affiliates, or successors to be eligible for membership in the credit union.

An application was received from Texas Employees Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit employees of Joel H. Klein & Associates, San Antonio, Texas, to be eligible for membership in the credit union.

An application was received from United Savers Trust Credit Union, Houston, Texas, to expand its field of membership. The proposal would permit employees of LSI-SGI Graphics Incorporated, Houston, Texas, to be eligible for membership in the credit union.

An application was received from Denton Area Teachers Credit Union, Denton, Texas, to expand its field of membership. The proposal would permit persons who live, work, attend school, and businesses and other legal entities within the boundaries of Cooke County, Texas.

An application was received from Capitol Credit Union, Austin, Texas, to expand its field of membership. The proposal would permit employees of Michael Angelos Food Manufacturing Company, Austin, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.tcup.state.tx.us/applications.html>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200205471
Harold E. Feeney
Commissioner
Credit Union Department
Filed: August 21, 2002

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC Section 91.103, the Credit Union Department provides notice of the final action taken on the following application(s):

Application(s) to Expand Field of Membership - Approved

Kraft America Credit Union, Garland, Texas - See *Texas Register* issue dated May 31, 2002.

TRD-200205472
Harold E. Feeney
Commissioner
Credit Union Department
Filed: August 21, 2002

◆ ◆ ◆
Texas Department of Criminal Justice

Notice to Bidders

The Texas Department of Criminal Justice invites bids for the construction of a **new Laundry Facility** at the **Carol Young (formerly SMRF) Medical Facility at 5509 Attwater Ave., (Galveston County) Texas City, Texas**. The work includes architectural, mechanical, electrical, plumbing, pre-engineered metal building and related site work as further shown in the Contract Documents prepared by **O'Connell Robertson & Assoc., Inc.**

The successful bidder will be required to meet the following requirements and submit evidence within five (5) days after receiving notice of intent to award from the Owner:

A. Contractor must have a minimum of five (5) consecutive years of experience as a General Contractor and provide references for at least three (3) projects that have been completed of a dollar value and complexity equal to or greater than the proposed project.

B. Contractor must be bondable and insurable at the levels required.

C. Contractors are required to submit a HUB Subcontracting Plan as detailed in Exhibit I. Failure to submit a completed HUB Subcontracting Plan will result in the bid being rejected from further consideration.

All Bid Proposals must be accompanied by a Bid Deposit in the amount of 5% of greatest amount bid. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

Bid Documents can be purchased from the Architect/Engineer at a cost of **\$75.00 (seventy-five dollars), (non-refundable)** per set, inclusive of mailing/delivery costs, or they may be viewed at various plan rooms. Payment checks for documents should be made payable to the Architect/Engineer :

O'Connell Robertson & Assoc., Inc., 811 Barton Springs Road, Ste. 900, Austin, Texas 78704

Attn: Noel Robertson; Phone: 512-478-7286; Fax: 512-478-7441

A Pre-Bid conference will be held at **11:00 AM on September 9, 2002 at the Carol Young Medical Facility, located at 5509 Attwater Ave., Texas City, Texas, followed by a site-visit. ONLY ONE SCHEDULED SITE VISIT WILL BE HELD FOR REASONS OF SECURITY AND PUBLIC SAFETY; THEREFORE, BIDDERS ARE STRONGLY ENCOURAGED TO ATTEND.** Directions to the unit location are included as Exhibit 2.

Bids will be publicly opened and read at 2:00 PM on September 19, 2002, in the Contracts and Procurement Conference Room located in the West Hill Mall, Suite 525, Two Financial Plaza, Huntsville, Texas.

The Texas Department of Criminal Justice requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUB's) in at least 26.1% of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-200205311
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: August 16, 2002



Notice to Bidders

The Texas Youth Commission invites bids for the Renovation of the Giddings State School at Giddings, Texas. The project consists of miscellaneous grading revisions, and replacement of existing roads, replacement of the existing built up roofing including tear-off of the existing roof, and flashing repairs, installation of CMU access doors and panels, ceramic tile flooring and ceiling repairs, removal and replacement of light fixtures, installation of three new detention showers, removal of existing wood dormers associated roof repairs and exhaust fan hood repairs, at the existing Giddings State School, P. O. Box 600, Hwy 290, Giddings, Texas 78942. The work includes Earthwork, Excavation, Grading, Paving, Masonry, Metal Fabrication, Carpentry, Roofing, Sanitary Drainage, Tile Work, and Painting as further shown in the Contract Documents prepared by: ROFDW Architects, Dallas, Texas.

The successful bidder will be required to meet the following requirements and submit evidence within five days after receiving notice of intent to award from the Owner:

Contractor must have a minimum of five (5) consecutive years of experience as a General Contractor and provide references for at least two projects within the last five years that have been completed of a dollar value and complexity equal to or greater than the proposed project.

Contractor must be bondable and insurable at the levels required.

All Bid must be accompanied by a Bid Guarantee in the amount of 5% of greatest amount bid. Bid Guarantee may be in the form of a Bid Deposit or Certified Check. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

Bid Documents can be purchased from the Architect/Engineer at a cost of **\$60.00 (Sixty Dollars, NON REFUNDABLE)** per set, inclusive of mailing/delivery costs, or they may be viewed at various plan rooms. Payment checks for documents should be made payable to the Architect/Engineer:

Larry E. Janousek, ROFDW Architects, 703 McKinney, Suite 401, Dallas, Texas 75202 Phone: (214) 871-0616; FAX: (214) 954-0855

A Pre-Bid conference will be held at **1:00PM on September 10, 2002** at the Giddings State School, Giddings, Texas, **followed by a site-visit. ONLY ONE SCHEDULED SITE VISIT WILL BE HELD FOR REASONS OF SECURITY AND PUBLIC SAFETY; THEREFORE, BIDDERS ARE STRONGLY ENCOURAGED TO ATTEND.**

Bids will be publicly opened and read at **2:00PM on September 24, 2002**, in the Contracts and Procurement Conference Room located in the West Hill Mall, Suite 525, Two Financial Plaza, Huntsville, Texas. The Texas Youth Commission requires the Contractor to make a good

faith effort to include Historically Underutilized Businesses (HUB's) in at least 26.2% of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-200205395
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: August 16, 2002



Interagency Council on Early Childhood Intervention

Notification of Request for Proposals

Notice of Invitation. The Interagency Council on Early Childhood Intervention (ECI) is soliciting proposals from Certified Public Accountants or Certified Internal Auditors with at least two years of experience with state government activities to provide internal auditing services to ECI. The contract is expected to begin November 1, 2002 and will continue through August 31, 2003. The Texas Internal Auditing Act, Texas Government Code, §2102, details internal auditing responsibilities.

Contact Person. The RFP is available to all interested providers upon written request to Ellen Baker, Interagency Council on Early Childhood Intervention, 4900 North Lamar, Suite 2110, Austin, Texas 78751-2399. A copy may also be obtained by calling (512) 424-6824 or by visiting the ECI office. Questions should be directed to Ellen Baker at (512) 424-6761.

Closing Date. All proposals to be considered must be received in the ECI administrative office by 5:00 p.m. on September 30, 2002. ECI reserves the right to reject all proposals if necessary.

Selection Criteria. Proposals will be evaluated based on the following: experience with state government activities, plan of implementation for providing audit services, and reasonableness of hourly fee and estimated number of hours. Review teams will make recommendations to the ECI Board for approval or denial of proposals received.

TRD-200205473
Mary Elder
Executive Director
Interagency Council on Early Childhood Intervention
Filed: August 21, 2002



Texas Education Agency

Request for Applications Concerning 2003-2004 Investment Capital Fund Grant Program: Improving Student Achievement through Staff Development and Parent Training for Campus Deregulation and Restructuring

Eligible Applicants. This is a campus-level grant. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-02-033 from public school districts and open-enrollment charter schools applying on behalf of individual campuses. A school must have demonstrated a commitment to campus deregulation and to restructuring educational practices and conditions at the school by entering into a partnership with TEA and with school staff, parents of students at the school, community and business leaders, school district officers, and a nonprofit, community-based organization that has a demonstrated capacity to train, develop, and organize parents and community leaders into a large, nonpartisan constituency that will hold

the school and the school district accountable for achieving high academic standards. A separate application, specific to the applying campus, must be submitted for each grant.

Description. The primary objective of this grant is to improve student achievement through deregulation and restructuring that includes staff development, parent and community training, and may also include strategies designed to enrich or extend student learning experiences outside the regular school day. The applicant must identify local needs and provide strategies and activities to address those needs by meeting all of the program goals: train school staff, parents, and community leaders to understand academic standards; develop effective strategies to improve student performance; and organize a large constituency of parents and community leaders that will hold the school and the school district accountable for achieving high academic standards.

Dates of Project. The Investment Capital Fund Grant will be implemented and carried out during the 2003-2004 school year. Applicants should plan for a starting date of no earlier than May 1, 2003, and an ending date of no later than July 31, 2004.

Project Amount. Funding will be provided for approximately 140 projects. Applicants may apply for up to \$50,000 for each grant submitted on behalf of an individual campus.

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 program and the extent to which the application addresses the primary objective, program goals, 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 # 701-02-033 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 phone 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 the Ellsworth Schave, Director, School Improvement Initiatives Unit, TEA, (512) 936-2589.

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, November 7, 2002, to be considered for funding.

TRD-200205484

Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Filed: August 21, 2002

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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	Amendment #	Date of Action
Amarillo	Amarillo Cardiovascular Center PC	L05577	Amarillo	00	8/7/02
Houston	PETNET Houston LLC	L05542	Houston	00	8/8/02
San Antonio	Veterinary Imaging Center of Texas Inc	L05559	San Antonio	00	7/30/02
San Antonio	Research Imaging Center The Univ of TX	L05556	San Antonio	00	8/2/02

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Abilene	Hendrick Medical Center	L02433	Abilene	76	8/9/02
Arlington	Open Imaging Arlington LLC	L05575	Arlington	02	8/8/02
Arlington	Metroplex Hematology Oncology Associates	L03211	Arlington	66	8/8/02
Arlington	W H Henken Industries Inc	L00967	Arlington	34	8/9/02
Austin	Columbia St Davids Healthcare System LP	L03273	Austin	49	8/2/02
Austin	Texas Cardiovascular Consultants, PA	L05246	Austin	05	8/2/02
Beaumont	Syncor International Corporation	L02987	Beaumont	37	8/9/02
Burnet	Daughters of Charity Health	L03515	Burnet	25	7/31/02
College Station	BCS Heart LLP	L04890	College Station	08	8/12/02
Corpus Christi	The Corpus Christi Medical Center Bay Area	L04723	Corpus Christi	29	8/2/02
Dallas	Dallas Cardiology Associates PA	L04607	Dallas	34	8/9/02
Deer Park	Shell Chemical LP	L04933	Deer Park	13	8/7/02
Denton	Antich Medical Imaging Inc	L05435	Denton	02	7/31/02
Denton	Isostar Texas Inc	L05430	Denton	02	8/12/02
Denton	Neorx Manufacturing Group Inc	L05433	Denton	04	8/14/02
Desoto	Vishu Lammata, M.D. PA	L05311	Desoto	06	8/2/02
El Paso	Guillermo A. Pinzon, M.D. PA	L04277	El Paso	09	8/1/02
El Paso	El Paso Healthcare System LP	L03395	El Paso	35	8/1/02
Ft Worth	Syncor International Corporation	L02905	Ft Worth	60	8/7/02
Ft Worth	John Peter Smith Hospital	L02208	Ft Worth	43	8/12/02
Ft Worth	Baylor All Saints Medical Center	L02212	Ft Worth	59	8/15/02
Ft Worth	All Saints Advanced Imaging Center	L05251	Ft Worth	02	8/15/02
Harlingen	Valley Baptist Medical Center	L01909	Harlingen	52	7/31/02
Houston	Tops Specialty Hospital LTD	L05441	Houston	01	8/5/02
Houston	Abitibi Consolidated Inc	L01793	Houston	24	7/31/02
Houston	Medi Physics Inc	L05517	Houston	01	8/1/02
Houston	Veterinary Cancer Associates	L04803	Houston	09	7/20/02
Houston	CHCA West Houston	L02224	Houston	57	8/2/02
Houston	Angiocardiac Care of Texas PA	L05011	Houston	04	8/8/02
Houston	Mallinckrodt Medical Inc	L03008	Houston	59	8/8/02
Houston	Spectracell Laboratories Inc	L04617	Houston	04	8/9/02
Houston	Memorial Hermann Hospital System	L00439	Houston	82	8/13/02

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Houston	Houston Cardiac Electrophysiology Assoc	L05090	Houston	05	8/14/02
Irving	Columbia Medical Center of Las Colinas Inc	L05084	Irving	08	8/13/02
Katy	St Catherine Health and Wellness Center	L05310	Katy	05	8/2/02
Kingsville	Christus Spohn Health System Corporation	L02917	Kingsville	27	8/1/02
Lake Jackson	Southern Services Inc	L05270	Lake Jackson	25	8/13/02
Llano	Llano Bay Health Care	L04438	Llano	17	8/8/02
Lubbock	University Medical Center	L04719	Lubbock	51	8/14/02
Mansfield	Clean Solvent Recycling Co Inc	L05243	Mansfield	01	7/31/02
Mansfield	Clean Solvent Recycling Co Inc	L05243	Mansfield	02	8/15/02
McAllen	Harish Koolwal, M.D. PA	L05149	McAllen	08	8/2/02
New Braunfels	McKenna Memorial Hospital	L02429	New Braunfels	32	8/13/02
Orange	Bayer Corporation	L00976	Orange	46	8/7/02
Plainview	Methodist Hospital Plainview	L02493	Plainview	22	8/8/02
Port Arthur	Gulf Coast Cardiology Group PA	L05393	Port Arthur	06	8/8/02
San Antonio	CTRC Clinical Foundation	L01922	San Antonio	63	8/6/02
San Antonio	Veterinary Imaging Center of S. Texas Inc	L05559	San Antonio	01	8/8/02
San Antonio	Methodist Healthcare System of San Antonio	L00594	San Antonio	166	8/12/02
San Marcos	Austin Heart PA	L05452	San Marcos	03	8/13/02
Texas City	BP Products North America Inc	L00254	Texas City	52	8/5/02
The Woodlands	Lexicon Genetics Inc	L04932	The Woodlands	08	8/9/02
The Woodlands	Memorial Hospital The Woodlands	L03772	The Woodlands	33	8/14/02
Throughout TX	Syncor International Corporation	L03398	Amarillo	29	8/7/02
Throughout TX	Syncor International Corporation	L02117	Austin	74	8/9/02
Throughout TX	Applied Standards Inspection Inc	L03072	Beaumont	70	8/6/02
Throughout TX	Beavers Construction Company	L05003	Bowie	03	8/6/02
Throughout TX	Syncor International Corporation	L04043	Corpus Christi	29	8/13/02
Throughout TX	Syncor International Corporation	L02048	Dallas	106	8/7/02
Throughout TX	Fargo Consultants Inc	L05300	Dallas	01	8/9/02
Throughout TX	Syncor International Corporation	L01999	El Paso	100	8/12/02
Throughout TX	General Inspection	L02319	Hempstead	34	8/6/02
Throughout TX	Law Engineering & Environmental Svs Inc	L02453	Houston	28	8/1/02
Throughout TX	Testmasters Inc	L03651	Houston	16	8/1/02
Throughout TX	ICO Worldwide Inc	L01884	Houston	35	8/5/02
Throughout TX	METCO	L03018	Houston	123	8/5/02
Throughout TX	Roxar Inc	L05547	Houston	00	8/2/02
Throughout TX	B J Services Company USA	L02684	Houston	41	8/13/02
Throughout TX	Westhollow Technology Center	L02116	Houston	41	8/9/02
Throughout TX	Southern Services Inc	L05270	Lake Jackson	24	8/12/02
Throughout TX	PMI Specialist Inc	L04686	Liberty	10	8/6/02
Throughout TX	Texas Gamma Ray LLC	L05561	Pasadena	05	8/6/02
Throughout TX	GCT Inspection Inc	L02378	S. Houston	66	8/8/02
Throughout TX	CB & I Constructors Inc	L01902	The Woodlands	55	8/7/02
Victoria	E I Dupont De Nemours & Company	L00386	Victoria	72	8/6/02
Waxahachie	Baylor Medical Center	L04536	Waxahachie	20	8/2/02
Webster	CHCA Clear Lake LP	L01680	Webster	52	8/5/02
Wichita Falls	North Texas Cardiology Center LLP	L05443	Wichita Falls	02	7/31/02

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Texas City	BP Products North America Inc	L00254	Texas City	53	8/13/02

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Dallas	Lockheed Martin Corporation	L02670	Dallas	28	8/12/02
Deleon	Deleon Hospital	L03233	Deleon	07	8/1/02
Denton	NRX Acquisition Corporation	L05282	Denton	03	8/12/02
Throughout TX	Beckman Construction Company	L05352	Ft Worth	01	7/31/02
Throughout TX	Westech	L05231	Houston	01	8/7/02

LICENSE EXEMPTION ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Paris	Christus St Josephs Health System	L03199	Paris		8/8/02

In issuing new licenses, amending and renewing existing licenses, or approving exemptions to Title 25 Texas Administrative Code (TAC) Chapter 289, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with 25 TAC Chapter 289 in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the new, amended, or renewed license (s) or the issuance of the exemption (s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A licensee, applicant, or person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200205466

Susan K. Steeg
 General Counsel
 Texas Department of Health
 Filed: August 21, 2002

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Notice of Fees Charged for Health Care Information

The Texas Department of Health licenses general and special hospitals in accordance with the Health and Safety Code, Chapter 241. In 1995, the Texas Legislature amended the law to address the release and confidentiality of health care information. In accordance with §241.154(e) of the Health and Safety Code, the fee for providing a patient's health care information has been adjusted 1.3% to reflect the most recent changes to the consumer price index as published by the Bureau of Labor Statistics (BLS) of the United States Department of Labor. The BLS measures the average changes in prices of goods and services purchased by urban wage earners and clerical workers.

With the adjustment, the fee may not exceed the sum of:

(1) a basic retrieval or processing fee, which must include the fee for providing the first ten pages of copies and which may not exceed \$35.30; and

a charge for each page of:

\$1.18 for the 11th through the 60th page of provided copies;

\$.59 for the 61st through the 400th page of provided copies;

\$.30 for any remaining pages of the provided copies; and

the actual cost of mailing, shipping, or otherwise delivering the provided copies; or

(2) if the requested records are stored on any microform or other electronic medium, a retrieval or processing fee, which must include the fee for providing the first ten pages of the copies and which may not exceed \$52.96; and

\$1.18 per page thereafter; and

the actual cost of mailing, shipping, or otherwise delivering the provided copies.

This is published only as a courtesy to licensed hospitals. Hospitals are responsible for verifying that any fees charged for health care information are in accordance with the Health and Safety Code, Chapter 241.

Contact Information

If you have any questions, please contact John M. Evans Jr., Hospital Licensing Director, Health Facility and Compliance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas, telephone (512) 834-6648.

TRD-200205483

Susan Steeg

General Counsel

Texas Department of Health

Filed: August 21, 2002

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Notice of the Establishment of the List of Immediate Precursors

Pursuant to the Texas Controlled Substances Act, Health and Safety Code, §481.02(22), the Commissioner has designated a list of Immediate Precursors.

The Director of the Department of Public Safety determined that public health and welfare are jeopardized by evidenced proliferation or use of the following chemical substances in the illicit manufacture of controlled substances or controlled substance analogues: methylamine, ethylamine, D-lysergic acid, ergotamine tartrate, diethyl malonate, malonic acid, ethyl malonate, barbituric acid, piperidine, N-acetylanthranilic acid, pyrrolidine, phenylacetic acid,

anthranilic acid, ephedrine, pseudoephedrine, norpseudoephedrine, phenylpropanolamine, red phosphorus, and hypophosphorous acid.

The Administrator of the Drug Enforcement Agency has determined that the following substances, in addition to legitimate uses, are used in manufacturing controlled substances in violation of the Federal Controlled Substances Act, and are important to the manufacture of controlled substances: anthranilic acid, its esters, and its salts; benzyl cyanide; ephedrine, its salts, optical isomers, and salts of optical isomers; ergonovine and its salts; ergotamine and its salts; N-Acetylanthranilic acid, its esters, and its salts; norpseudoephedrine, its salts, optical isomers, and salts of optical isomers; phenylacetic acid, its esters, and its salts; phenylpropanolamine, its salts, optical isomers, and salts of optical isomers; piperidine and its salts; pseudoephedrine, its salts, optical isomers, and salts of optical isomers; 3,4-Methylenedioxyphenyl-2-propanone; methylamine and its salts; ethylamine and its salts; propionic anhydride; isosafrole; safrole; piperonal; N-Methylephedrine, its salts, optical isomers, and salts of optical isomers; N-Methylpseudoephedrine, its salts, optical isomers, and salts of optical isomers; hydriodic acid (alternative spelling: hydriotic acid); benzaldehyde; nitroethane; gamma-butyrolactone (Other names include: GBL; Dihydro-2(3H)-furanone; 1,2-Butanolide; 1,4-Butanolide; 4-Hydroxybutanoic acid lactone; gamma-hydroxybutyric acid lactone); red phosphorus; white phosphorus (Other names: yellow phosphorus); hypophosphorous acid and its salts (including ammonium hypophosphite, calcium hypophosphite, iron hypophosphite, potassium hypophosphite, manganese hypophosphite, magnesium hypophosphite, and sodium hypophosphite); acetic anhydride; acetone; benzyl chloride; ethyl ether; potassium permanganate; 2-Butanone (or methyl ethyl ketone or MEK); toluene; hydrochloric acid (including anhydrous hydrogen chloride); sulfuric acid; methyl isobutyl ketone (MIBK); and iodine.

These substances have been found to be Immediate Precursors and this action is based upon the following reasons:

- (1) the substances are principal compounds commonly used or produced primarily for use in the manufacture of controlled substances;
- (2) the substances are immediate chemical intermediaries used or likely to be used in the manufacture of controlled substances; and
- (3) the substances require control to prevent, curtail, or limit the manufacture of controlled substances.

Pursuant to The Texas Controlled Substances Act, Health and Safety Code, §481.02(22), and in my capacity as Commissioner of the Texas Department of Health, I do hereby order that the List of Immediate Precursors is established as follows:

IMMEDIATE PRECURSORS

Acetic anhydride;

Acetone;

Anthranilic acid, its esters, and its salts;

Barbituric acid;

Benzaldehyde;

Benzyl chloride;

Benzyl cyanide;

2-Butanone (or Methyl Ethyl Ketone or MEK);

D-lysergic acid;

Diethyl malonate;

Malonic acid;

Ephedrine, its salts, optical isomers, and salts of optical isomers;
Ergonovine and its salts;
Ergotamine and its salts;
Ethyl malonate;
Ethylamine and its salts;
Ethyl ether;
Gamma-Butyrolactone (Other names include: GBL; Dihydro-2(3H)-furanone; 1,2-Butanolide; 1,4-Butanolide; 4-Hydroxybutanoic acid lactone; gamma-hydroxybutyric acid lactone);
Hydrochloric acid (including anhydrous hydrogen chloride);
Hydriodic acid (alternative spelling: hydriotic acid);
Hypophosphorous acid and its salts (including ammonium hypophosphite, calcium hypophosphite, iron hypophosphite, potassium hypophosphite, manganese hypophosphite, magnesium hypophosphite, and sodium hypophosphite; Iodine;
Isosafrole;
Methyl Isobutyl Ketone (MIBK);
Methylamine and its salts;
3,4-Methylenedioxyphenyl-2-propanone;
N-Acetylanthranilic acid, its esters, and its salts;
N-Methylephedrine, its salts, optical isomers, and salts of optical isomers;
N-Methylpseudoephedrine, its salts, optical isomers, and salts of optical isomers;
Nitroethane;
Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers;
Phenylacetic acid, its esters, and its salts;
Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers;
Piperidine and its salts;
Piperonal;
Potassium permanganate;
Pseudoephedrine, its salts, optical isomers, and salts of optical isomers;
Propionic anhydride;
Pyrrolidine;
Red Phosphorus;
Safrole;
Sulfuric acid;
Toluene; and
White phosphorus (Other names: Yellow Phosphorus).
The order was signed by Eduardo J. Sanchez, M.D., M.P.H., Commissioner of Health, on August 12, 2002, in Austin, Texas.

TRD-200205482

Susan Steeg
General Counsel
Texas Department of Health
Filed: August 21, 2002

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Texas Department of Housing and Community Affairs

Notice of Public Hearing

Multifamily Housing Revenue Bonds (Cutten Forest Apartments) Series 2002

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Moore Elementary School located at 13734 Lakewood Forest Drive, Houston, Texas 77070 at 6:00 p.m. on September 18, 2002 with respect to an issue of tax-exempt multifamily residential rental project revenue bonds in the aggregate principal amount not to exceed \$12,500,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Cutten Forest Partners, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing project (the "Project") described as follows: 208-unit multifamily residential rental development to be constructed on approximately 16.72 acres of land located at the northwest intersection of Cutten Road and Cypresswood Drive in Houston, Harris County, Texas 77070. The project will be initially owned and operated by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or requests for additional information may be directed to Robert Onion at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-3872 and/or ronion@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robert Onion in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robert Onion prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at 1 (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200205465
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 21, 2002

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Program Proposed Amendment

Announcement of Public Comment Period and Public Hearings on the TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS HOME Program Proposed Amendment to the 2002 State of Texas Consolidated Plan -- One Year Action Plan

The Texas Department of Housing and Community Affairs (TDHCA) proposes an amendment to its 2002 State of Texas Consolidated Plan-One Year Action Plan (the Plan) for the HOME Investment Partnerships Program (HOME). There will be a 32-day comment period on

this proposed amendment beginning on August 30th, 2002, and ending at 12:00 p.m. September 30, 2002. In addition there will be two public hearings to allow for public comment. The Plan is submitted in compliance with 24 CFR 91.320 Consolidated Plan submissions for Community Planning and Development Programs.

The State of Texas HOME Program proposes combining the annual HUD allocation for Program Year 2002 and 2003 totaling an approximate \$78,000,000 (less \$216,000 for the Washington County/Brazos Valley Consortium). Applications for and allocation of funding for the Homebuyer Assistance, Owner-Occupied Housing Assistance, and Tenant Based Rental Assistance for both PY 2002 and 2003 will be available during an upcoming Spring 2003 funding cycle.

TDHCA has traditionally held a competitive cycle each program year. The combined allocation will allow Department staff to focus on improvement to program processes and implement new procedures for future funding allocations.

Two public hearings will be held during the public comment period to solicit comments on the proposed amendment. **September 10th**, 2:00, TDHCA Board Room, 507 Sabine, Austin, TX, 78701 and **September 13th**, 10:30, Dallas City Hall, 1500 Marilla, Rm L1FN, Dallas, TX 75201, (214) 670-4238

Individuals who require auxiliary aids or services should contact Gina Esteves, ADA Responsible Employee, at least two days before the scheduled hearing, at (512) 475-3943, or Relay Texas at 1-800-735-2989, so that appropriate arrangements can be made.

Written comment is encouraged and should be sent to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin TX 78711-3941 or by phone: (512) 475-4595, fax: (512) 475-3746, or email at clandry@tdhca.state.tx.us.

TRD-200205485
Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 21, 2002

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Texas Department of Insurance

Company Licensing

Application to change the name of INDUSTRIAL COUNTY MUTUAL INSURANCE COMPANY, to AAA TEXAS COUNTY MUTUAL INSURANCE COMPANY a foreign fire and/or casualty company. The home office is in Costa Mesa, California.

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-200205486
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: August 21, 2002



Notice of Call for Issues Related to 2002 Biennial Title Hearing

Texas Insurance Code Article 9.07(c) requires the Department of Insurance to hold a biennial hearing to consider adoption of premium rates and such other matters and subjects relative to the regulation of the business of title insurance as may be requested by any association, any title insurance company, any title insurance agent, any member of the public, or as the commissioner may determine necessary to consider. Notice of the hearing will appear in the *Texas Register* at a later date. Any association, any title insurance company, any title insurance agent, or any member of the public that would like to request that any matter or subject, in addition to the rates for title insurance, be considered at the biennial hearing must provide a detailed description of the matter or subject no later than September 30, 2002.

All requests should be addressed to the Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104 (please refer to reference number O-0802-33-I). Requests should be submitted in both hard copy and 3 1/2 inch diskette format.

TRD-200205501
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: August 21, 2002



Texas Lottery Commission

Instant Game Number 318 "Stars & Stripes"

1.0 Name and Style of Game.

A. The name of Instant Game No. 318 is "STARS & STRIPES". The play style is "match 3 with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 318 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 318.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: \$1.00, \$2.00, \$3.00, \$6.00, \$9.00, \$18.00, \$27.00, \$100, \$1,000, and \$3,000.

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

Figure 1: GAME NO. 318 - 1.2D

PLAY SYMBOL	CAPTION
\$1.00	ONES
\$2.00	TWO\$
\$3.00	THREE\$
\$6.00	SIX\$
\$9.00	NINES
\$18.00	EGHTN
\$27.00	TWYSVN
\$100	ONE HUND
\$1,000	ONE THOU
\$3,000	THR THOU

Table 2 of this section.

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:

Figure 2: GAME NO. 318 - 1.2E

CODE	PRIZE
ONE	\$1.00
THR	\$3.00
SIX	\$6.00
NIN	\$9.00
EHT	\$18.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$3.00, \$6.00, \$9.00, or \$18.00.

H. Mid-Tier Prize - A prize of \$27.00, \$100, or \$300.

I. High-Tier Prize - A prize of \$3,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A thirteen (13) digit number consisting of the three (3) digit game number (318), 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 : 318-0000001-000.

L. Pack - A pack of "STARS & STRIPES" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 000 - 004 will be on the top page and tickets 005 - 009 will be on the next page and so forth with tickets 245 - 249 on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number through the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "STARS & STRIPES" Instant Game No. 318 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 "STARS & STRIPES" Instant Game is determined once the latex on the ticket is scratched off to expose 6 (six) play symbols. If a player gets three like amounts, the player will win that amount. If a player gets three like amounts in RED, the player will win triple 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 6 (six) 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 6 (six) 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 6 (six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 6 (six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. No adjacent non-winning tickets will contain identical play symbols in the same locations.

B. No four or more of a kind on a ticket (in any color).

C. Single winning play symbols will be in blue.

D. Triple winning play symbols will be in red.

E. There will be at least two red play symbols on all tickets.

F. There will never be three matching symbols in both colors (e.g., 2 red and 1 blue or 2 blue and 1 red).

2.3 Procedure for Claiming Prizes.

A. To claim a "STARS & STRIPES" Instant Game prize of \$1.00, \$3.00, \$6.00, \$9.00, \$18.00, \$27.00, \$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 \$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 "STARS & STRIPES" Instant Game prize of \$3,000, 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 "STARS & STRIPES" 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

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "STARS & STRIPES" 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 "STARS & STRIPES" 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 20,534,000 tickets in the Instant Game No. 318. The approximate number and value of prizes in the game are as follows:

Table 3 of this section

Figure 3: GAME NO. 318 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$1.00	2,463,987	8.33
\$3.00	1,314,252	15.62
\$6.00	164,317	124.97
\$9.00	164,227	125.03
\$18.00	82,136	250.00
\$27.00	18,837	1,090.09
\$100	4,385	4,682.78
\$300	3,001	6,842.39
\$3,000	41	500,829.27

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.87. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.



A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 318 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. 318, 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-200205448
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: August 20, 2002

Instant Game Number 354 "Lucky Day"

1.0 Name and Style of Game.

A. The name of Instant Game No. 354 is "LUCKY DAY". The play style is "match 3 with doubler."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 354 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 354.

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, \$50.00, \$100, \$200, \$2,000, and HORSESHOE SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and

each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 of this section

Figure 1: GAME NO. 354 - 1.2D

PLAY SYMBOL	CAPTION
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$8.00	EIGHT\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$2,000	TWO THOU
HORSESHOE SYMBOL	HORSESHOE

Table 2 of this section

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:

Figure 2: GAME NO. 354 - 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 Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$8.00, \$10.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100, or \$200.

I. High-Tier Prize - A prize of \$2,000.

J. Bar Code - A 22 (twenty-two) 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 13 (thirteen) digit number consisting of the three (3) digit game number (354), 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: 354-0000001-000.

L. Pack - A pack of "LUCKY DAY" 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 first page, tickets 005-009 will be on the next page and so forth with tickets 245-249 on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number through the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LUCKY DAY" Instant Game No. 354 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 "LUCKY DAY" Instant Game is determined once the latex on the ticket is scratched off to expose nine (9) play symbols. If the player matches three like amounts, the player will win that amount. If the player matches two like amounts and a horseshoe symbol, the player will win double 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. No more than one (1) Doubler Symbol on a ticket.

E. No more than one pair of like play symbols will appear on a ticket containing a Doubler Symbol.

F. No more than two 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 "LUCKY DAY" Instant Game prize of \$1.00, \$2.00, \$4.00, \$8.00, \$10.00, \$20.00, \$50.00, \$100, or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$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 "LUCKY DAY" Instant Game prize of \$2,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY DAY" 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

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "LUCKY DAY" 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 "LUCKY DAY" 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 12,239,500 tickets in the Instant Game No. 354. The approximate number and value of prizes in the game are as follows:

Table 3 of this section

Figure 3: GAME NO. 354 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$1	1,321,918	9.26
\$2	979,160	12.50
\$4	293,670	41.68
\$8	97,916	125.00
\$10	24,492	499.73
\$20	36,725	333.27
\$50	17,808	687.30
\$100	921	13,289.36
\$200	517	23,674.08
\$2,000	13	941,500.00

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.41. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 354 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. 354, 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-200205339
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: August 16, 2002

◆ ◆ ◆
Manufactured Housing Division

Notice of Administrative Hearing
 Wednesday, September 25, 2002, 1:00 p.m.

State Office of Administrative Hearings, Stephen F. Austin Building,
 1700 N Congress, 11th Floor, Suite 1100
 Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Texas Department of Housing and Dr. Bacon's Custom Homes Inc. dba Dr. Bacon's Affordable Housing to hear alleged violations of Sections 4(d), 14(f) and 14(j) of the Act and Sections 80.131(b) and 80.132(3) of the Administrative Rules by not complying with the warranty order, not responding with corrective action in a timely manner, and not properly installing a manufactured home. SOAH 332-02-3943. Department MHD2001001904-W, MHD2002001323-IV, and MHD2002000595-W.

Contact: Jim R. Hicks, P.O. Box 12489, Austin, Texas 78711-2489,
 (512) 475-3589, jhicks@tdhca.state.tx.us

TRD-200205468
 Timothy K. Irvine
 Attorney
 Manufactured Housing Division
 Filed: August 21, 2002

◆ ◆ ◆
Texas Natural Resource Conservation Commission

Enforcement Orders

An agreed order was entered regarding CITGO Refining & Chemical Company, L.P., Docket No. 1999-0057-AIR-E on August 13, 2002 assessing \$750,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Risner, Staff Attorney at (512)239-6224, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kansas City Southern Railway Company, Docket No. 1999-1569-IWD-E on August 13, 2002 assessing \$28,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Troy Nelson, Staff Attorney at (903)525-0380, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Charles Jackson, Jr., Docket No. 2001-0385-WOC-E on August 13, 2002.

Information concerning any aspect of this order may be obtained by contacting Rich O'Connell, Staff Attorney at (512)239-5528, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kent Thomas dba Longhorn Resort, Docket No. 2000-0588-PWS-E on August 13, 2002 assessing \$2,188 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.

An agreed order was entered regarding Wise County Recycling, Inc., Docket No. 2001-0042-MSW-E on August 13, 2002 assessing \$8,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Wendy Cooper, Enforcement Coordinator at (817)588-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jackie Fountain dba Fountain Plumbing, Docket No. 2001-0282-OSI-E on August 13, 2002 assessing \$1,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lisa Lemaczyk, Staff Attorney at (512)239-5915, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jim Kelly's Ice Tee, L.L.C. dba Mulligan's, Docket No. 2001-1507-PWS-E on August 13, 2002 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly McGuire, Enforcement Coordinator at (512)239-4761, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Port Mansfield Public Utility District, Docket No. 2001-1102-MSW-E on August 13, 2002 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Katharine Hodgins, SEP Coordinator at (512)239-5731, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gene Harris Petroleum, Inc. dba Quickway #13, Docket No. 2001-0377-PST-E on August 13, 2002 assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katharine Hodgins, SEP Coordinator at (512)239-5731, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Boyd Reeder, Docket No. 2001-1267-MSW-E on August 13, 2002 assessing \$2,500 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 Bobby Cunningham dba Littlefield Butane Co. and Bobby Cunningham dba 66 Butane & Fertilizer Co., Docket No. 2001-0902-PST-E on August 13, 2002 assessing \$16,000 in administrative penalties with \$3,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Elnora Moses, Enforcement Coordinator at (903)535-5136, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding William Lasater dba Lasater Dairy, Docket No. 2001-1295-AGR-E on August 13, 2002 assessing \$5,400 in administrative penalties with \$1,080 deferred.

Information concerning any aspect of this order may be obtained by contacting Katharine Hodgins, SEP Coordinator at (512)239-5731, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Larry O'Neill dba Lazy Acres Mobile Home Park, Docket No. 2001-1150-PWS-E on August 13, 2002 assessing \$350 in administrative penalties with \$70 deferred.

Information concerning any aspect of this order may be obtained by contacting J Craig Fleming, Enforcement Coordinator at (512)239-5806, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Juan D. Juarez and Juarez Brothers, Inc. dba America Auto Repair, Docket No. 2001-0143-AIR-E on August 13, 2002 assessing \$6,000 in administrative penalties with \$1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Kevin Keyser, Enforcement Coordinator at (713)767-8938, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stampede Fuels, Inc., Docket No. 2002-0015-PST-E on August 13, 2002 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Slocum, Enforcement Coordinator at (512)239-6589, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Robert Lee, Docket No. 2001-1136-MWD-E on August 13, 2002 assessing \$9,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katharine Hodgins, SEP Coordinator at (512)239-5731,

Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Republic Waste Services of Texas, Ltd., Docket No. 2001-1488-PST-E on August 13, 2002 assessing \$2,250 in administrative penalties with \$450 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 Sherwin Alumina, L.P., Docket No. 2002-0115-AIR-E on August 13, 2002 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Katharine Hodgins, SEP Coordinator at (512)239-0600, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Betty J. Pope and Ivan B. Hansen dba B & I Grocery, Docket No. 2001-1024-PST-E on August 13, 2002 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Susan Kelly, Enforcement Coordinator at (409)899-8704, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Econo Lube N'Tune, Inc., Docket No. 2002-0008-PST-E on August 13, 2002 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Alayne Ferguson, Enforcement Coordinator at (817)588-5812, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sharon K. Melancon dba Elsie M's Grocery, Docket No. 2001-1323-PST-E on August 13, 2002 assessing \$10,500 in administrative penalties with \$9,900 deferred.

Information concerning any aspect of this order may be obtained by contacting Susan Kelly, Enforcement Coordinator at (409)899-8704, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eros Investment Inc. dba Stop N Shop, Docket No. 2001- 1429-PST-E on August 13, 2002 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting Susan Kelly, Enforcement Coordinator at (409)899-8704, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2001-1122-PST-E on August 13, 2002 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512)239-2134, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation dba Exxon R/S 6-2007, Docket No. 2001-1185-PST-E on August 13, 2002 assessing \$8,500 in administrative penalties with \$1,700 deferred.

Information concerning any aspect of this order may be obtained by contacting A Sunday Udoetok, Enforcement Coordinator at (512)239-0739, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Garland Municipal Power & Light, Docket No. 2001- 1338-AIR-E on August 13, 2002 assessing \$13,500 in administrative penalties with \$2,700 deferred.

Information concerning any aspect of this order may be obtained by contacting Katharine Hodgins, SEP Coordinator at (512)239-5731, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Industrial Pipe and Plastics of Texas, Incorporated, Docket No. 2001-1511-AIR-E on August 13, 2002 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512)239-2134, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Jayton, Docket No. 2001-0983-PWS-E on August 13, 2002 assessing \$2,813 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting George Ortiz, Enforcement Coordinator at (915)698-9674, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Westfield Sandblasting, Inc., Docket No. 2001-1362- IHW-E on August 13, 2002 assessing \$2,700 in administrative penalties with \$540 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Sherman, Enforcement Coordinator at (713)767-3624, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding W&W Fiberglass Tank Company, Docket No. 2001- 1524-AIR-E on August 13, 2002 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Ronnie Kramer, Enforcement Coordinator at (806)468-0512, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Doris Higgins dba Two Pines Mobile Home Park, Docket No. 2001-0940-PWS-E on August 13, 2002 assessing \$1,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at (903)535-5145, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kim Pham dba Sunny's Food Express, Docket No. 2001- 1022-PST-E on August 13, 2002 assessing \$4,000 in administrative penalties with \$800 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Sherman, Enforcement Coordinator at (713)767-3624, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stubbs Petroleum Co., Inc., Docket No. 2001-1425-PST- E on August 13, 2002 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Katharine Hodgins, SEP Coordinator at (512)239-5731, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Jasper, Docket No. 2001-1270-MWD-E on August 13, 2002 assessing \$11,250 in administrative penalties with \$2,250 deferred.

Information concerning any aspect of this order may be obtained by contacting Katharine Hodgins, SEP Coordinator at (512)239-5731, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J. H. Jones Oil Company, Inc. of Silsbee TX, Docket No. 2002-0160-PST-E on August 13, 2002 assessing \$500 in administrative penalties with \$100 deferred.

Information concerning any aspect of this order may be obtained by contacting Susan Kelly, Enforcement Coordinator at (409)899-8704, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Steve Vandermeer dba Vandermeer Dairy, Docket No. 2001-1145-AGR-E on August 13, 2002 assessing \$2,500 in administrative penalties.

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 Lyondell-CITGO Refining, LP, Docket No. 2001-0072- AIR-E on August 13, 2002 assessing \$12,700 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.

An agreed order was entered regarding Detar Hospital, LLC, Docket No. 2001-1376-PST-E on August 13, 2002 assessing \$1,500 in administrative penalties with \$300 deferred.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator at (361)825-3122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Baker Petrolite Corporation, Docket No. 2001-0195- AIR-E on August 13, 2002 assessing \$51,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katharine Hodgins, SEP Coordinator at (512)239-0600, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Min Jae Lee dba Coastal Gas Mart, Docket No. 2001- 1280-PST-E on August 13, 2002 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Sherman, Enforcement Coordinator at (713)767-3624, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200205455

LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: August 20, 2002



Notice of a Name Change from the Texas Natural Resource Conservation Commission (TNRCC) to the Texas Commission on Environmental Quality (TCEQ)

Part 1. Texas Commission on Environmental Quality

House Bill 2912, Article 18, 77th Legislature, 2001, changed the name of the Texas Natural Resource Conservation Commission (TNRCC) to the Texas Commission on Environmental Quality (TCEQ) and directed the TNRCC to adopt a timetable for phasing in the change of the agency's name. The TNRCC decided to make the change of the agency's name to the TCEQ effective September 1, 2002.

House Bill 2912 provides that: 1) all powers, duties, rights, and obligations of the TNRCC are the powers, duties, rights, and obligations of the TCEQ; 2) a member of the TNRCC is a member of the board of the TCEQ; 3) all personnel, equipment, data, documents, facilities, and other items of the TNRCC are transferred to the agency under its new name; and 4) any appropriation to the TNRCC is automatically an appropriation to the TCEQ.

The *Texas Register* has changed the heading of Part 1 of Title 30 to Texas Commission on Environmental Quality. The TCEQ is in the process of revising and updating its rules to reflect its new name.

TRD-200205443
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: August 20, 2002



Notice of Application for Industrial Hazardous Waste Permits/Compliance Plans

APPLICATION Air Products, L.P., located at 1423 Highway 225, Pasadena, Texas, a chemical manufacturer, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a permit/compliance plan renewal/major amendment. The permit renewal authorizes the continued operation of a of one existing tank and container storage area for the storage of hazardous waste and also post-closure care of two closed surface impoundments. The major amendment authorizes changes to the approved waste analysis plan, closure plan, the geology report, and the emergency coordinators list and update the list of solid waste management units. The compliance plan renewal authorizes and requires the permittee to update the existing corrective action program to incorporate solid waste management unit into corrective action, monitor the concentration of hazardous constituents in ground waster and remediate ground-water quality to specified standards. The facility is located in Pasadena in Harris County, Texas. This application was submitted to the TNRCC on April 21 , 2000.

The TNRCC executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council and has determined that the action is consistent with the applicable CMP goals and policies.

The TNRCC executive director has completed the technical review of the application and prepared a draft permit and compliance plan. The

draft permit and compliance plan, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision that this permit and compliance plan, if issued, meet all statutory and regulatory requirements. The permit and compliance plan application, executive director's preliminary decision, and draft permit/compliance plan are available for viewing and copying at the Pasadena Public Library, 1201 Jeff Ginn Memorial Drive, Pasadena, Texas 77501.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. Generally, the TNRCC will hold a public meeting if the executive director determines that there is a significant degree of public interest in the application, if requested in writing by an affected person, or if requested by a local legislator. A public meeting is not a contested case hearing.

Written public comments and requests for a public meeting must be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087 within 45 days from the date of newspaper publication of this notice.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for public comments, the executive director will consider the comments and prepare a response to all relevant and material or significant public comments. The response to comments, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments or is on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the executive director's decision. A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

A contested case hearing will only be granted based on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised during the public comment period and not withdrawn. Issues that are not raised in public comment may not be considered during a hearing.

EXECUTIVE DIRECTOR ACTION. The executive director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the executive director will not issue final approval of the [permit/compliance plan] and will forward the application and requests to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: (1) the mailing list for this specific application; (2) the permanent mailing list for a specific applicant name and permit number; and/or (3) the permanent mailing list for a specific county. Clearly specify which mailing list(s) to which you wish to be added and send your request to the TNRCC Office of the Chief Clerk at the address below. Unless you otherwise specify, you will be included only on the mailing list for this specific application.

INFORMATION. If you need more information about this permit application or the permitting process, please call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

Further information may also be obtained from Air Products, L.P., at P.O. Box 3326, Pasadena Texas 77501-3326 or by calling W. F. Caldwell at 713-447-6841.

TRD-200205457
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: August 20, 2002



Notice of District Petition

Notices mailed on August 16, 2002.

TNRCC Internal Control No. 05142002-D03; Bobby W. Shotwell, Mary Frances Edwards, and John Alexander Family Limited Partnership, RH of Texas Limited Partnership, and James E. Sowell Company (Petitioners), have filed a petition for the creation of Brazoria County Municipal Utility District Number 28 (District) with the Texas Natural Resource Conservation Commission (TNRCC). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TNRCC. The petition states that: (1) Bobby W. Shotwell, Mary Frances Edwards, and John Alexander Family Limited Partnership are the owners of a majority in value of the land to be included in the proposed District; (2) RH of Texas Limited Partnership and James E. Sowell Company have entered into earnest money contracts to purchase all of the property in the proposed District (3) there are no lien holders on the properties to be included in the proposed District; (4) the proposed District will contain approximately 170.8326 acres located within Brazoria County, Texas; and (5) the proposed District is within the corporate boundaries of the City of Pearland, Texas. By Ordinance No. 1055, effective February 25, 2002, the City of Pearland passed, approved and gave its consent to create District, and has given its authorization to initiate proceedings to create such political subdivision within its jurisdiction. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the petitioners, from the information available at this time, that the cost of said project will be approximately \$9,000,000.

TNRCC Internal Control No. 03142002-D03; Marwood Land Investments, Ltd. and BGM Land Investments, Ltd. (Petitioners) filed a petition for creation of Harris County Municipal Utility District Number 391 (District) with the Texas Natural Resource Conservation Commission (TNRCC). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TNRCC. The petition states that: (1) the Petitioners are the owner of a majority in value of the land to be included in the proposed District; (2) there are two lienholders (Bank of Texas, N.A. and Paradigm Bank Texas) on the land to be included in the proposed District; (3) the proposed District will contain approximately 636.250 acres of land located within Harris County, Texas, save and except a 0.574 acre tract of land situated in Harris County, Texas (636.25-0.574 = 635.676 approximate total acres); and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and is not within such jurisdiction of any other city. By City of Houston, Texas, Ordinance No. 2002-110, effective February 26, 2002, the City of Houston, Texas granted its consent to create District, and has given its authorization to initiate proceedings to create such political subdivision within its jurisdiction.

The TNRCC may grant a contested case hearing on these petitions if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and

fax number, if any; (2) the name of the petitioner and the TNRCC Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve the petitions unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-200205459

LaDonna Castañuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: August 20, 2002



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

The Texas Natural Resource Conservation Commission (commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director (ED) of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 30, 2002**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should

be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 30, 2002**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Mitchell and Alvin Kidd dba Old West Mobile Home Park; DOCKET NUMBER: 2001-1193-PWS-E; TNRCC ID NUMBER: 1910045; LOCATION: 7801 McCormick Road, Amarillo, Randall County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(2) and Texas Health and Safety Code (THSC), §341.033(d), by failing to conduct and submit routine monthly bacteriological samples; 30 TAC §290.109(g), by failing to notify the public for microbial contamination; 30 TAC §290.46(e)(1), by failing to ensure that the facility is operated under the direct supervision of a certified water works operator at all times; 30 TAC §290.118(b) and (g), by exceeding the maximum secondary constituent level of 2.0 milligrams per liter for fluoride in the water; 30 TAC §290.46(t), by failing to post a legible system ownership sign at each production, treatment, and storage facility in plain view of the public which includes the name of the water supply and an emergency telephone number where a responsible official can be contacted; 30 TAC §290.41(c)(3), by failing to submit to the TNRCC well completion data for review and approval prior to being placed into service; 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling tap on the discharge line to facilitate the collection of samples for chemical and bacteriological analysis directly from the well; 30 TAC §290.41(c)(3)(N), by failing to install a flow meter on the pump discharge line in order to assist in the production of water usage records and to assist in more efficient system operation; 30 TAC §290.41(c)(1)(A), by failing to locate groundwater sources so there will be no danger of pollution from unsanitary surroundings; and 30 TAC §290.46(f)(1) and (2), by failing to maintain reports regarding the chemical and microbiological quality of the water supply, by failing to maintain water system operating records, and failing to make these reports readily available for review during the inspection; PENALTY: \$9,600; STAFF ATTORNEY: Shannon Strong, Litigation Division, MC 175, (512) 239-6201; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(2) COMPANY: Sneed Shipbuilding, Inc.; DOCKET NUMBER: 2001-0343-MLM-E; TNRCC ID NUMBER: OC-0065-S; LOCATION: 2011 Dupont Drive, Orange, Orange County, Texas; TYPE OF FACILITY: barge building, ship repair, and salvage shop; RULES VIOLATED: 30 TAC §§101.4, 111.201, and 330.5, and THSC, §382.085(a) and (b), by conducting unauthorized burning of large piles of miscellaneous debris consisting of tires, construction materials, fiberglass, creosote logs, and other solid waste; PENALTY: \$5,000; STAFF ATTORNEY: Scott McDonald, Litigation Division, MC R-4, (817) 588-5888; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Fwy., Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-200205307

Paul C. Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: August 15, 2002



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

The Texas Natural Resource Conservation Commission (commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 30, 2002**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 30, 2002**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: Billy Ray Fisher; DOCKET NUMBER: 2000-0865-OSI-E; TNRCC ID NUMBER: none; LOCATION: 91 County Road 305, Jonesboro, Hamilton County, Texas; TYPE OF FACILITY: on-site sewage facility (OSSF); RULES VIOLATED: 30 TAC §285.5(1) and Texas Health and Safety Code (THSC), §366.051(c), by failing to verify that a TNRCC permit had been issued before installing an OSSF system; 30 TAC §285.58(a)(3) and THSC, §366.054, by failing to notify the TNRCC and obtain authorization to construct before beginning to install an OSSF system; and 30 TAC §285.58(a)(11), by failing to call for the required inspections of the OSSF system; PENALTY: \$2,250; STAFF ATTORNEY: Darren Ream, Litigation Division, MC R-4, (817) 588-5878; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Ave., Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Kennedy Ridge Water Supply Corporation; DOCKET NUMBER: 2000-1069- PWS-E; TNRCC ID NUMBER: 2270308; LOCATION: north of Farm-to-Market Road 969 at the intersection of Cadillac Drive and Chamberlain Road, Travis County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(m)(1)(B), by failing to conduct an inspection of the interior surface of the pressure tank within the past five years; 30 TAC §290.43(c)(8), by failing to maintain the ground storage tank; 30 TAC §290.110(c)(5)(B), by failing to conduct weekly chlorine residual tests; 30 TAC §290.44(c), by failing to provide proper sized water lines throughout the distribution system; and 30 TAC §290.51, by failing to pay late fees; PENALTY: \$9,888; STAFF ATTORNEY: Elisa Roberts, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Dr., Suite. 150, Austin, Texas 78758-5336, (512) 339-2929.

(3) COMPANY: Lorenzo Estrada dba Reliable Backhoe; DOCKET NUMBER: 2001-1224- OSI-E; TNRCC ID NUMBER: OS 6567; LOCATION: 2810 Sain Drive, Alice, Jim Wells County, Texas; TYPE

OF FACILITY: on-site sewage (OSSF); RULES VIOLATED: 30 TAC §285.3(b)(1) and THSC, §366.051(c), by failing to obtain proof that authorization to construct had been obtained from the permitting authority before construction of an OSSF; and 30 TAC §285.61(5), and THSC, §366.051(c) and §366.054 by failing to notify the permitting authority of the date on which the installer planned to begin construction of an OSSF and by failing to show proof of an approved plan from the permitting authority prior to construction; PENALTY: \$500; STAFF ATTORNEY: Troy Nelson, Litigation Division, MC R-5, (903) 525-0380; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(4) COMPANY: Roy Carrell dba Roy Carrell Dairy; DOCKET NUMBER: 2001-0664-AGR- E; TNRCC ID NUMBER: 04263; LOCATION: east side of County Road 1001 immediately north of the intersection of County Road 1001 and County Road 913 in Godley, Johnson County, Texas; TYPE OF FACILITY: dairy; RULES VIOLATED: 30 TAC §321.39(a), by failing to develop an adequate pollution prevention plan; 30 TAC §321.38, by failing to document all best management practices used to comply with all applicable waste and wastewater discharge and air emission limitations; and 30 TAC §321.41(d) and (e), by failing to document inspections and maintenance and keep records on site for three years; PENALTY: \$1,600; STAFF ATTORNEY: Gitanjali Yadav, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Forth Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Rudolfo De La Rosa dba Del Camino Cleaners and Martin Caballero dba Camino Cleaners; DOCKET NUMBER: 2000-1024-PST-E; TNRCC ID NUMBER: 0014979; LOCATION: 106 south Conception, El Paso, El Paso County, Texas; TYPE OF FACILITY: dry cleaning; RULES VIOLATED: 30 TAC §334.50(a)(1) and TWC, §26.3475, by failing to have a release detection method for the underground storage tank (UST); 30 TAC §334.51(b) and TWC, §26.3475, by failing to have spill and overflow prevention equipment for the UST system; 30 TAC §334.49(a), and TWC, §26.3475, by failing to provide corrosion protection for the UST; and 30 TAC, §334.93(a) and (b) and TWC, §26.352, by failing to demonstrate financial responsibility; PENALTY: \$10,625; STAFF ATTORNEY: Lisa Lemanczyk, Litigation Division, MC 175, (512) 239-5915; REGIONAL OFFICE: El Paso Regional Office, 401 E. Franklin Ave., Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(6) COMPANY: Trimac Corporation; DOCKET NUMBER: 2001-1490-PST-E; TNRCC ID NUMBER: none; LOCATION: South Highway 281, Burnet, Burnet County, Texas; TYPE OF FACILITY: fuel transporter; RULES VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator of the UST system at the facility had a valid, current TNRCC delivery certificate prior to depositing a regulated substance into the regulated UST system; PENALTY: \$ 2,000; STAFF ATTORNEY: Kelly W. Mego, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Dr., Suite. 150, Austin, Texas 78758-5336, (512) 339-2929.

TRD-200205308

Paul C. Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: August 15, 2002

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Notice of Water Quality Applications

The following notices were issued during the period of August 12, 2002 through August 19, 2002.

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.**

COOPER CAMERON CORPORATION 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. 13578-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day. The plant site is located at 11800 Charles Street; approximately 1.0 mile west-northwest of the intersection of U.S. Highway 290 and Farm-to-Market Road 529 in Harris County, Texas.

CITY OF CUNEY has applied for a renewal of TPDES Permit No. 13728-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located 0.5 mile south of State Highway 175 and 0.6 mile east of the Neches River in Cherokee County, Texas.

DONOHUE INDUSTRIES INCORPORATED which operates the Lufkin Mill, an integrated pulp and paper mill, has applied for a major amendment to TNRCC Permit No. 00368 to authorize removal of the monitoring and reporting requirements for total zinc at Outfall 001; removal of the effluent limitations for 2,3,7,8-TCDD Equivalents at Outfall 001; removal of the 2,3,7,8-TCDD Equivalents testing requirements for the sludge; removal of the fish tissue sampling requirements; an increase in the biochemical oxygen demand (5-day) effluent limitation at Outfall 001; adding landfill leachate to the authorized wastestreams; removal of Outfall 003; and clarification of the existing authorized wastestreams at Outfall 004 to include boiler blowdown, discharges from the fire water system, and cooling water. The current permit authorizes the discharge of process wastewater, utility wastewater, washdown water, domestic wastewater, and storm water at a daily average dry weather flow not to exceed 20,000,000 gallons per day via Outfall 001; and the discharge of storm water runoff on an intermittent and flow variable basis via Outfalls 002, 003, 004, and 005. The application also includes a request for a temporary variance extension to the existing water quality standards for the water quality based criteria for aluminum for the Angelina River/Sam Rayburn Reservoir in Segment No. 0615 of the Neches River Basin. The variance extension would authorize an additional three-year period in which the Commission will consider the site-specific standards and determine whether to adopt the standards or require the existing water quality standards to remain in effect. The facility is located on the north side of State Highway 103, approximately 0.25 miles east of the intersection of State Highway 103 and Farm-to-Market Road 842 northeast of the City of Lufkin, Angelina County, Texas.

PLAINS COTTON COOPERATIVE ASSOCIATION which operates the American Cotton Growers facility, a textile mill that manufactures denim from raw cotton, has applied for a major amendment to Permit No. 02599 to authorize an increase in the daily average flow of water softener regeneration water from a daily max flow of 1,500 gallons per day and dye rinse water from a daily average flow of 95,000 gallons per day to a combined daily average flow not to exceed 170,000 gallons per day via evaporation; increase the daily average flow of rinse water from starch vats from 1,500 gallons per day to 4,000 gallons per day via soil injection; increase the soil injection area from 6.18 acres to 10.24 acres; and increase the disposal area for evaporation from 23.56

acres to 41.57 acres. The current permit authorizes the disposal of water softener regenerate at a daily maximum flow not to exceed 1,500 gallons per day and indigo dye rinse water at a daily average flow not to exceed 95,000 gallons per day via evaporation; and the disposal of rinse water from starch vats at a daily average flow not to exceed 1,500 gallons per day via soil injection. This permit will not authorize a discharge of pollutants into water in the State. The facility and disposal area are located adjacent to State Highway 54, approximately 1.4 miles east of the City of Littlefield, Lamb County, Texas.

SHELBYVILLE INDEPENDENT SCHOOL DISTRICT has applied for a major amendment TPDES Permit No. 13370-001 to authorize an addition of a constructed wetland. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 11,250 gallons per day. The facility is located 1,000 feet due south of the intersection of Farm-to-Market Road 147 and State Highway 87, on the west side of State Highway 87 in Shelby County, Texas.

TAWAKONI WASTE WATER CORPORATION has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14297-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility is located approximately 1,000 feet southwest of the intersection of Farm-to-Market Road 429 and Farm-to-Market Road 721, on the northwest side of Farm-to-Market Road 429, between Farm-to-Market Road 429 and Lake Tawakoni in Hunt County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of Permit No. 13285-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 14,000 gallons per day via surface irrigation of 8.5 acres of non-public access land. The facility and disposal site are located approximately 1,000 feet south of Farm-to-Market Road 1716 and approximately 4,500 feet south-southeast of the intersection of State Highway 43 and Farm-to-Market Road 1716 in Rusk County, Texas.

TRINITY RIVER AUTHORITY OF TEXAS has applied for a renewal of TPDES Permit No. 13457-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The facility is located at 1687 U.S. Highway 377 north of Roanoke, approximately 1.5 miles north-northeast of the intersection of State Highway 114 and U.S. Highway 377 in Denton County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, **WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE**

The Texas Natural Resource Conservation Commission (TNRCC) has initiated a minor amendment of the Texas Pollutant Discharge Elimination System (TPDES) permit issued to GARY RANDOLPH BOSTIC, to authorize correction of date of expiration of existing permit. The facility is located 2,450 feet from the Redmon Street/Gum Spring Road intersection and 5,300 feet from the Redmon Road/Cotton Street intersection, and approximately 1 mile east of the City of Longview in Harrison County, Texas.

TRD-200205456
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: August 20, 2002



Notice of Water Rights Application

Notices mailed during the period August 7, 2002 through August 15, 2002.

APPLICATION NO. 5776; Wilbow-Fairview No. 1 Development Corporation, 9330 LBJ Fwy., Suite 745, Lockbox 68, Dallas, Texas, 75243, applicant, seeks a Water Use Permit, pursuant to Texas Water Code (TWC) 11.143 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. Applicant seeks authorization to maintain an existing exempt reservoir, known as the West Pond, on an unnamed tributary of an unnamed tributary of Sloan Creek, tributary of Wilson Creek, tributary of the Trinity River, Trinity River Basin, for in-place recreational (aesthetics) purposes within the Town of Fairview, Collin County, Texas. The dam is located in the J.A. Taylor Original Survey N-1155, Abstract 909, Collin County. The midpoint on the centerline of the dam is N1.933 W, 1,945 feet from the southwest corner of the Samuel Sloan Original Survey I-259, Abstract 791, Collin County, Texas, also being Latitude 33.138 N and Longitude 96.636 W. The reservoir has a capacity of 4.90 acre-feet of water and a surface area of 0.94 acre. Ownership of the land where the reservoir is located is evidenced by a deed recorded in vol. 04865, pg. 04134 in the records of the Collin County Clerk's office. No diversions are requested. The application was received on September 6, 2001. Additional fees and information were received on March 22, 2002 and May 17, 2002. The Executive Director reviewed the application and determined it to be administratively complete on May 17, 2002. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk at the address provided in the information section below within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 5775; Wilbow-Fairview No. 1 Development Corporation, 9330 LBJ Fwy., Suite 745, Lockbox 68, Dallas, Texas, 75243, applicant, seeks a Water Use Permit, pursuant to Texas Water Code (TWC) 11.143 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. Published notice of the application is given pursuant to 30 TAC 295.152 and mailed notice pursuant to 30 TAC 295.153(c)(1) to all of the downstream water right holders of record in the Trinity River Basin. Applicant seeks authorization to maintain an existing exempt reservoir, known as the East Pond, on an unnamed tributary of an unnamed tributary of Sloan Creek, tributary of Wilson Creek, tributary of the Trinity River, Trinity River Basin, for in-place recreational (aesthetics) purposes within the Town of Fairview, Collin County, Texas. The midpoint on the centerline of the dam is N21.113 E, 1,888 feet from the southwest corner of the Samuel Sloan Original Survey I-259, Abstract 791, Collin County, Texas, also being Latitude 33.137 N and Longitude 96.634 W. The reservoir has a capacity of 4.3 acre-feet of water and a surface area of 1.0 acre. Ownership of the land where the reservoir is located is evidenced by a deed recorded in vol. 04865, pg. 04134 in the records of the Collin County Clerk's office. No diversions are requested. The application was received on September 6, 2001. Additional fees and information were received on March 22, 2002 and May 17, 2002. The Executive Director reviewed the application and determined it to be administratively complete on May 17, 2002. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk at the address provided in the information section below within 30 days of the date of newspaper publication of the notice.

Application No. 08-3344A; Mount Olivet Cemetery Association, P.O. Box 9450, Fort Worth, Texas 76147-2450, applicant, seeks an amendment to Certificate of Adjudication No. 08-3344 pursuant to Texas Water Code (TWC) 11.122, and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. Certificate of Adjudication No. 08-3344 authorizes owner to maintain an existing dam and reservoir on an unnamed tributary of the West Fork Trinity River, Trinity

River, Trinity River Basin in Tarrant County and impound therein not to exceed one (1) acre- feet of water. Owner is also authorized to divert and use not to exceed 180 acre-feet of water per annum from the West Fork Trinity River for agricultural purposes to irrigate a maximum of 86 acres out of a 195.237 acre tract at a maximum rate of 2.23 cfs (1,000 gpm). Applicant seeks to amend Certificate of Adjudication No. 08-3344 by adding an off-channel reservoir and to directly divert into the off-channel reservoir not to exceed an additional 75 acre-feet of water per annum from a point on the West Fork Trinity River, tributary of the Trinity River, Trinity River Basin for subsequent agricultural use to irrigate a maximum of 100 acres of land out of a 129.5 acre tract in Tarrant County at a maximum diversion rate of 0.56 cfs (250 gpm) from the West Fork Trinity River (point no. 1) and 1.11 cfs (500 gpm) from the aforesaid reservoir (point no. 2). The off-channel reservoir has a capacity of 3 acre-feet and a surface area of 1.75 acres and is located in the C.B. Daggett Survey, Abstract No. 428, Tarrant County, Texas. Station 1 + 00 (NE corner) of the levee forming the reservoir is S 61 degrees 30' W, 460 feet from the NE corner of the aforesaid survey, also being at Latitude 32.794 degrees N and Longitude 97.309 degrees W. Diversion point no. 1 is located at a point on the north, or left, bank of the West Fork Trinity River, S 47 degrees W, 6,000 feet from the aforesaid survey corner, also being at Latitude 32.789 degrees N and Longitude 97.326 degrees W. Diversion point no. 2 will be from the perimeter of the off-channel reservoir levee, S 61 degrees 30' W, 460 feet from the aforesaid survey corner, also being at Latitude 32.794 degrees N and Longitude 97.326 degrees W. Ownership of the land is evidenced by Warranty Deed No. 12485, Volume 3086, Page 406 in the official records of Tarrant County, Texas. No other changes are requested. The application was received on June 7, 2002 and the additional information was received on July 30, 2002. The application was filed and declared to be administratively complete on July 31, 2002. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk at the address provided in the information section below within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 5781; BAE Systems, 6500 Tracor Lane, Austin, Texas 78725, applicant, seeks a Water Use Permit pursuant to Texas Water Code (TWC) 11.121, and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. Published notice of the application is being given pursuant to 30 TAC 295.152, allowing for a thirty (30) day comment period. Notice is being mailed to the water right holders of record in the Colorado River Basin pursuant to 30 TAC 295.153. Applicant seeks to maintain an existing dam and reservoir on an unnamed tributary of Walnut Creek, tributary of the Colorado River, Colorado River Basin, in Travis County, for in-place recreation purposes with no right of diversion. The reservoir has a surface area of 1.07 acres and a capacity of 4.33 acre-feet of water at normal maximum operating level. The dam is located in the Original Jess Tannehill Survey No. 29, Abstract No. 22, and the James Burleson Survey No. 19, Abstract No. 4. The centerline of the dam (Latitude 30.277 N, Longitude 97.663 W) is bearing N 30.528 E, 14,440 feet from the southeast corner of aforementioned Tannehill Survey, approximately 4.7 miles east of Austin, Texas. Ownership of the land is recorded in Volume 11590, pp. 1712-1736 in the official real estate records of Travis County. The application was received on October 18, 2001, and was determined to be administratively complete and filed on July 3, 2002. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 5777; Waste Management of Texas, Inc., West-side Recycling and Disposal Facility, 3500 Linkcrest, Aledo, Texas, 76008, applicant, seeks a Water Use Permit pursuant to 11.121, Texas

Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. Published and mailed notice of the application is given pursuant to 30 TAC 295.152 and 295.153 to all of the water right holders of record in the Trinity River Basin. Applicant has re-routed an unnamed tributary of Mary's Creek, tributary of Clear Fork Trinity River, tributary of the West Fork Trinity River, tributary of the Trinity River, Trinity River Basin, to a man-made drainage pathway into two (2) detention/retention reservoirs in Tarrant County. The stream is returned to the natural channel of the unnamed tributary of Mary's Creek before it leaves the applicant's property. Applicant seeks authorization to impound a combined total of 33.4 acre-feet of water in the two reservoirs and to divert and use not to exceed 75 acre-feet of water per annum at a maximum combined diversion rate of 1.493 cfs (670 gpm) from the reservoirs for industrial (dust suppression (10 acre-feet) and construction activities (35 acre-feet)) and agricultural purposes (30 acre-feet) to irrigate 50 acres of land out of a 235.209 acre tract in the J. Johnson Survey, Abstract 871, Tarrant County. The reservoirs and diversion points are located 12 miles southwest from the County Courthouse, Tarrant County, and 5 miles northeast from Aledo, Texas and are described as follows: Reservoir No. 1 is the upstream reservoir and has a surface area of 3.8 acres and a capacity of 30.7 acre-feet of water. The centerline of the dam is S45 E, 800 feet from the northwest corner of the aforesaid Johnson Survey, also being Latitude 32.7333 N and Longitude 97.5375 W. Reservoir No. 2 is the downstream reservoir and has a surface area of 0.7 acres and a capacity of 2.7 acre-feet of water. The centerline of the dam is S45 E, 1300 feet from the northwest corner of the aforesaid Johnson Survey, also being Latitude 32.7428 N and Longitude 97.5344 W. Diversion point 1 is located at Latitude 32.7331 N and Longitude 97.5378 W, also bearing S30 E, 315 feet from the northwest corner of the aforesaid Johnson Survey. Diversion point 2 is located at Latitude 32.7428 N and Longitude 97.5344 W, also bearing S45 E, 1300 feet from the northwest corner of the aforesaid Johnson Survey. Ownership of the land to be irrigated is evidenced by deeds recorded in volume 12208, page 2281; volume 6477, page 335; and volume 12648, page 2000 of the Deed Records of Tarrant County. The application was received on May 14, 1998. Additional information was received on April 8, 2002, April 9, 2002, and May 23, 2002. The Executive Director reviewed the application and determined it to be administratively complete on May 23, 2002. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk at the address provided in the information section below within 30 days of the date of newspaper publication of the notice.

Information Section

A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in an application.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TNRCC Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request

to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-200205458

LaDonna Castañuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: August 20, 2002

Texas Department of Protective and Regulatory Services

Request for Proposal--Primary Child Abuse Prevention

The Texas Department of Protective and Regulatory Services (PRS), Division of Prevention and Early Intervention, is soliciting proposals to provide Primary Child Abuse Prevention services. PRS anticipates funding four contracts as a result of this solicitation. The Request for Proposal (RFP) will be released on or about August 23, 2002. The RFP will be posted on the State Internet Site at www.marketplace.state.tx.us on the date of its release.

Brief Description of Services: The purpose of primary prevention is to increase knowledge and awareness of child abuse and maltreatment. Primary prevention programs include, but are not limited to, public awareness campaigns, parent education classes, general curricula/activities that support reducing child abuse and maltreatment, community awareness of resources, and printed information for distribution that educate the public regarding child abuse and neglect.

Primary Prevention is defined as services and activities available to the community at large or to families to prevent child abuse and neglect *before* it ever occurs. The key aspects of primary prevention are that it: is offered to all members of a population and is voluntary; attempts to influence societal forces that impact parents and children; and seeks to promote positive family functioning rather than just to prevent problems.

PRS is not stipulating or describing a specific primary prevention program in this RFP. The program parameters are that it must be community-based, generally open to all members of the community, and stay within the funding limits described.

The contracts will be funded and managed by PRS.

Eligible Applicants: Eligible offerors include private nonprofit and for-profit corporations, cities, counties, state agencies/entities, partnerships, and individuals. Historically Underutilized Businesses (HUBs), Minority Businesses and Women's Enterprises, and Small Businesses are encouraged to apply.

Limitations: Total anticipated funding for the 10-month contract is a maximum award of \$125,000 for November 1, 2002, through August 31, 2003. The funding allocated for the contracts resulting from this RFP is dependent on Legislative appropriation. Funding is not guaranteed at the maximum level, or at any level. PRS reserves the right to reject any and all offers received in response to this RFP and to cancel this RFP if it is deemed in the best interest of PRS. PRS also reserves the right to re-procure this service.

If no acceptable responses are received, or no contract is entered into as a result of this procurement, PRS intends to procure by non-competitive means in accordance with the law but without further notice to potential vendors.

Deadline for Proposals, Term of Contract, and Amount of Award: Proposals will be due September 30, 2002, at 3:00 p.m. The effective dates of contracts awarded under this RFP will be November 1, 2002, through August 31, 2003.

Contact Person: Potential offerors may obtain a copy of the RFP on or about August 23, 2002. It is preferred that requests for the RFP be submitted in writing (by mail or fax) to: Vicki Logan, Mail Code Y-956; Texas Department of Protective and Regulatory Services; P.O. Box 149030; Austin, Texas 78714-9030; Fax: 512-821-4767.

TRD-200205442

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

Filed: August 20, 2002

Texas Department of Public Safety

Consultant Contract Award

(1) The Texas Department of Public Safety (DPS), in accordance with provisions of Texas Government Code, Chapter 2254, announces the awarding of a consultant contract for the Crash Records Information System (CRIS) Project.

(2) The amendment for the "CRIS" Project was published in the June 21, 2002, issue of the *Texas Register* (27 TexReg 5621).

(3) The selected consultant will perform the following services:

(A) Include a recommendation regarding the need to continue with implementation of the Automated Road Inventory (ARI) Project.

(B) Assist the internal CRIS Project Manager with the presentation of the final report to the CRIS Project Steering Committee.

(4) The amendment to 405-C2-8031 was awarded to the following vendor:

RFD & Associates, Incorporated

401 Camp Craft Road

Austin, Texas 78746

(5) This amendment has a cost of \$2,990.00, bringing the contract to a total value of \$369,010.00 beginning April 22, 2002 and ending August 6, 2002.

(6) The deliverables and due dates are as follows:

(A) "As-Is" Model 06/25/02

(B) Findings and Recommendations 07/11/02

(C) Cost/Benefit Analysis for Each Strategy 07/16/02

(D) Analysis of Prioritized Strategies within Vision 07/23/02

(E) Analysis of Three Top Strategies 07/24/02

(F) Executive Summary 07/31/02

(G) Final Report 08/06/02

TRD-200205453

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Filed: August 20, 2002

Hazard Mitigation Grant Program (HMGP)/DR 1425-2.1

As a result of the Central Texas Floods of 2002 during the incident period beginning June 28, 2001, a major disaster, (FEMA- 1425-DR) was declared by the President. Due to this declaration, Texas is authorized federal funds through the Hazard Mitigation Grant Program (HMGP). The HMGP is a 75/25 federal to applicant cost-share program designed to help prevent reoccurring disaster losses to citizens and infrastructure. It is imperative that these funds be used to reduce the risk of loss of life and property in the future.

All eligible applicants, which include local governments, state agencies, certain non-profit organizations and institutions, and Indian tribes or authorized tribal organizations are invited and encouraged to take advantage of this additional opportunity and apply for HMGP funds. These funds will be allocated to applicants based on a competitive application process. The number one mitigation strategy for Texas is the purchase and removal of structures at risk from flooding; however, all cost effective actions that mitigate the consequences of the hazards, and provide long term meaningful and definable risk reduction benefits will be considered. In accordance with Public Law (PL) 106-390 (Disaster Mitigation Act of 2000) the development of local mitigation action plans that comply with provisions of the law, and Texas planning standards are also eligible projects for consideration. It is recommended that you contact your supporting Council of Governments office for possible hazard mitigation planning assistance.

If your organization is interested in participating in the HMGP process, you are invited to submit a notice of interest by September 15, 2002, to the Texas Hazard Mitigation Officer, Disaster Field Office, 9830 Colonade Blvd., Suite 200, San Antonio, Texas 78230, or fax to (210) 697-4573. Detailed information including an HMGP Fact Sheet and the forms to use for development and submission of a notice of interest (NOI) are available on the Department of Public Safety/ Division of Emergency Management website at <http://www.txdps.state.tx.us/dem/ctxflood02.htm>.

If you have questions or need assistance please contact state Mitigation Officer Greg Pekar at (210) 697-4518 or by email at gregory.pekar@fema.gov.

TRD-200205454

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Filed: August 20, 2002

Public Utility Commission of Texas

Notice of Amendment to Interconnection Agreement

On August 19, 2002, Southwestern Bell Telephone, LP d/b/a Southwestern Bell Telephone Company and GTE Mobilnet of South Texas Limited Partnership d/b/a Verizon Wireless, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas

Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26498. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) 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 13 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 26498. 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 September 18, 2002, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's 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 action, 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, or by phone 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 26498.

TRD-200205490
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 21, 2002



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

On August 12, 2002, ITC^DeltaCom 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 60202. Applicant intends to reflect a *pro forma* change in ownership/control.

The Application: Application of ITC^DeltaCom for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 26462.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than September 5, 2002. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 26462.

TRD-200205298
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 14, 2002



Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 14, 2002, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of ACN Communication Services, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 26469 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by Southwestern Bell Telephone and Verizon Southwest.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-800-782-8477 no later than September 5, 2002. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket No. 26469.

TRD-200205439
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 19, 2002



Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 15, 2002, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Amerimex Communications Corp. for a Service Provider Certificate of Operating Authority, Docket Number 26475 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service.

Applicant's requested SPCOA geographic area includes the geographic area of Texas currently served by Southwestern Bell Telephone and Verizon Southwest.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-800-782-8477 no later than September 5, 2002. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket No. 26475.

TRD-200205440
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 19, 2002



Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 16, 2002, for a service provider certificate of operating authority (SPCOA), pursuant to § 54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of EZ Connect, Ltd. for a Service Provider Certificate of Operating Authority, Docket Number 26488 before the Public Utility Commission of Texas.

Applicant intends to provide prepaid calling services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by Southwestern Bell Telephone and Verizon Southwest.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-800-782-8477 no later than September 5, 2002. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 26488.

TRD-200205475
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 21, 2002



Notice of Interconnection Agreement

On August 19, 2002, Dallas MTA, LP and San Antonio MTA, LP doing business as Verizon Wireless and Alenco Communications, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 &

Supplement 2002) (PURA). The joint application has been designated Docket Number 26493. The joint application and the underlying interconnection agreement is available for public inspection at the Public Utility Commission of Texas (commission) 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 13 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 26493. 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 September 18, 2002, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's 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 action, 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, or by phone 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 26493.

TRD-200205476
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 21, 2002



Notice of Interconnection Agreement

On August 19, 2002, Dallas MTA, LP doing business as Verizon Wireless and Peoples Telephone Cooperative, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated,

Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26494. 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 13 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 26494. 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 September 18, 2002, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, 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, or by phone 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 26494.

TRD-200205478
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 21, 2002



Notice of Interconnection Agreement

On August 19, 2002, Dallas MTA, LP doing business as Verizon Wireless and Nortex Communications, 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 & Supp. 2002) (PURA). The joint application has been designated Docket Number 26495. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The Public Utility Commission of Texas (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 13 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 26495. 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 September 18, 2002, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to commission's 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 action, 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, or by phone 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 26495.

TRD-200205479
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 21, 2002



Notice of Interconnection Agreement

On August 19, 2002, Dallas MTA, LP doing business as Verizon Wireless and Lipan Telephone Company, Inc, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA)

and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26496. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) 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 13 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 26496. 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 September 18, 2002, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's 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 action, 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, or by phone 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 26496.

TRD-200205481
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 21, 2002



Notice of Interconnection Agreement

On August 19, 2002, San Antonio MTA, LP doing business as Verizon Wireless and Riviera Telephone Company, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as

amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26497. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) 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 13 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 26497. 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 September 18, 2002, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's 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 action, 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, or by phone 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 26497.

TRD-200205489
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 21, 2002



Notice of Rulemaking on Code of Conduct for Electric Wholesale Market Participants and Request for Comments

The Public Utility Commission of Texas (commission) is issuing a notice of formal rulemaking to establish a code of conduct for wholesale

market participants in the Electric Reliability Council of Texas electricity markets. Project Number 26201, Code of Conduct for Wholesale Market Participants Rulemaking has been established for this proceeding.

The purpose of the Code of Conduct rulemaking is to foster a fair and equitable functioning of the electric wholesale market in ERCOT for the ultimate benefit of all market participants and to protect customers from unfair pricing practices. The Code of Conduct specifies minimum standards for wholesale market participants' behavior, clear rules for behavior, and clear consequences for non-compliance. It clarifies market participants' obligations as well as prohibited activities, and adopts a progressive range of penalties and sanctions.

The commission requests that interested persons file comments to a set of questions that have been filed in the Central Records of the commission under Project No. 26201. The questions are also available from the project website at www.puc.state.tx.us under "Electric Competition - S.B. 7 Implementation." Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326 within 30 days of the date of publication of this notice. All responses should reference Project Number 26201.

Questions concerning the rulemaking or this notice should be referred to Danielle Jaussaud, Market Oversight Division, 512-936-7396. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200205491

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: August 21, 2002



Public Notice of Interconnection Agreement

On August 14, 2002, United Telephone Company of Texas, Inc. doing business as Sprint and Central Telephone Company of Texas doing business as Sprint and Winstar Communications, LLC, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26471. The joint application and the underlying interconnection agreement is available for public inspection at the Public Utility Commission of Texas (commission) 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 13 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 26471. 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 September 16, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, 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, or by phone 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 26471.

TRD-200205310

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: August 16, 2002



Sul Ross State University

Request for Proposals

Pursuant to Texas Government Code, Article 2254, Sul Ross State University, a Member of the Texas State University System, announces the solicitation for consultant services to advise and assist with the proposal development, management and administration of an Upward Bound Grant.

Project Summary: Sul Ross State University wishes to apply for a new federally funded Upward Bound Grant. The services requested under this RFP were previously provided by a consultant. The SRSU Upward Bound Program is designed to motivate low-income, potential first-generation college students and help them develop the skills they need to complete secondary education and succeed at the post secondary educational institution of their choice. Upward Bound activities will provide these services: academic counseling and assistance, career counseling and assistance, personal counseling and referral, parental and community involvement and assistance, exposure to the arts and cultural events, exposure to a university environment, mentoring by university personnel, and a university enrichment program. The successful vendor will share in the responsibility for assurance of the attainment of the grant objectives, compliance with the terms and conditions of the grant and will provide services such as assistance in budget management, consultations, performance reporting, and review and editing of reports.

Proposals are to be received no later than 5:00 p.m., Friday, September 13, 2002. A copy of the request for proposal packet is available upon request from Patty Roach, Director of Purchasing, Sul Ross State University, P.O. Box C-116, Alpine, Texas 79832, phone (915)837-8045, fax (915)837-8046.

The University reserves the right to reject any and all proposals received if it is determined to be in the best interest of the University. All material submitted in response to this request becomes the property of the University and may be reviewed by other vendors after the official review of the proposals.

TRD-200205474
Patty Roach
Purchasing Director
Sul Ross State University
Filed: August 21, 2002

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Texas Department of Transportation

**Public Notice--Disadvantaged Business Enterprise Goals,
Fiscal Year 2003**

In accordance with Title 49, Code of Federal Regulations, Part 26, recipients of federal-aid funds authorized by the Transportation Equity Act for the 21st Century (TEA 21) are required to establish Disadvantaged Business Enterprise (DBE) programs. Section 26.45 requires the recipients of federal funds, including the Texas Department of Transportation, to set overall goals for DBE participation in U. S. Department of Transportation assisted contracts. As part of this goal-setting process, the Texas Department of Transportation is publishing this notice to inform the public of the proposed overall goals, and to provide instructions on how to obtain copies of documents explaining the rationale for each goal.

The proposed Fiscal Year 2003 DBE goals are 12.40% for highway design and construction, 13.20% for aviation and 5.50% for public transportation.

The proposed goals and goal-setting methodology for each is available for inspection between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, for 30 days following the date of this notice. The information may be viewed in the office of the Texas Department of Transportation, Construction Division, Business Opportunity Programs Section, 200 East Riverside Drive, Austin, Texas 78704.

The department will accept comments on the DBE goals for 45 days from the date of the notice. Comments can be sent to Juan Vega, Construction Division, 125 E. 11th St., Austin, Texas 78701; (512) 486-5547; Fax: (512) 486-5519.

Email: jvega2@dot.state.tx.us
TRD-200205467
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: August 21, 2002

◆ ◆ ◆
The University of Texas System

Notice of Contract Award

The University of Texas Southwestern Medical Center at Dallas

Notice of Award of Contract for HIPAA Consulting Services

Pursuant to §2254.030, Government Code, The University of Texas Southwestern Medical Center at Dallas (UT Southwestern) announces that it has awarded a contract for consulting services related to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to Science Applications International Corporation (SAIC). SAIC will perform a HIPAA readiness assessment and gap analysis of UT Southwestern's privacy and security operations. The contract was issued pursuant to an RFP issued by The University of Texas System and previously published as follows:

Contract Number: UHC-00202

Date: August 24, 2001

Volume: 26 TexReg

Page Number: 6491

Science Applications International Corporation is located at 10260 Campus Point Drive, San Diego, CA 92121. The contract total is \$320,130.

The effective date of the contract is August 1, 2002 and estimated time of completion is December 31, 2002. Due dates for contract deliverables vary, but are generally due weekly, monthly and before the contract termination according to the schedule contained in the contract.

TRD-200205306
Francie A. Frederick
Counsel and Secretary to the Board
The University of Texas System
Filed: August 14, 2002

How to Use the Texas Register

Information Available: The 13 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back

cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the *TAC*: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

Texas Register

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