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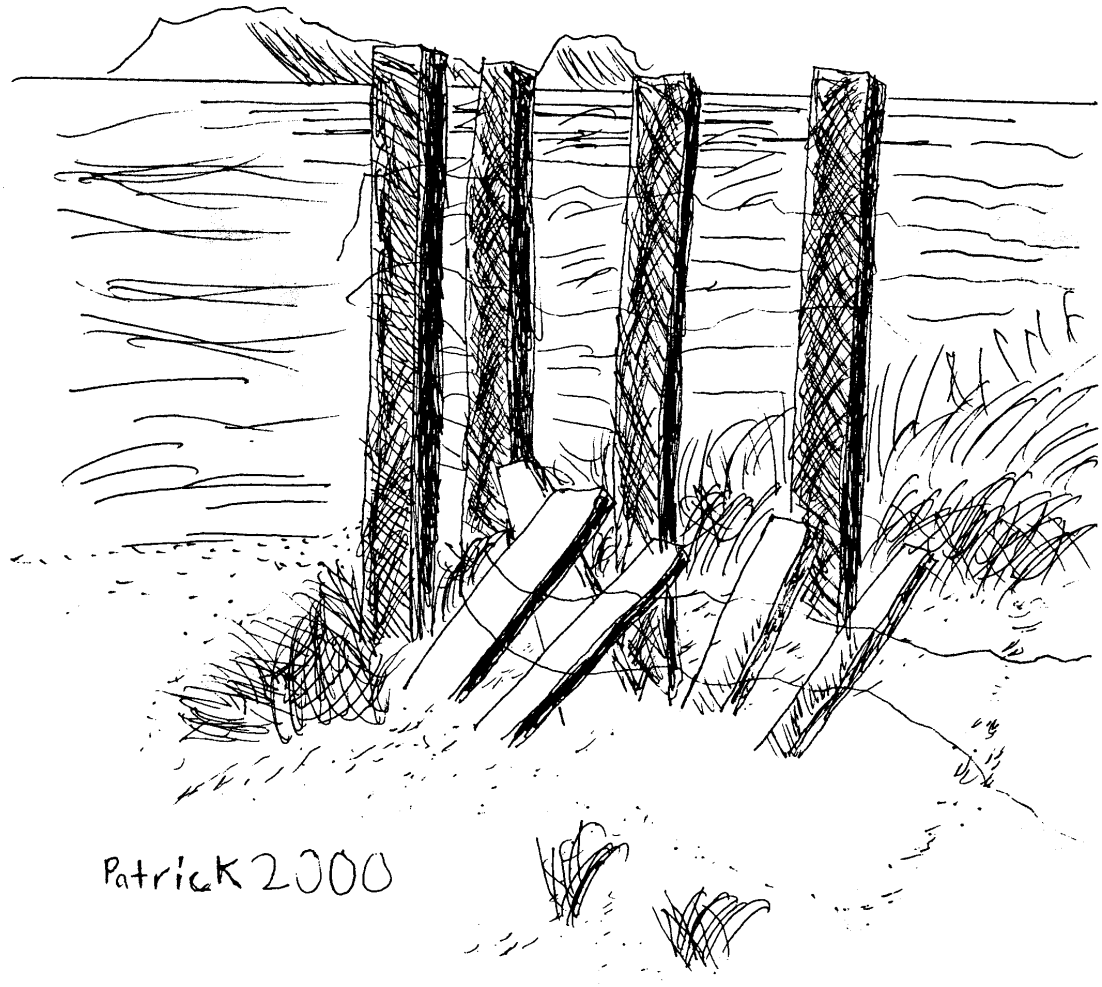

This month's front cover artwork:

Artist: *Patrick Hubbard*
2nd grade
Trinity School

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

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

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

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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

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

OFFICE OF THE ATTORNEY GENERAL

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

Request for Opinions

RQ-0403-JC

The Honorable Michael A. McDougal, District Attorney, Ninth Judicial District, 301 North Thompson, Suite 106, Conroe, Texas 77301-2824

Re: Whether a county bail bond board may permit an elected alternate to serve as the surety representative on the board in the event the elected surety representative is unable to attend a board meeting (Request No. 0403-JC)

Briefs requested by August 19, 2001

RQ-0404-JC

The Honorable Patricia Gray, Chair, Public Health Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910

Re: Whether the State Board of Podiatric Medical Examiners may adopt a rule defining the term "foot" as a "functional foot" (Request No. 0404-JC)

Briefs requested by August 20, 2001

For further information, please call (512) 463-2110.

TRD-200104274
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: July 24, 2001

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 18. TELECOMMUNICATIONS INFRASTRUCTURE FUND BOARD

CHAPTER 471. OPERATING RULES OF THE TELECOMMUNICATIONS INFRASTRUCTURE FUND BOARD

1 TAC §§471.5, 471.13, 471.53

The Telecommunications Infrastructure Fund Board (agency) proposes new §471.5 relating to videoconference meetings, §471.13 relating to historically underutilized businesses, and §471.53 relating to grants and services. New §471.5 describes the circumstances under which the Board may conduct a meeting by videoconference as authorized by Government Code, §551.127. Section 471.13 adopts the rules of the General Services Commission relating to the historically underutilized business program as required by Government Code, §2161.003. Section 471.53 describes the grant and loan process, grant application requirements, authorized grant purposes, and grantees' financial, performance, reporting, and records retention requirements.

Frank Pennington, Director of Finance and Administration, Telecommunications Infrastructure Fund Board, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing the sections.

Mr. Pennington also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the assurance of public access to all board meetings whether via videoconference or otherwise, more contracting opportunities for historically underutilized businesses, and increased knowledge by grantees of the grant process, grant application requirements, authorized grant purposes, and financial, performance, reporting, and records retention requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Michelle D. Pundt, Telecommunications Infrastructure Fund Board, P.O. Box 12876, Austin, Texas 78711, (512) 344-4306 or email at: mpundt@tifb.state.tx.us no later than 30 days from the date that these proposed rules are published in the *Texas Register*.

The new sections are proposed pursuant to Government Code, §551.127, Government Code, § 2161.003, and Utilities Code , §57.045(d)(2). The Board interprets Government Code, §551.127 as describing the circumstances under which governmental entities may conduct videoconference meetings, Government Code, §2161.003 as requiring it to adopt the rules of the General Services Commission relating to historically underutilized businesses, and Utilities Code, §57.045(d)(2) as authorizing it to adopt rules as necessary for the administration of Utilities Code, Chapter 57, Subchapter C.

No other statutes, articles or codes are affected by this proposal.

§471.5. Videoconference Meetings.

(a) The governing board may conduct meetings via videoconference provided:

(1) A quorum of the members is present in a single location.

(2) Notice is given as for other governing board meetings and the notice specifies as the location of the meeting, location where a quorum of the members is physically present, and where all other members who will participate will be physically present.

(3) The meeting is open to the public, unless a closed session is allowed by Chapter 551 of the Government Code.

(4) Each open portion of the meeting is visible and audible to the public at each location.

(5) Each location described in subsection (a)(2) has two-way communication with each other location during the entire meeting.

(6) Each member, while speaking, is clearly visible and audible to all members and to the public during open portion of the meeting.

(7) The quality of the video and audio signals perceptible to the public meets or exceeds the standards prescribed by the Department of Information Resources at 1 TAC §201.16 (relating to Minimum Standards for Meetings Held by Videoconference Call); meets or exceeds the quality of signals perceived by the members of the governing board; and allows the public at each location to observe the demeanor and hear the voice of each participant in the open portion of the meeting.

(8) Members of the public, in the chair's discretion, may participate from each remote location.

(b) At a minimum, the Board shall make an audio recording of the meeting. The recording or an exact duplicate is available for public inspection or copying.

§471.13. Historically Underutilized Business Participation.

The Telecommunications Infrastructure Fund Board adopts the rules of the General Services Commission relating to the Historically Underutilized Business (HUB) Program and codified at 1 Texas Administrative Code, Part V, Subchapter B, Chapter 111, §§111.11-111.16.

§471.53. Grants and Services.

(a) Scope of Available Funding.

(1) Funding may be provided to any project consistent with the Utilities Code, Chapter 57, Subchapter C.

(2) Limitation on Grantees' Authority: All grants are contingent upon legislative appropriations.

(b) Filing of Applications.

(1) Applications filed with the agency shall be on a form promulgated by the agency. Appropriate instructions and explanatory materials will be provided with the application.

(2) Dates for the submission of applications shall be recommended by the agency staff, approved by the governing board, and published if practical, in the *Texas Register* by the agency. If funds are available, application dates will be set not less than annually.

(3) The deadline for receipt and consideration of an application for funding is the close of business (5:00 p.m. Central Standard Time) on the submission date. An application is considered filed when actually received in the agency office(s) and time-date stamped or when postmarked showing the application was received and accepted by the United States post office, a common carrier or its equivalent, at least four calendar days prior to submission date. Metered mail is not acceptable unless it also includes the United States Postal Service postmark.

(4) All documents relating to an application shall be filed with the agency. Each application will be marked with the date and time received in the offices of the agency. The envelope or other wrapper in which an application received by mail or common carrier was enclosed shall be retained with the application.

(5) A copy of all applications and supporting documentation shall be maintained at the agency's office. Applicants are advised that the agency must comply with the Public Information Act, Texas Government Code, Chapter 552, and therefore that the application and supporting documentation are subject to the Public Information Act.

(6) An application for a grant, loan, or other disbursement of funds shall be accompanied by all supporting documentation at the time the application is filed, except as provided in subsection (g) of this section.

(7) Upon receipt, an application will undergo an initial compliance review by the agency to determine whether the application is complete and whether all proposed activities are eligible for funding.

(A) The results of the initial review shall be provided to the applicant.

(B) The applicant may correct any deficiencies within 10 calendar days of the date of the notification of such deficiencies by the agency.

(C) Failure to correct any identified deficiencies within 10 calendar days shall be grounds for rejection of the application.

(D) Upon determination that the application is complete, the application shall be forwarded to the application review committee for consideration.

(8) The agency may require a technical review of all applications. The technical review may include investigation into the economic and technical feasibility of the project for which funding is sought and the likelihood that the project, if implemented, will accomplish the objectives stated in the application or established by the agency.

(9) An investigation of the financial circumstances, business experience, and background of applicants, the personnel identified by the applicant as being principally responsible for the project for which funding is sought, and the same information concerning specific suppliers of goods and/or services proposed to be acquired pursuant to the terms of the application may be required by the agency.

(c) Required Information in Applications.

(1) All applicants, whether requesting a loan or a grant, must provide the information described in this section.

(A) Failure to provide the information or failure to fully disclose any material fact concerning the subject matter of the required information items shall be grounds for rejection of the application.

(B) Intentional concealment of material facts related to the required information items shall be grounds for refusal to consider any further application submitted by the applicant for a time period determined appropriate by the agency.

(2) Applicants shall include a statement that the proposed project complies with all applicable federal and state law; a description of any federal, state, and/or local telecommunications programs in place or planned for the area and reasonably anticipated; and a "statement of project" including:

(A) detailed description of relevant qualifications of the project's key personnel,

(B) detailed description of the applicant's past performance and experience with similar projects;

(C) detailed description of the applicant's quality control/assurance or evaluation plan;

(D) detailed description of the applicant's proposed schedule for reporting the project's progress to the agency;

(E) detailed project budget, including description of the specification of all equipment, labor, and facilities;

(F) detailed description of equipment to be used and the method used to select the equipment;

(G) overview of pertinent telecommunications activity;

(H) clear identification, whenever applicable, of the entity's proposed vendors as a historically underutilized business, individual with low income, health care facility, minority-owned business, or women-owned business, and whenever applicable, identification of the applicant's employment of historically underutilized business for project-related services;

(I) detailed discussion of other public and private funding options available to the applicant;

(J) identification of matching fund availability, from the applicant's own revenue or from other sources, including signed letter of intent;

(K) identification of the applicant as a local political subdivision whose other funding option would be local tax revenues or general revenue funds;

(L) evidence of economic feasibility of the project including a demonstration of the ability to principally fund and sustain the project,

(3) The award of a grant or loan is contingent on the receipt of the following during the application process:

(A) a Letter of Intent,

(B) the designation of grant officials,

(C) budget information including travel, equipment, and contractual services,

(D) certified assurances,

(E) a narrative including, but not limited to:

(i) a vision statement and introduction to the narrative,

(ii) a needs assessment,

(iii) project objectives and methods,

(iv) sustainability/securing funding,

(F) a project timeline,

(G) an evaluation plan, and

(H) an overall budget summary, and in the event of collaboration an individual site budgets from the fiscal agent.

(d) Considerations by the Governing Board.

(1) The award of a loan, grant, or other disbursement of funds shall be considered by the governing board at a regular governing board meeting or other open meeting designated by the governing board.

(2) Grants shall be allocated by vote of the governing board at large upon the agency's staff recommendations.

(3) Prior to the commencement of the meeting, any governing board member may review the entire application, including all supporting documentation, the written recommendation of the application review committee, and written comments.

(e) Governing Board Decision.

(1) All decisions of the governing board shall be final upon action by a majority of the governing board in attendance at a duly called meeting.

(A) Governing board action shall be reflected in the minutes of the meeting.

(B) Governing board action shall be deemed to have been taken on the date of vote of the board in open meeting.

(2) The governing board is under no legal requirement to execute an agreement on the basis of any application for funding.

(A) The governing board retains the right to accept or reject any or all completed applications.

(B) The governing board reserves the right to vary any and all provisions of its applications at any time prior to execution of an agreement where the governing board deems such variances to be in the interest of the State of Texas.

(3) Upon issuance of a final decision, the agency shall send a copy of that decision by first class mail to each applicant or the applicant's representative. The agency shall keep an appropriate record of that mailing.

(f) Grant and Loan Agreements. Minimum terms and compliance with terms are executed through a grant or loan agreement.

(1) Entities receiving grants or loans shall be required to execute an agreement in the form prescribed by the governing board setting out the terms and conditions of the grant or loan as approved by the governing board. A true and complete copy of the application made by the recipient and all additions or amendments thereto shall be attached to the agreement and made a part thereof.

(2) Agreements shall be executed by the chair and by the chief executive officer of the recipient or by such other officer authorized by the governing body of the entity to execute the agreement. A certified copy of a resolution of the governing body of the recipient consenting to the terms and conditions of the agreement and authorizing the officer executing it to do so shall be attached to the agreement.

(3) The agreement shall contain at least the following terms and conditions, together with all such other terms and conditions prescribed by the agency:

(A) performance under the grant shall strictly comply with the proposal submitted in the application, unless specifically modified by the agency in writing;

(B) all equipment purchased through the grant or loan shall be maintained and operated in compliance with manufacturer's warranty requirements, state and federal laws. The recipient shall immediately report to the agency all citations by regulatory authorities for violations of such provisions to the agency;

(C) the recipient shall assume all liability for the operation and maintenance of equipment purchased through the grant or loan and indemnifies the agency and the State of Texas from all liability arising there to the extent permitted by law;

(D) at the direction of the agency, may provide for funding of purchases or construction, in stages, conditioned on delivery of equipment or completion and approval by the governing board or other appropriate authority of specified stages of construction;

(E) provide that further funding may terminate at the discretion of the agency for the failure of the recipient to comply with the requirement of the grant or loan;

(F) provide that the agreement may be terminated by mutual agreement of the recipient and the agency, and all unexpended funds returned to the agency, in the even of either impossibility, including unavailability of equipment planned to be purchased with loan or grant funds, or the commercial unfeasibility of project;

(G) bind the recipient to refund to the agency all funds expended by the recipient in violation of the terms of the agreement,

together with all administrative costs, attorney fees, expenses, and court costs incurred by the agency, and

(H) grant to the agency the right to demand and receive reports of progress of the project at specified intervals, the right to audit the recipient with respect to the project and the right to perform inspections of the project at reasonable times.

(g) Enforcement.

(1) In the event, the general counsel determines that an applicant is in breach of any agreement executed with the agency, all available remedies may be pursued.

(2) The agency may utilize the various staffs of member agencies to pursue any such appropriate remedies.

(h) Adoptions By Reference. The agency adopts by reference the following governmentwide policies, statutes, and standards:

(1) United States Office of Budget and Management Cost Principle Circulars (which can be found at: www.whitehouse.gov/omb/circulars/index.html),

(A) A-21, Educational Institutions

(B) A-87, State and Local Governments

(C) A-122, Non-Profit Organizations

(2) United States Office of Budget and Management Administrative Requirement Circulars (which can be found at: www.whitehouse.gov/omb/circulars/index.html),

(A) A-102, State and Local Governments

(B) A-110 Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

(3) United States Office of Budget and Management Audit Requirement Circular A-133, States, Local Governments, and Non-Profit Organizations (which can be found at: www.whitehouse.gov/omb/circulars/index.html),

(4) United States General Accounting Office, Standards for Audit of Governmental Organizations, Programs, Activities and Functions, and

(5) State of Texas, Government Code Chapter 783 Uniform Grant Management Standards.

(i) Use of the Internet.

(1) The agency may provide for submission of grant applications, progress reports, financial reports, and other information via the Internet. Completion and submission of a progress report of financial report via the Internet meets the relevant requirements contained within this chapter for submitting reports in writing.

(2) If a grant application is submitted via the Internet, the agency will not consider it complete until the grantee provides an Internet Submission Form to the Board that is signed by the applicant's authorized official and that meets all relevant deadlines for applications. This form certifies that the information submitted via the Internet is true and correct and that, if a grant is awarded, the grantee will abide by all relevant rules, policies, and procedures.

(j) Allowable Use of Grant or Loan Monies.

(1) A public school district that receives money under the public schools account must use the money for equipment purchases. This includes computers, printers, computer laboratories, video equipment and intra/intercampus wiring to use equipment.

(2) A public school, public library, institution of higher education, rural not-for-profit health entity or collaborative that receives money under the qualifying entities account must use the money for any purpose authorized in the public schools account and the following additional purchases: wiring, materials, program development, training, installation costs, or the development of a statewide telecommunications network.

(3) Individual grants may not exceed the amount of award.

(k) Grant Reimbursement Procedures.

(1) Commencement of project work: Approved project work may not begin before the assigned grant period begins, except for planning work connected with development projects.

(2) Reimbursement of allowable project expenses: All payments of grant funds are strictly on a reimbursement basis. Reimbursements may be made after the grant award, the beginning of the grant period and submission of proof of incurred allowable expenses.

(3) All payments of grant funds are only issued with appropriate supporting documentation.

(4) Deadline for submission of requests for reimbursement: Grantees must ensure that the Board receives their final requests for funds postmarked no later than the 90th calendar day after the end of the grant period.

(A) If this date falls on a weekend or holiday, then the agency will honor receipt or a postmark on the next business day.

(B) If grant funds are on hold for any reason, these funds are forfeited and the grantee cannot recover them. Under exceptions established by policy, the agency will make no payments to grantees that submit their request for funds with a postmark after the 90-day deadline.

(5) Forfeiture of grant: Failure to expend the full grant amount by the end of the grant period or failure to submit to the agency all required materials by the end of the grant period or other deadline as announced by the agency will result in forfeiture of the remaining grant amount unless otherwise approved in writing by the agency.

(l) Completion Reports for Awarded Grants.

(1) All awarded grant projects require interim and final financial reporting. Financial reporting form structure is decided by the agency and due on the dates announced at the time of a grant award.

(2) Failure to submit the required financial report by the due date will place the awarded entity on hold. On hold status will prevent the entity from having any request for funds processed until the required documentation is submitted.

(3) The failure of grantees to submit required documentation by the due dates may disqualify them from participating in future grants.

(m) Performance Standards.

(1) All awarded grant projects must conform to the performance and technology standards outlined in the Request for Proposal.

(2) All awarded grant projects are reviewed by the agency's quality assurance function. Grantees are expected to comply with online surveys and may possibly encounter a site visit by the quality assurance staff during or after the term of the grant period.

(3) Failure to provide the information requested by the quality assurance staff within the specified timeline will place the awarded entity on hold. On hold status will prevent the entity from

having any request for funds processed until the required documentation is submitted. In the event the entity fails to submit required documentation during a post implementation cycle, the entity may jeopardize future grant awards.

(n) Match for Awarded Grants.

(1) At the agency's discretion, a minimum amount of matching funds or in-kind equivalency may be required to receive a grant.

(2) If a matching funds requirement applies, then the grantee must provide matching funds equal to the required matching funds percentage multiplied by the total project expenditures funded by the agency.

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

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

(5) If an applicant applies for a grant, which has a matching funds requirement, it may be satisfied through direct funding contributions, in-kind contributions or a combination of the two.

(6) The sources of matching funds for the agency funded grant projects must be current at the time of grant award and not anticipated. The applicant must identify the funding sources in the application.

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

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

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

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

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

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

(C) the name of the contributor,

(D) the date of the contribution,

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

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

(9) Not more than one half of the match may be derived from prior capital expenditures, prior in-kind match, and current in-kind match, and not less than one half of the match must be derived from current cash match. Prior capital expenditures and prior in-kind matches constitute credit for the board to approve capital and planning expenditures during the application process.

(o) Grant Adjustments.

(1) The person designated in the grantee acceptance notice to request grant adjustments or an authorized official must sign all requests for grant adjustments.

(2) Grant adjustments consisting of the reallocation of funds among or within budget categories are considered budget adjustments, and are allowable only with prior agency approval. The following rules apply to budget adjustments:

(A) During a grant period, grantees may transfer funds among or within the standard grant budget categories without the agency's prior approval, as long as the amount transferred does not exceed a cumulative total of ten percent of the total grant award during the grant period. All budget adjustments must comply with the relevant rules in this section. The grantee must maintain accurate records that show all budget adjustments.

(B) Budget adjustments beyond a quantity of three, must be approved by an agency grant administrator and considered only for extenuating circumstances.

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

(D) Requests to revise the scope, target, or focus of the project, or alter project activities requires advance written approval from the agency.

(E) The grantee shall notify the agency in writing of any changes in the designated project director, financial officer, or authorized official within five (5) days following the change. When the notice addresses a change of financial officer, the letter must include a sample signature of the new official. When the notice addresses a change of authorized official, the governing body, must submit the request.

(F) Failure to submit the signatures of current, authorized grant officials will prevent all requests for fund reimbursements from being paid.

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

(p) Retention of Records.

(1) Grantees must maintain all financial records, supporting documents, statistical records, and all other records pertinent to the award for at least three years following the closure of the most recent audit report or submission of the final expenditure if the audit report requirement has been waived. Records retention is required for the purposes of state examination and audit. Grantees may retain records in an electronic format. All records are subject to audit or monitoring during the entire retention period.

(2) Grantees must retain records for equipment, non-expendable personal property, and real property for a period of three years from the date of the item's disposition, replacement, or transfer.

(3) If any litigation, claim, or audit is started before the expiration of the three-year records retention period, the grantee must retain the records under review until the resolution of all litigation, claims, or audit findings.

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

Filed with the Office of the Secretary of State, on July 23, 2001.

TRD-200104250
Robert J. "Sam" Tessen
Executive Director
Telecommunications Infrastructure Fund Board
Earliest possible date of adoption: September 2, 2001
For further information, please call: (512) 344-4306

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. TEXAS COMMISSION OF LICENSING AND REGULATION
SUBCHAPTER A. AUTHORITY AND RESPONSIBILITIES

16 TAC §60.10

The Texas Department of Licensing and Regulation proposes amendments to §§60.10 concerning the Texas Commission of Licensing and Regulation.

These rules are necessary to implement statutory changes to Title 2, Texas Occupations Code, Chapter 51. The statutory changes to Chapter 51 were enacted by Acts of the 77th Legislature; HB 1214. The proposed rules related to HB 1214, §41(b) define "Commissioner" as being the Executive Director of the Texas Department of Licensing and Regulation and define the "Executive Director" as being the Commissioner of the Texas Department of Licensing and Regulation.

Michael Chisum, General Counsel and Director of Legal Services of the Texas Department of Licensing and Regulation, has determined that for the first five-year period these sections are in effect there will be no fiscal implications as a result of enforcing or administering the proposed revised rules. There also will be no fiscal implications on local government.

Mr. Chisum also has determined that for each year of the first five years the sections are in effect, there will be no direct benefit to the public, nor is there any cost to the public. This is due to the fact that the proposed amendments are only for the purpose of modification of the definition of commissioner.

There is no anticipated economic effect on small businesses and persons who are required to comply with the revised rules as proposed.

Comments on the proposal may be submitted to Michael Chisum, General Counsel and Director of Legal Services, Texas Department of Licensing and Regulation, P. O. Box 12157, Austin, Texas 78711, facsimile (512) 475-2872, or by e-mail: michael.chisum@license.state.tx.us. The deadline for comments is thirty days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Chapter 51, §51.203. The Department interprets §51.203 as authorizing the Executive Director to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. The Department interprets §41(b) of HB 1214, Acts of the 77th Texas Legislature, as authorizing the Executive Director of the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of Chapter 51.

The statutory provisions affected by the proposed amendments related to HB 1214 are Texas Occupations Code, Chapter 51, §§51.001. No other statutes, articles, or codes are affected by the proposed amendments.

§60.10. Definitions.

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

(1) - (4) (No Changes).

(5) Commissioner--As used in any statute or rule assigned to the Texas Department of Licensing and Regulation, means the Chief Executive Officer, whose statutory title is Executive Director; therefore, "Commissioner" and "Executive Director" have the same meaning.

(6) [~~(5)~~] Complainant--Any person who has filed a complaint with the Department against any person whose activities are subject to the jurisdiction of the Department.

(7) [~~(6)~~] Contested case or proceeding--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the Department after an opportunity for adjudicative hearing.

(8) Executive Director--as used in any statute or rule assigned to the Texas Department of Licensing and Regulation, means the Chief Executive Officer, whose position title is Commissioner; therefore, "Commissioner" and "Executive Director" have the same meaning.

(9) [~~(7)~~] Final decision maker--The Commission and/or the Executive Director, both of whom are authorized by law to render the final decision in a contested case.

(10) [~~(8)~~] Hearings Examiner, Examiner, Administrative Law Judge--A person appointed by the Executive Director to conduct hearings in contested cases.

(11) [~~(9)~~] License--The whole or part of any Departmental registration, license, Commission, certificate of authority, approval, permit, endorsement, title or similar form of permission required or permitted by law.

(12) [~~(10)~~] Party--A person admitted to participate in a case before the final decision maker.

(13) [~~(11)~~] Person--any individual, partnership, corporation, or other legal entity, including a state agency or governmental subdivision.

(14) [~~(12)~~] Pleading--A written document submitted by a party, or a person seeking to participate in a case as a party, which requests procedural or substantive relief, makes claims, alleges facts, makes legal argument, or otherwise addresses matters involved in the case.

(15) [~~(13)~~] Respondent--Any person, licensed or unlicensed, who has been charged with violating a law establishing a regulatory program administered by the Department or a rule or order issued by the Commission or the Executive Director.

(16) [~~(14)~~] Rule--Any Departmental statement of general applicability that implements, interprets, or prescribes law or policy,

or describes the procedure or practice requirements of the Department and is filed with the Texas Register.

(17) [~~(15)~~] T.R.C.P.--Texas Rules of Civil Procedure

(18) [~~(16)~~] U.S.P.S.--United States Postal Service.

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

Filed with the Office of the Secretary of State, on July 20, 2001.

TRD-200104188
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: September 2, 2001
For further information, please call: (512) 463-7348

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CHAPTER 68. ARCHITECTURAL BARRIERS

The Texas Department of Licensing and Regulation proposes the repeal of 16 Texas Administrative Code §§68.1, 68.10, 68.20, 68.21, 68.30, 68.31, 68.33, 68.60, 68.61, 68.62, 68.63, 68.64, 68.65, 68.66, 68.70, 68.90, 68.93, 68.100, 68.101 and new §§68.1, 68.10, 68.20, 68.30, 68.31, 68.50, 68.51, 68.52, 68.53, 68.54, 68.65, 68.70, 68.75, 68.76, 68,79, 68.90, 68.93, 68.100 and 68.101, concerning architectural barriers. The new rules rearrange, consolidate, and revise existing language for clarification.

These rules are also necessary to implement a new regulatory program and other statutory changes in Title 132, Texas Civil Statutes, Chapter 20, Article 9102, Architectural Barriers Act. Article 9102 was amended by Acts of the 77th Legislature; SB 484 and HB 1214. The proposed rules related to SB 484: describe the buildings and facilities subject to compliance with the Texas Accessibility Standards, provide certain exemptions to compliance, and establish procedures for requesting a variance to waive compliance on specific items; establish procedures for the accessibility review of construction documents and for the inspection of subject buildings and facilities following construction or renovation, require corrective modifications following an inspection that finds items not in compliance, and provide for the issuance of notices evidencing full compliance; establish procedures related to an advisory committee; establish minimum qualifications for issuance of a certificate of registration for individuals who will perform the agency's plan review and inspection functions, and establish certain responsibilities and standards of conduct for these individuals, who will be known as "registered accessibility specialists"; apply the same minimum qualifications, responsibilities and standards of conduct to representatives of state agencies and political subdivisions who may contract with the Department to perform its plan review and inspection functions, except as may otherwise be provided in their contracts; provide for the investigation of complaints filed against registered accessibility specialists and against owners of subject buildings or facilities, and for the assessment of administrative penalties or sanctions when violations are found; adopt the Texas Accessibility Standards, provide for the Department's publication of technical memoranda related to those standards, and establish special standards for state leased buildings or facilities.

The proposed rules related to HB 1214 define "Commissioner" as being the Executive Director of the Texas Department of Licensing and Regulation and define the "Executive Director" as being the Commissioner of the Texas Department of Licensing and Regulation.

George Ferrie, Director of Code Review and Inspections, of the Texas Department of Licensing and Regulation, has determined that for the first five-year period these sections are in effect, there will be no fiscal implications until fee rules are proposed and adopted by the Department. The Department anticipates proposing the fee rules in the very near future.

Mr. Ferrie also has determined that for each year of the first five years the sections are in effect, the public benefit as a result of enforcing the section should be an increase in the level of accessibility in new and renovated buildings and facilities in the state. An increase in general revenue to the Department is also anticipated, which should help the Department increase its enforcement and regulatory efforts.

The Department does not anticipate an economic effect on small businesses and persons who are required to comply with the sections as proposed until it proposes and adopts fee rules. The Department anticipates proposing and adopting fee rules in the very near future.

Comments on the proposal may be submitted to George Ferrie, Director of Code Review and Inspections, Texas Department of Licensing and Regulation, P. O. Box 12157, Austin, Texas 78711, facsimile (512) 475-2872, or by e-mail: george.ferrie@license.state.tx.us. The deadline for comments is thirty days after publication in the *Texas Register*.

16 TAC §§68.1, 68.10, 68.20, 68.21, 68.30, 68.31, 68.33, 68.60 - 68.66, 68.70, 68.90, 68.93, 68.100, 68.101

(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 Licensing and Regulation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Occupations Code, Chapter 51, §51.203, Texas Civil Statutes, Article 9102, §§5 and 5A, Acts of the 77th Legislature, SB 484, §5(b), and Acts of the 77th Texas Legislature, HB 1214, §41(b). The Department interprets §51.203 as authorizing the Executive Director to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. The Department interprets §§5 and 5A of Article 9102, §5(b) of SB 484, and §41(b) of HB 1214, as authorizing the Executive Director of the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of Article 9102.

The statutory provisions affected by the repeal are Texas Civil Statutes, Article 9102, and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the repeal.

§68.1. Authority.

§68.10. Definitions.

§68.20. Registration -- Submittal of Constructions Documents.

§68.21. Registration -- Subject Buildings and Facilities.

§68.30. Exemptions.

§68.31. Variance Procedures.
§68.33. Technical Deviation -- State Leased Facilities.
§68.60. Review of Construction Documents.
§68.61. Resubmittals.
§68.62. Inspections
§68.63. Corrective Modifications.
§68.64. Certificates and Approvals.
§68.65. Advisory Committee.
§68.66. Contract Providers.
§68.70. Responsibilities of the Registrant -- Construction Document Submittals.
§68.90. Sanctions -- Administrative Sanctions or Penalties.
§68.93. Complaints and Investigations.
§68.100. Technical Standards and Technical Memoranda.
§68.101. State Leases (Initial or Renewed).

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

Filed with the Office of the Secretary of State, on July 20, 2001.

TRD-200104189
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: September 2, 2001
For further information, please call: (512) 463-7348

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16 TAC §§68.1, 68.10, 68.20, 68.30, 68.31, 68.50 - 68.54, 68.65, 68.70, 68.75, 68.76, 68.79, 68.90, 68.93, 68.100, 68.101

The new rules are proposed under Texas Occupations Code, Chapter 51, §51.203, Texas Civil Statutes, Article 9102, §§5 and 5A, Acts of the 77th Legislature, SB 484, §5(b), and Acts of the 77th Texas Legislature, HB 1214, §41(b). The Department interprets §51.203 as authorizing the Executive Director to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. The Department interprets §§5 and 5A of Article 9102, §5(b) of SB 484, and §41(b) of HB 1214, as authorizing the Executive Director of the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of Article 9102.

The statutory provisions affected by the new rules are Texas Civil Statutes, Article 9102, and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed new rules.

§68.1. Authority.

These rules are promulgated under the authority of the Architectural Barriers Act, Texas Civil Statutes, Article 9102 and Texas Occupations Code, Chapter 51.

§68.10. 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 Texas Architectural Barriers Act, Texas Civil Statutes, Article 9102.

(2) Building -- Any structure located in the State of Texas that is used and intended for supporting or sheltering any use or occupancy.

(3) Business days -- Calendar days, not including Saturdays, Sundays, and legal holidays.

(4) Commencement of Construction -- Placement of engineering stakes, delivery of lumber or other construction materials to the job site, erection of batter boards, formwork, or other construction related work.

(5) Commissioner -- As used in Article 9102 and in this chapter, has the same meaning as Executive Director.

(6) Completion of Construction -- That phase of a construction project which results in occupancy or the issuance of a certificate of occupancy.

(7) Construction Documents -- Documents used for construction of a building or facility, including working drawings, specifications, addenda, and applicable change orders.

(8) Contract Provider -- The state agency or political subdivision under contract with the department to perform plan reviews, inspections, or both.

(9) Designated Agent -- An individual designated by the owner to act on the owner's behalf.

(10) Facility -- All or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real property located in the State of Texas.

(11) Issue -- To mail or deliver plans or specifications to an owner, lessee, contractor, subcontractor, or any other person acting for an owner or lessee for the purpose of construction, after such plans or specifications have been sealed by an architect, interior designer, landscape architect, or engineer. In the event of a conflict between this definition and a definition promulgated by a licensing agency with authority over the person issuing the plans or specifications, then the definition of that licensing agency shall govern.

(12) Lessee -- With respect to state leased or occupied space, the state agency that enters into a contract with a building owner. In instances of free space or where a written contract is non-existent, reference to the lessee shall mean the occupying state agency.

(13) Owner -- The person or persons, company, corporation, authority, commission, board, governmental entity, institution, or any other entity that holds title to the subject building or facility. For purposes under these rules and the Act, an owner may designate an agent.

(14) Registered Building or Facility -- For the purposes of Article 9102, §5(k), a registered building or facility is a construction project that has been assigned a project registration number by the department.

(15) Registered Accessibility Specialist -- An individual who is certified by the department to perform the review functions, inspection functions, or both review and inspection functions of the department.

(16) Religious Organization -- An organization that qualifies as a religious organization as provided in Vernon's Texas Statutes and Codes Annotated Tax Code, Title 1, Subtitle C, Chapter 11, §11.20(c).

(17) Renovated, Modified, or Altered -- Any construction activity, including demolition, involving any part or all of a building or facility. Cosmetic work and normal maintenance do not constitute a renovation, modification, or alteration.

(18) Rules -- Title 16, Texas Administrative Code, Chapter 68, the administrative rules of the Texas Department of Licensing and

Regulation promulgated pursuant to the Texas Architectural Barriers Act.

(19) State Agency -- A board, commission, department, office, or other agency of state government.

(20) TAS -- the Texas Accessibility Standards.

(21) Variance Application -- The formal documentation filed with the department, by which the owner petitions the department to rule on the impracticality of applying one or more of the standards or specifications to a building or facility.

§68.20. Buildings and Facilities Subject to Compliance with the Texas Accessibility Standards.

(a) A building or facility is subject to compliance with the Texas Accessibility Standards (hereinafter "TAS") if:

(1) public funds from a municipality, county, the state, or any political subdivision of the state are used any time during the construction process;

(2) a municipality, county, the state, or any political subdivision of the state donate land or other use of public lands on which buildings or facilities are constructed with private funds; or

(3) constructed with private funds with the intent of donating or deeding to a public entity.

(b) Buildings or facilities that are leased or rented to the state:

(1) need not be registered with the department for plan review and inspection if the annual lease expense is $12,000 or less.

(2) may be exempted from compliance if it is determined by the occupying agency that the space will not be used by the public and that the occasion for employment for persons with disabilities is improbable because of the essential job functions. The agency shall, prior to advertisement for bid, submit to the department for a determination a completed Lease Evaluation Form obtained from the department. If a Lease Evaluation Form is not submitted, compliance with all applicable standards shall be required.

(c) The following private entities are considered public accommodations and subject to the Act:

(1) an inn, hotel, motel, or other place of lodging except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(2) a restaurant, bar, or other establishment serving food or drinks;

(3) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(4) an auditorium, convention center, lecture hall, or other place of public gathering;

(5) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(6) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(7) a terminal, depot, or other station used for specified public transportation;

(8) a park, zoo, amusement park, or other place of recreation;

(9) a museum, library, gallery, or other place of public display or collection;

(10) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(11) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(12) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

(d) Commercial facilities are subject to the Act if they are intended for non-residential use and if their operations will affect commerce. Such application shall not include railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in the Americans with Disabilities Act (ADA) §242, or covered under the ADA, Title III, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under the federal Fair Housing Act of 1968.

(e) Buildings or facilities of a religious organization are subject to the Act except for areas exempted under §68.30 of this title (relating to Exemptions).

(f) Buildings or facilities not subject to the Act may be reviewed and/or inspected upon request and payment of the applicable fee(s).

§68.30. Exemptions.

The following buildings, facilities, or spaces are exempt from the provisions of the Act:

(1) *Federal Property*. Buildings or facilities owned, operated, or leased by the federal government;

(2) *Construction Sites*. Structures, sites, and equipment directly associated with the actual processes of construction, including, but not limited to, scaffolding, bridging, materials hoists, materials storage, construction trailers, portable toilet units provided for use exclusively by construction personnel on a construction site;

(3) *Raised Security Areas*. Raised areas used primarily for purposes of security, life safety, or fire safety, including, but not limited to, observation galleries, prison guard towers, fire towers, or lifeguard stands;

(4) *Limited Access Spaces*. Spaces accessed only by ladders, catwalks, crawl spaces, very narrow passageways, or tunnels;

(5) *Equipment Spaces*. Spaces frequented primarily by personnel for maintenance, repair, or periodic monitoring of equipment. Such spaces include, but are not limited to, elevator pits, elevator penthouses, mechanical, electrical, or communications equipment rooms, piping or equipment catwalks, petroleum and chemical processing and distribution structures, electric substations and transformer vaults, environmental treatment structures, and highway and tunnel utility facilities.

(6) *Single Occupant Structures*. Single occupant structures accessed only by passageways below grade or elevated above grade, including but not limited to, toll booths that are accessed only by underground tunnels.

(7) *Restricted Occupancy Spaces*. Vertical access (elevators and platform lifts) is not required for the second floor of two-story control buildings located within a chemical manufacturing facility where the second floor is restricted to employees and does not contain common areas or employment opportunities not otherwise available in accessible locations within the same building.

(8) *Places Used Primarily for Religious Rituals.* Within a building or facility of a religious organization, an area used primarily for religious ritual, as determined by the owner or occupant. To facilitate the plan review, the owner or occupant shall include a clear designation of such areas with the plans submitted for review. This exemption does not apply to common areas. Examples of common areas include, but are not limited to, the following: parking facilities, accessible routes, walkways, hallways, toilet facilities, entrances, public telephones, drinking fountains, and exits.

§68.31. Variance Procedures.

(a) Requests to waive or modify a standard shall be submitted on the Variance Application form prescribed by the department. A separate variance application shall be submitted for each condition within a single building or facility.

(b) Variance applications shall be submitted by the owner of the subject building or facility, and shall be accompanied by the applicable fee.

(c) A denial of a variance application may be appealed to the Director of Code Review and Inspections, or his designate, in writing within 21 calendar days from issuance, upon payment of the applicable appeal fee.

(d) A denial of a variance appeal from the Director of the Code Review and Inspections Division may be appealed to the Executive Director of the Texas Department of Licensing and Regulation, or his designate, in writing within ten days of notification of the Division Director's decision. The decision of the Executive Director may be appealed to the Texas Commission of Licensing and Regulation in writing within ten calendar days of notification of the Executive Director's decision.

(e) At each stage of the variance process, the party making the request shall be advised in writing of the determination.

§68.50. Submission of Construction Documents.

(a) An architect, interior designer, landscape architect, or engineer with overall responsibility for the design of a building or facility subject to compliance with TAS, shall mail, ship, or hand-deliver the construction documents to the department, a registered accessibility specialist, or a contract provider not later than five (5) business days after the design professional issues the construction documents..

(b) An Architectural Barriers Project Registration form must be completed for each subject building or facility and submitted along with the construction documents and the applicable review fee.

(c) In projects involving multiple phases, construction documents pertaining to each phase shall be submitted in accordance with this chapter.

(d) In projects involving "fast-track" construction, partial submittals of constructions documents may be made. Construction documents pertaining to each portion of the work shall be submitted in accordance with these rules.

(e) When bid packages involve multiple facilities such as prototypes or other identical facilities, only one set of building drawings need be submitted. An Architectural Barriers Project Registration form must be submitted for each separate building and facility. Drawings noting site adaptations are required for each location.

§68.51. Review of Construction Documents.

(a) After review, the person making the submission will be advised in writing of the results. Construction documents will be approved only when the documents reflect compliance with all applicable accessibility standards. Conditional approval may be granted when it is determined that resubmittals are not warranted. Conditional approvals will refer to all items noted during the review which must be included in the design and construction of the building or facility.

(b) Construction documents received by the department, a registered accessibility specialist, or a contract provider shall become the property of the department.

(c) When the department, a registered accessibility specialist, or a contract provider requires verification of design revisions, such verifications may be made by submission of revised construction documents, change orders, addenda, and letters specifically addressing each revision.

(1) Resubmittals will be reviewed and the person making the resubmittal will be advised of the results. Resubmittals will be approved only when the resubmittal reflects compliance with all applicable accessibility standards. Conditional approval may be granted when it is determined that additional submittals are not warranted.

(2) Resubmittals received after completion of construction, based on the recorded estimated completion date, may not be reviewed but will become a matter of record.

§68.52. Inspections.

(a) The building or facility owner must request an inspection from the department, a registered accessibility specialist, or a contract provider no later than thirty (30) calendar days after the completion of construction, renovation, modification, or alteration of the subject building or facility.

(b) Inspections will be performed during the normal operating hours of the owner. Any deviation from operating hours shall be at the convenience of the owner.

(c) The owner will be notified of the impending inspection and requested to be present during the inspection.

(d) The owner will be advised of the results of each inspection.

§68.53. Corrective Modifications Following Inspection.

When corrective modifications to achieve compliance are required, the department, registered accessibility specialist, or contract provider shall:

(1) provide the owner a list of deficiencies and a deadline for completing modifications;

(2) grant an extension, consistent with established procedures, if satisfactory evidence is presented showing that the time period specified is inadequate to perform the necessary corrections; and

(3) require written verification of corrective modifications from the owner, as needed.

§68.54. Notice of Compliance.

A Notice of Substantial Compliance will be provided to the owner, after a newly constructed building or facility has had a satisfactory inspection or submitted verification of corrective modifications.

§68.65. Advisory Committee.

(a) The purpose of the Architectural Barriers Advisory Committee is to review rules and Technical Memoranda relating to the Architectural Barriers program and recommend changes in the rules and Technical Memoranda to the Commission and the Executive Director.

(b) Recommendations of the committee will be transmitted to the Commission by the Executive Director through the Director of the Code Review and Inspections Division.

(c) Committee meetings are called by the chair or Executive Director. Meetings in excess of those mandated by the Act may be authorized by the Executive Director.

(d) Expenses reimbursed to committee members shall be limited to authorized expenses incurred while on committee business and traveling to and from committee meetings. The least expensive method of travel should be used. Expenses can be reimbursed to committee members only when the legislature has specifically appropriated money for that purpose.

(e) Expenses paid to committee members shall be limited to those allowed by the State of Texas Travel Allowance Guide and the Texas Department of Licensing and Regulation policies governing travel allowances for employees.

(f) The committee shall consist of four building professionals and five consumers. A majority of the Committee shall be persons with disabilities. Committee members will serve staggered three-year terms.

§68.70. Registered Accessibility Specialists -- Qualifications for Certification.

(a) An applicant seeking departmental certification as a registered accessibility specialist in order to perform plan review services shall meet the following minimum qualifications:

(1) Any one of the following:

(A) a degree in architecture, engineering, interior design, landscape architecture, or equivalent, and a minimum of one year experience related to building planning, accessibility design or review, or equivalent; or

(B) eight years experience related to building planning, accessibility design or review, or equivalent; or

(C) four years experience related to building planning, accessibility design or review, or equivalent, and certification as an accessibility specialist granted by a model building code organization; and

(2) satisfactory completion of the Texas Accessibility Academy; and

(3) pass an examination approved by the department.

(b) An applicant seeking departmental certification as a registered accessibility specialist in order to provide inspection services shall meet the following minimum qualifications:

(1) Any one of the following:

(A) minimum of a high school diploma or equivalent; and

(B) either

(i) four years experience related to building inspections, accessibility inspections, building planning, accessibility design or review, or equivalent; or

(ii) two years experience related to building inspections, accessibility inspections, building planning, accessibility design or review, or equivalent, and certification as an accessibility specialist as granted by a model building code organization; and

(2) satisfactory completion of the Texas Accessibility Academy; and

(3) pass an examination approved by the department.

(c) An applicant shall submit a complete application for certification on the form prescribed by the department, accompanied by all appropriate fees. An applicant must complete all requirements, including satisfactory completion of an examination, no later than one year after the date the application is filed.

(d) Each applicant who satisfies all requirements will be provided a wallet card. The wallet card is the actual certificate of registration. A wall certificate will be provided to a new registrant.

(e) Endorsement codes for certificates of registration are as follows: Plan review functions-R; Inspection functions-I; Plan review and inspection functions-RI.

§68.75. Responsibilities of the Registered Accessibility Specialist.

(a) Registered accessibility specialists may set and collect fees for services.

(b) Records maintained by registered accessibility specialists, as required by department rules or procedures, are subject to the provisions of the Texas Government Code, Chapter 552, Texas Open Records Act.

(c) Registered accessibility specialists endorsed for plan review services shall submit all required fees to the department, and comply with all procedures established by the department relating to plan reviews.

(d) Registered accessibility specialists endorsed for inspection services shall:

(1) verify the ownership of each building or facility for which they perform inspection services, prior to submittal of the inspection;

(2) submit all required fees to the department, and comply with all procedures established by the department relating to inspections.

§68.76. Standards of Conduct for the Registered Accessibility Specialist.

(a) *Competency*. The registered accessibility specialist shall be knowledgeable of and adhere to the Act, the rules, the TAS, Technical Memoranda published by the department, and all procedures established by the department for plan reviews and inspections. It is the obligation of the registered accessibility specialist to exercise reasonable judgment and skill in the performance of plan reviews, inspections, and related activities.

(b) *Integrity*. A registered accessibility specialist shall be honest and trustworthy in the performance of plan review, inspection, and related activities, and shall avoid misrepresentation and deceit in any fashion, whether by acts of commission or omission. Acts or practices that constitute threats, coercion, or extortion are prohibited.

(c) *Interest*. The primary interest of the registered accessibility specialist is to ensure compliance with the Act, the rules, and the TAS. The registered accessibility specialist's position, in this respect, should be clear to all parties concerned while conducting plan reviews, inspections, and related activities.

(d) *Conflict of Interest*. A registered accessibility specialist is obliged to avoid conflicts of interest and the appearance of a conflict of interest. A conflict of interest or the appearance of a conflict of interest includes, but is not limited to, the following:

(1) performing a plan review, inspection, or a related activity on a building or facility in which a registered accessibility specialist is an owner, either in whole or in part, or an employee of a full or partial owner;

(2) performing a plan review, inspection, or related activity on a building or facility in which a member of the family of the registered accessibility specialist is an owner, either in whole or in part;

(3) performing a plan review, inspection, or related activity on a building or facility for which the design of the current project

was created, either in whole or in part, by the registered accessibility specialist; and

(4) performing a plan review, inspection, or related activity on a building or facility for which the design of the current project was created, either in whole or in part, by the registered accessibility employer(s).

(e) *Specific Rules of Conduct.* A registered accessibility specialist shall not:

(1) participate, whether individually or in concert with others, in any plan, scheme, or arrangement attempting or having as its purpose the evasion of any provision of the Act, the rules, or the TAS;

(2) knowingly furnish inaccurate, deceitful, or misleading information to the department, a building owner, or other person involved in a plan review, inspection, or related activity;

(3) state or imply to the building owner that the department will grant a variance;

(4) engage in any activity that constitutes dishonesty, misrepresentation, or fraud while performing a plan review, inspection, or related activity; and

(5) perform a plan review, inspection, or related activity in a negligent or incompetent manner.

§68.79. Contract Providers.

In addition to the specific terms of their contracts, contract providers are subject to the same minimum qualifications, responsibilities, and standards of conduct as registered accessibility specialists. Contract providers are also subject to the same investigation and audit procedures as registered accessibility specialists.

§68.90. Administrative Sanctions or Penalties.

(a) If a person violates any provision of Title 132A, Texas Civil Statutes, Article 9102, any provision of Title 16, Texas Administrative Code, Chapter 68, any provision of the Texas Accessibility Standards (TAS), or an order of the Executive Director or Commission, proceedings may be instituted to impose administrative sanctions, administrative penalties, or both administrative penalties and sanctions in accordance with the provisions of Title 132A, Texas Civil Statutes, Article 9102; Title 2, Texas Occupations Code, Chapter 51; and Title 16, Texas Administrative Code, Chapter 60 of this title (relating to the Texas Department of Licensing and Regulations).

(b) It is a violation of the Act for a person to perform a plan review or inspection function of the department, unless that person is a department employee, a registered accessibility specialist with the appropriate endorsement, or a contract provider. A person who does not hold one of these designations and performs a plan review or inspection function of the department is subject to administrative penalties in accordance with the Act or Title 2, Texas Occupations Code, Chapter 51 and Title 16, Texas Administrative Code, Chapter 60.

(c) Cheating on an examination is grounds for denial, suspension, or revocation of a license, imposition of an administrative penalty, or both.

§68.93. Complaints, Investigations, and Audits.

(a) *Complaints.* A complaint may be filed against an owner if there is reason to believe that a building or facility is not in compliance with the Act, the rules, or the TAS. A complaint may be filed against a registered accessibility specialist if there is reason to believe that the registered accessibility specialist has violated the Act, the rules, or the TAS.

(b) *Investigations and Monitoring.* Owners of buildings and facilities subject to compliance with the TAS are subject to investigation by the department. Registered accessibility specialists are subject to investigation and monitoring by the department.

(c) *Inspection and Copying of Records of Registered Accessibility Specialist.* A registered accessibility specialist's records, pertaining to a project for which plan review, inspection, or related activities have been or will be performed, shall be made available for the inspection and copying by the department. The registered accessibility specialist shall make said records available within ten (10) calendar days of receiving a written request for records from the department.

§68.100. Technical Standards and Technical Memoranda.

(a) The Texas Department of Licensing and Regulation adopts by reference the Texas Accessibility Standards (TAS), April 1, 1994 edition.

(b) The Texas Department of Licensing and Regulation may from time to time, publish Technical Memoranda to provide clarification of technical matters relating to the Texas Accessibility Standards, if such memoranda have been reviewed by the Architectural Barriers Advisory Committee.

(c) Copies of TAS or Technical Memoranda may be obtained at www.license.state.tx.us or by contacting the department.

§68.101. State Leases (initial or renewed).

(a) State leased buildings or facilities with an annual lease expense in excess of $12,000 shall be registered with the department by completing a State Lease Registration form. For state leased buildings or facilities that are being newly constructed or substantially renovated, an Architectural Barriers Project Registration form shall also be completed.

(b) Buildings or facilities that are leased or occupied in whole or in part for use by the state, shall meet the following requirements of TAS:

(1) New construction shall comply with TAS 4.1.2 and 4.1.3.

(2) Additions shall comply with TAS 4.1.5.

(3) Alterations shall comply with TAS 4.1.6.

(4) Historic buildings or facilities shall comply with TAS 4.1.7.

(5) Existing buildings and facilities are ones that have not been constructed, renovated, modified or altered since April 1, 1994. In an existing building or facility, where alterations are not planned or the planned alterations will not affect an area containing a primary function, the following minimum requirements shall apply:

(A) If parking is required as part of the lease agreement or is provided to serve the leased area, accessible parking spaces shall comply with TAS 4.6.

(B) An accessible route from the parking area(s) shall comply with TAS 4.3.

(C) At least one entrance serving the leased space shall comply with TAS 4.14.

(D) If toilet rooms or bathrooms are required by the lease agreement or are provided to serve the leased area, at least one set of men's and women's toilet rooms or bathrooms or at least one unisex toilet room or bathroom serving the leased area shall comply with TAS 4.22 or 4.23.

(E) Signage at toilet rooms or bathrooms shall comply with TAS 4.30. Toilet rooms or bathrooms serving the leased area which are not accessible shall be provided with signage complying with TAS 4.30.1, 4.30.2, 4.30.3, 4.30.5 and 4.30.7, indicating the location of the nearest accessible toilet room or bathroom within the facility.

(F) If drinking fountains are required by the lease agreement, or are provided to serve the leased area, at least one fountain shall comply with TAS 4.15. If more than one drinking fountain is provided, at least 50% shall comply with TAS 4.15.

(G) If public telephones are required by the lease agreement, or are provided to serve the leased area, at least one public telephone shall comply with TAS 4.31.

(H) If an element or space of a lease is not specified in this subsection but is present in a state leasehold, that element or space shall comply with TAS 4.1.6.

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

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TRD-200104190
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: September 2, 2001
For further information, please call: (512) 463-7348

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CHAPTER 71. WARRANTORS OF VEHICLE PROTECTION PRODUCTS

16 TAC §§71.1, 71.10, 71.21, 71.22, 71.70, 71.80, 71.90

The Texas Department of Licensing and Regulation proposes new §§71.1, 71.10, 71.21, 71.22, 71.70, 71.80, and 71.90 concerning the regulation of certain warrantors of vehicle protection products.

These rules are necessary to implement a new regulatory program required by Title 132, Texas Civil Statutes, Chapter 20, Article 9035, Vehicle Protection Product Regulatory Act. Article 9035 was enacted by Acts of the 77th Legislature; SB 714 and HB 1214. The proposed rules related to SB 714 establish requirements and set fees necessary for the registration and regulation of certain warrantors of vehicle protection products. The proposed rules related to HB 1214 define "Commissioner" as being the Executive Director of the Texas Department of Licensing and Regulation and define the "Executive Director" as being the Commissioner of the Texas Department of Licensing and Regulation.

Jimmy Martin, Director of Enforcement, of the Texas Department of Licensing and Regulation, has determined that for the first five-year period these sections are in effect there will be fiscal implications as a result of enforcing or administering these new rules. State government will have an increase in revenue due to the collection of fees for certificates of registration. The average annual revenue increase for each of the first five years these sections are in effect will be approximately $24,800, for an approximate total amount of $124,000 for the first five-year period. Costs to the state are expected to be approximately equal to these revenues. There will be no fiscal implications on local government.

Mr. Martin 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 section will be to provide industry oversight and require warrantors of vehicle protection products to maintain financial responsibility.

The anticipated economic effect on small businesses and persons who are required to comply with the sections as proposed will be a yearly registration fee of $500 for registrants who became obligated as warrantors of 0 to 999 vehicle protection product warranties during the twelve (12) months preceding the date of the application; $1,000 for registrants who became obligated as warrantors of 1,000 to 1,999 vehicle protection product warranties during the twelve (12) months preceding the date of the application; and $1,500 for registrants whom became obligated as warrantors of 2,000 or more vehicle protection product warranties during the twelve (12) months preceding the date of the application.

The cost of compliance will not exceed the statutory limit of $2,500 per annual registration fee.

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

The new rules are proposed under Texas Occupations Code, Chapter 51, §51.203 and Texas Civil Statutes, Article 9035, §4. The Department interprets §51.203 as authorizing the Executive Director to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. The Department interprets §4 of Article 9035 and §41(b) of HB 1214, Acts of the 77th Texas Legislature, as authorizing the Executive Director of the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of Article 9035.

The statutory provisions affected by the new rules are Texas Civil Statutes, Article 9035, and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed new rules.

§71.1. Authority.
These rules are promulgated under the authority of Title 132, Texas Civil Statutes, Chapter 20, Article 9035, and Title 2, Texas Occupations Code, Chapter 51.

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

(1) Commissioner--As used in Texas Civil Statutes, Article 9035, and in these rules, has the same meaning as Executive Director.

(2) Executive Director--As used in Texas Civil Statutes, Article 9035, and in these rules, has the same meaning as Commissioner.

(3) Financial statements--A balance sheet, income statement, statement of cash flows, and statement of equity reflecting the financial condition of the subject during the most recent twelve (12) months, prepared in accordance with generally accepted accounting principles.

(4) Net worth--The excess of total assets over total liabilities.

(5) Nonpublic information--Information prohibited from disclosure by statute.

§71.21. Registration Requirements - General.

(a) No person may operate as a warrantor of vehicle protection products, or offer to be a warrantor of vehicle protection products sold or offered in this state without first registering with the department.

(b) Registration is valid for one year from the date issued and must be renewed annually.

(c) The required fee must accompany both initial and renewal applications.

(d) Falsification of information on an application is cause for denial of the application and revocation of the registration.

§71.22. Registration Requirements - Financial Security Requirements.

(a) Each applicant and registrant may comply with the financial security requirement under Article 9035 by:

(1) submitting proof of a reimbursement insurance policy described in Article 9035, or

(2) presenting an audit report and audited financial statements for the twelve-month period preceding the filing of the application which demonstrate that either the applicant or the registrant, or the parent corporation of the applicant or registrant, if there is one, has a net worth of at least $50 million.

(b) If the applicant or registrant relies upon the net worth of its parent corporation to satisfy the financial security requirements of Article 9035, then the applicant or registrant must furnish sufficient written proof that the parent corporation has agreed to guarantee the liabilities and obligations of the applicant or registrant relating to vehicle protection products sold or offered for sale by the applicant or registrant in this state.

§71.70. Responsibilities of Registrant.

(a) A registrant must provide the following written notification to all purchasers of their vehicle protection products and warranties: "Regulated by the Texas Department of Licensing and Regulation, P. O. Box 12157, Austin, Texas 78711, 1-800-803-9202, 512-463-6599." The notification shall be on all contracts and invoices prepared, issued, or used by the registrant.

(b) A registrant shall notify the Department in writing within thirty (30) days of any change in the information set forth in the registrant's application.

(c) The registrant shall allow the department to audit, examine, and copy any and all records maintained by the registrant pursuant to Article 9035 or relating to vehicle protection products sold or offered for sale in this state.

(d) A registrant who is a warrantor of vehicle protection products shall provide a copy of the warranty to the purchaser within 45 days from the date of purchase.

(e) A registrant who is a warrantor of vehicle protection products shall not disclose nonpublic information obtained in connection with the sale of a vehicle protection product in this state except to an entity acting on behalf of the registrant to perform the functions required to implement the vehicle protection product warranty who agrees not to disclose the nonpublic information.

(f) An entity acting on behalf of the registrant under subsection (e) of this section shall not disclose nonpublic information concerning a consumer unless it is necessary to fulfill the terms and conditions of the consumer's warranty.

§71.80. Fees.

(a) All fees are non-refundable.

(b) The original and renewal registration fees shall be:

(1) $500 for registrants who became obligated as warrantors of 0 to 999 vehicle protection product warranties during the twelve (12) months preceding the date of the application;

(2) $1,000 for registrants who became obligated as warrantors of 1,000 to 1,999 vehicle protection product warranties during the twelve (12) months preceding the date of the application; and

(3) $1,500 for registrants who became obligated as warrantors of 2,000 or more vehicle protection product warranties during the twelve (12) months preceding the date of the application.

(c) A $50 fee shall be charged for duplicate or amended registration certificates.

§71.90. Administrative Penalties and Sanctions.

If a person violates any provision of Title 132, Texas Civil Statutes, Chapter 20, Article 9035, any provision of Title 16, Texas Administrative Code, Chapter 71, or any provision of an order of the Executive Director or Commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both administrative penalties and sanctions in accordance with the provisions of Title 132, Texas Civil Statutes, Chapter 20, Article 9035; Title 2, Texas Occupations Code, Chapter 51; and Title 16, Texas Administrative Code, Chapter 60 of this title (relating to the Texas Department of Licensing and Regulation).

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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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7348

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CHAPTER 75. AIR CONDITIONING AND REFRIGERATION CONTRACTOR LICENSE LAW

16 TAC §75.10, §75.100

The Texas Department of Licensing and Regulation proposes amendments to §75.10 and §75.100 concerning the regulation of air conditioning and refrigeration contractors.

These rules are necessary to implement statutory changes to Title 132, Texas Civil Statutes, Article 8861, Air Conditioning and Refrigeration Contractor License Law. The statutory changes to Article 8861 were enacted by Acts of the 77th Legislature; HB 196 and HB 1214. The proposed rule revisions related to HB 196 change the references to codes to be applied by air conditioning and refrigeration contractors performing installation services and in fulfilling the standards of practice for their professional services. The proposed rules related to HB 1214 define

"Commissioner" as being the Executive Director of the Texas Department of Licensing and Regulation and define the "Executive Director" as being the Commissioner of the Texas Department of Licensing and Regulation.

Jimmy Martin, Director of Enforcement, of the Texas Department of Licensing and Regulation, has determined that for the first five-year period these sections are in effect there will be no fiscal implications as a result of enforcing or administering the proposed revised rules. There also will be no fiscal implications on local government.

Mr. Martin 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 section will be to provide increased industry oversight and to clarify contractors' responsibilities under municipal codes affecting air conditioning and refrigeration services.

There is no anticipated economic effect on small businesses and persons who are required to comply with the revised rules as proposed.

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

The amendments are proposed under Texas Occupations Code, Chapter 51, §51.203 and Texas Civil Statutes, Article 8861, §3. The Department interprets §51.203 as authorizing the Executive Director to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. The Department interprets §3 of Article 8861 and §41(b) of HB 1214, Acts of the 77th Texas Legislature, as authorizing the Executive Director of the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of Article 8861.

The statutory provisions affected by the proposed amendments related to HB 196 are Texas Occupations Code, Chapter 51 and Texas Civil Statutes, Article 8861. The statutory provisions affected by the proposed amendments related to HB 1214 are Texas Occupations Code, Chapter 51, §51.001 and Texas Civil Statutes, Article 8861, §2. No other statutes, articles, or codes are affected by the proposed amendments.

§75.10. Definitions.

The following words and terms have the following meanings:

(1)-(8) (No Change).

(9) Commissioner -- As used in Texas Civil Statutes, Article 8861, and in these rules, has the same meaning as Executive Director.

(10) [~~(9)~~] Contracting -- Agreeing to perform work, either verbally or in writing, or performing work, either personally or through an employee or subcontractor.

(11) [~~(10)~~] Cryogenics -- refrigeration that deals with producing temperatures ranging from:

(A) -250 degrees F to Absolute Zero (-459.69 degrees F);

(B) -156.6 degrees C to -273.16 degrees C;

(C) 116.5 K to 0 K; or

(D) 209.69 degrees F to 0 degrees R.

(12) [~~(11)~~] Design of a system -- making decisions on the necessary size of equipment, number of grilles, placement and size of supply and return air ducts, and any other requirements affecting the ability of the system to perform the function for which it was designed.

(13) [~~(12)~~] Direct personal supervision -- Directing and verifying the design, installation, construction, maintenance, service, repair, alteration, or modification of an air conditioning, refrigeration, process cooling, or process heating product or equipment for compliance with mechanical integrity.

(14) [~~(13)~~] Employee -- An individual who performs tasks assigned to him by his employer. The employee is subject to the deduction of social security and federal income taxes from his pay. An employee may be full time, part time, or seasonal. Simultaneous employment with a temporary employment agency, a staff leasing agency, or other employer does not affect his status as an employee.

(15) [~~(14)~~] Employer -- One who employs the services of others, pays their wages, deducts the required social security and federal income taxes from the employee's pay, and directs and controls the employee's performance.

(16) Executive Director -- as used in Texas Civil Statutes, Article 8861, and in these rules, has the same meaning as Commissioner.

(17) [~~(15)~~] Full time employee -- an employee who is present on the job 40 hours a week, or at least 80% of the time the company is offering air conditioning and refrigeration contracting services to the public, whichever is less.

(18) [~~(16)~~] Licensee -- an individual holding a license of the class and endorsement appropriate to the work performed under the Act and these rules.

(19) [~~(17)~~] Permanent office -- Any business location at which contractual agreements to perform work requiring a license under the Act are arranged and where supervising control for those contracts originate. Temporary construction sites or other locations at which employees of a licensee work under contract to provide service, maintenance and repair work are not permanent offices.

(20) [~~(18)~~] Primary process medium -- a refrigerant or other primary process fluid that is classified in the current ANSI/ASHRAE Standard 34 as Safety Group A1, A2, B1, or B2. Safety Groups A3 and B3 refrigerants are specifically excluded.

(21) [~~(19)~~] Proper installation -- installing air conditioning or refrigeration equipment in accordance with:

(A) applicable municipal ordinances and codes adopted by a municipality where the installation occurs;

(B) the least [~~most~~] stringent current Uniform Mechanical Code [~~Codes, Standard Mechanical Code, Standard Gas Code~~], International Mechanical Code, and International Fuel Gas Code in areas where no code has been adopted;

(C) the manufacturer's instructions; and

(D) all requirements for safety and the proper performance of the function for which the equipment or product was designed.

(22) [~~(20)~~] Repair work -- diagnosing and repairing problems with air conditioning, commercial refrigeration, or process cooling or heating equipment, and remedying or attempting to remedy the

problem. Repair work does not mean simultaneous replacement of the condensing unit, furnace, and evaporator coil.

§75.100. Technical Requirements.

(a)-(d) (No Change)

(e) Standards

(1) The standard for the practice of air conditioning and refrigeration in a municipality is the code the municipality adopted by ordinance, provided that the ordinance does not make the code less strict than the current [~~2000~~] edition of the code adopted.

(2) The standards for the practice of air conditioning and refrigeration in an area where no code has been adopted is the least strict applicable provision of the current [~~2000~~] International Mechanical Code or the current [~~2000~~] Uniform Mechanical Code.

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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William H. Kuntz, Jr.
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Texas Department of Licensing and Regulation
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CHAPTER 80. LICENSED COURT INTERPRETERS

16 TAC §§80.1, 80.10, 80.20, 80.22, 80.24, 80.70, 80.80, 80.90

The Texas Department of Licensing and Regulation proposes new §§80.1, 80.10, 80.20, 80.22, 80.24, 80.70, 80.80, and 80.90 concerning the licensing and regulation of court interpreters for individuals who do not communicate in English.

These rules are necessary to implement a new licensing and regulatory program required by Title 2, Texas Government Code, Chapter 57. Title 2, Texas Government Code, Chapter 57 was enacted by Acts of the 77th Legislature; HB 2735 and HB 1214. The proposed rules related to HB 2735 establish requirements and set fees necessary for the licensure and regulation of court interpreters for individuals who do not communicate in English. The proposed rules related to HB 1214 define "Commissioner" as being the Executive Director of the Texas Department of Licensing and Regulation and define the "Executive Director" as being the Commissioner of the Texas Department of Licensing and Regulation.

Jimmy Martin, Director of Enforcement, of the Texas Department of Licensing and Regulation, has determined that for the first five-year period these sections are in effect there will be fiscal implications as a result of enforcing or administering these new rules. State government will have an increase in revenue due to the collection of fees for original applications, renewal applications, duplicate licenses, and language examinations. The average annual revenue increase for each of the first five years these sections are in effect will be approximately $167,525, for an approximate total amount of $837,625 for the first five-year period. Costs to the state are expected to be approximately equal to these revenues. There will be no fiscal implications on local government.

Mr. Martin 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 increase the efficiency and reliability of the judicial system, and to ensure equal access to the system regardless of a person's ability to communicate in English.

The anticipated economic effect on small businesses and persons who are required to comply with the sections as proposed will be an initial application fee of $200, an annual renewal fee of $100, a duplicate license fee of $50, a $50 fee to add another language endorsement to an existing license, and a language examination fee of $100 for each language test administered.

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

The new rules are proposed under Texas Occupations Code, Chapter 51, §51.203 and Title 2, Texas Government Code, Chapter 57, §57.043(b). The Department interprets §51.203 as authorizing the Executive Director to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. The Department interprets §57.043(b) of Chapter 57 and §41(b) of HB 1214, Acts of the 77th Texas Legislature, as authorizing the Executive Director of the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of Chapter 57.

The statutory provisions affected by the new rules are Title 2, Texas Government Code, Chapter 57, and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed new rules.

§80.1. Authority.

These rules are promulgated under the authority of Title 2, Texas Government Code, Chapter 57, and Title 2, Texas Occupations Code, Chapter 51.

§80.10. Definitions.

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

(1) Commissioner--As used in Title 2, Texas Government Code, Chapter 57, and in these rules, has the same meaning as Executive Director.

(2) Dishonorable--Lacking in integrity, indicating an intent to deceive or take unfair advantage of another person, or bringing disrepute to the profession of court interpretation.

(3) Executive Director--As used in Title 2, Texas Government Code, Chapter 57, and in these rules, has the same meaning as Commissioner.

(4) Unethical--Conduct that does not conform to generally accepted standards of conduct for professional court interpreters.

§80.20. Licensing Requirements - General.

(a) Prior to performing court interpretation services, a person first must obtain a court interpreter license from the Department with a language endorsement for each language that the applicant will interpret.

(b) A person seeking to be licensed as a court interpreter must file an application with the Department using Department forms for this purpose and must pay a non-refundable license application filing fee at the time the application is filed with the Department.

§80.22. License Requirements - Examination.

Except as provided by §80.24 of this title (relating to Licensing Requirements-Waiver of Examination Requirement), each applicant must pass all parts of a Department approved language examination before the applicant will be licensed as a court interpreter for that language.

§80.24. License Requirements - Waiver of Examination Requirement.

(a) Upon acceptable proof of an applicant's qualifications, the Executive Director may waive the examination requirement of §80.22 of this title (relating to Licensing Requirements - Examination), if the application is submitted prior to January 1, 2002.

(b) Acceptable proof of an applicant's qualifications may include any or all of the following:

(1) a written reference from an officer of a court, including administrative hearing proceedings, stating that the applicant has acted as a court interpreter in that court, and that the applicant has demonstrated proficiency interpreting in a specific language;

(2) the results of an examination passed within the two years preceding the filing of the application; and

(3) any other proof the Executive Director may deem appropriate.

§80.70. Responsibilities of Licensee - General.

(a) A licensee must provide the following written notification to the court: "Regulated by The Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, 1-800-803-9202, 512-463-6599." The notification shall also be included on all contracts and invoices for court interpreter services.

(b) A licensee shall present their court interpreter license upon the request of a court or an officer of the court.

(c) A licensee shall notify the Department, in writing, within thirty (30) days of any change in the information set forth in the licensee's application.

§80.80. Fees.

(a) All fees are non-refundable.

(b) The original license application filing fee shall be $200.

(c) The renewal application filing fee shall be $100.

(d) The fee for obtaining a duplicate license, making a change in name or address, or obtaining an additional language endorsement shall be $50 each.

(e) Each language examination shall have a separate fee of $60 for the written examination and $40 for the oral examination.

§80.90. Sanctions - Administrative Sanctions/Penalties.

If a person violates any provision of Title 2, Texas Government Code, Chapter 57, any provision of 16 Texas Administrative Code, Chapter 80, or any provision of an order of the Executive Director or Commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both administrative penalties and sanctions in accordance with the provisions of Title 2, Texas Occupations Code, Chapter 51, or 16 Texas Administrative Code, Chapter 60 (relating to the Texas Department of Licensing and Regulation).

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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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
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TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. PROVISIONS OF THE REAL ESTATE LICENSE ACT

SUBCHAPTER F. EDUCATION, EXPERIENCE, EDUCATIONAL PROGRAMS, TIME PERIODS AND TYPE OF LICENSE

22 TAC §535.62

The Texas Real Estate Commission (TREC) proposes an amendment to §535.62, concerning acceptable courses of study. Section 535.62 establishes the guidelines for TREC's acceptance of core real estate courses from license applicants. Under the current section, a proctor must conduct the examination for a correspondence course offered by a college or university. The proposed amendment would clarify how the examination must be graded by the instructor or provider, and would permit the course provider to conduct the examination by use of a computer, thus allowing students to take the course examination online or at a site designated by the provider. Whether the examination is conducted by proctor or by computer, the proposed amendment section would require the provider to ensure that the examinee is the same person as the person who seeks course credit. The amendment would permit correspondence course providers to employ the same examination alternatives that exist for providers who use alternative delivery systems, such as computers, for their courses.

Mark A. Moseley, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the section.

Mr. Moseley also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be greater flexibility in the offering of examinations for correspondence courses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

The statute which is affected by this proposal is Texas Civil Statutes, Article 6573a.

§535.62. Acceptable Courses of Study.

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

(d) A core real estate course also must meet each of the following requirements to be accepted.

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

(5) For a correspondence course, the course must have been offered by an accredited college or university, and students receiving credit for the course must pass either: [~~successful completion of a written final examination was a requirement for receiving credit from the provider, and the examination was administered under controlled conditions to positively identified students~~]

(A) a proctored final examination administered under controlled conditions to positively identified students and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or

(B) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks course credit .

(6)-(9) (No change.)

(e)-(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.

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Mark A. Moseley
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 465-3910

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SUBCHAPTER G. MANDATORY CONTINUING EDUCATION

22 TAC §535.71, §535.72

The Texas Real Estate Commission (TREC) proposes amendments to §535.71, concerning approval of mandatory continuing education (MCE) providers, courses and instructors and §535.72, concerning presentation of courses, advertising and records.

Under current §535.71, MCE correspondence course examinations must be conducted by a proctor. The proposed amendment would clarify how the examination must be graded by the instructor or provider and would permit the course provider to conduct the examination by use of a computer, thus allowing students to take the course examination online or at a site designated by the provider. Whether the examination is conducted by proctor or by computer, the section would require the provider to ensure that the examinee is the same person as the person who seeks course credit. The amendment would permit correspondence course providers to employ the same examination alternatives that exist for providers who use alternative delivery systems, such as computers. The amendment to §535.71 also would adopt by reference a revised form, MCE 9-4, Alternative Instructional Methods Reporting Form, which would be used by the provider to report the student's passing of the examination and successful completion of the course. The report form has been rearranged for clarity, and additional language has been added to emphasize the provider's obligation to submit the form to TREC. If the provider administers the examination on line, the section relating to the proctor would not be completed.

The amendment to §535.72 updates a reference to the revised reporting form.

Mark A. Moseley, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the sections.

Mr. Moseley also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be greater flexibility in the offering of examinations for MCE correspondence courses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

The statute which is affected by this proposal is Texas Civil Statutes, Article 6573a.

§535.71. Mandatory Continuing Education: Approval of Providers, Courses and Instructors.

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

(c) The commission adopts by reference the following forms published and available from the commission, P.O. Box 12188, Austin, Texas, 78711-2188:

(1)-(7) (No change.)

(8) MCE Form 9-4 [~~9-3~~], Alternative Instructional Methods Reporting Form;

(9)-(13) (No change.)

(d)-(o) (No change.)

(p) Correspondence courses. The commission may approve a provider to offer an MCE course by correspondence subject to the following conditions:

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

(3) students receiving MCE credit for the course must pass either:

(A) a proctored written examination administered under controlled conditions to positively identified students, at a location and by an official approved by the commission and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or

(B) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks MCE credit; and

(4) written course work required of students must be graded by an approved instructor or the provider's coordinator or director, who is available to answer students' questions or provide assistance as necessary, using answer keys approved by the instructor or provider[~~; and~~]

[~~(5) final examinations must be graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider].~~

(q)-(r) (No change.)

§535.72. Mandatory Continuing Education: Presentation of Courses, Advertising and Records.

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

(d) Providers of MCE correspondence or alternative delivery method courses shall furnish each student with an Alternative Instructional Methods Reporting Form, MCE Form 9-4 [~~9-3~~], at the time of the final examination. Upon successful completion of the examination the student shall sign MCE Form 9-4 [~~9-3~~]. To report successful course completion the provider shall file the completed MCE Form 9-4 [~~9-3~~] with the commission.

(e)-(o) (No change.)

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

Filed with the Office of the Secretary of State, on July 17, 2001.

TRD-200104108
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: September 2, 2001
For further information, please call: (512) 465-3900

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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 169. ZOONOSIS CONTROL
SUBCHAPTER E. DOG AND CAT STERILIZATION

25 TAC §169.101

The Texas Department of Health (department) proposes an amendment to §169.101 concerning the Animal Friendly Advisory Committee (committee). The committee provides advice to the Texas Board of Health (board) on the dispensing of grant money in the animal friendly account. The committee is governed by the Health and Safety Code, §828.014.

In 1993, the Texas Legislature passed Senate Bill 383 (now codified in the Government Code, Chapter 2110) which requires that each state agency adopt rules on advisory committees. The rules must state the purpose and tasks of the committee, describe the manner in which the committee will report to the agency, and establish a date on which the committee will be automatically abolished unless the governing body of the agency affirmatively votes to continue the committee's existence.

In 1998, the board established a rule relating to the Animal Friendly Advisory Committee. The rule states that the committee will automatically be abolished on September 1, 2001. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until September 1, 2005.

This section amends provisions relating to the operation of the committee. Specifically, language is revised to reflect a change in the applicable law from the Texas Civil Statutes to the Government Code; to clarify that, according to statute, the committee makes recommendations to the department regarding applications for grants funded through the animal friendly account; to continue the committee until September 1, 2005; to change the term of office for committee members to four years expiring on alternating even-numbered years; to change the process for filling vacancies in the offices of presiding officer and assistant presiding officer; to clarify how the committee will conduct meetings in accordance with the Open Meetings Act; and to clarify that the committee must prepare an annual report to the board.

Jacquelyn McDonald, Director of the Office of the Board of Health, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications for state and local government as a result of amending the section as proposed. There will be no costs to small business or micro-business resulting from compliance with this section, as this section addresses only continuance of the committee and terms of office. There are no anticipated economic costs to persons who are required to comply with the section proposed. There is no anticipated impact on local employment.

Ms. McDonald has also determined that for each of the first five years the section is in effect, the public benefit anticipated as a result of amending the section will be to provide a continuance of the committee, and to create a greater continuity of work due to the staggered terms of office.

Comments on the proposed section may be submitted to Jacquelyn McDonald, Director, Office of the Board of Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512)458-7484. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The amendment is proposed under Health and Safety Code, §828.015, Animal Friendly Advisory Committee, which requires that the commissioner of health establish an advisory committee; §12.001 which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health; and Government Code §2110.005 which requires the department to adopt rules stating the purpose and tasks of its advisory committees.

The amendment affects Health and Safety Code, Chapter 828.

§169.101. Animal Friendly Advisory Committee.

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) (No change.)

(2) The committee is required to be established by the commissioner of health (commissioner) by the Texas Health and Safety Code, § [Chapter] 828.015, Dog and Cat Sterilization.

(b) Applicable law. The committee is subject to Government Code, Chapter 2110, relating to [Texas Civil Statutes, Article 6252-33 concerning] state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the Texas Board of Health (board) on the dispensing of grant money in the animal friendly [license plates] account.

(d) Tasks.

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

(3) The committee shall review and make recommendations to the Texas Department of Health (department) [board] on applications submitted to the department [Texas Department of Health (department)] for grants funded with money credited to the animal friendly account.

(e) Review and duration. By September 1, 2005, [September 1, 2001,] the commissioner will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) (No change.)

(g) Terms of office. The term of office of each member shall be four [two] years.

(1) Members shall be appointed for staggered terms expiring [so that the terms of four members expire] on January 31 of each even-numbered [odd-numbered] year [and the terms of the remaining members expire on January 31 of each even-numbered year].

(2) Those members whose terms expire on January 31, 2003, will be extended to January 31, 2004.

(3) [(2)] If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(h) Officers. The commissioner shall designate one member as presiding officer of the committee and one other member as the assistant presiding officer.

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

(4) If the office of assistant presiding officer becomes vacant, it may be filled temporarily by vote of the committee until a successor is appointed by the commissioner. [In the event of a vacancy in the offices of presiding officer or assistant presiding officer, the commissioner shall appoint a member to preside for the remainder of the term.]

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

(7) The presiding officer and assistant presiding officer serving on January 1, will continue to serve until the commissioner appoints their successors.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

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

(3) The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply. [Each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551.]

(4)-(7) (No change.)

(j)-(n) (No change.)

(o) Reports to board. The committee shall file an annual written report with the board [commissioner].

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

(p) (No change.)

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

Filed with the Office of the Secretary of State, on July 16, 2001.

TRD-200104100
Susan Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: September 2, 2001
For further information, please call: (512) 458-7236

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PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 411. STATE AUTHORITY RESPONSIBILITIES

SUBCHAPTER H. INTERSTATE TRANSFER

25 TAC §§411.351 - 411.362

(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 Mental Health and Mental Retardation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeals of §§411.351 - 411.362 of Chapter 411, Subchapter H, concerning interstate transfer. New §§411.351 - 411.362 of Chapter 411, Subchapter H, concerning the same, which would replace the repealed sections, are contemporaneously proposed in this issue of the *Texas Register*.

The repeals would allow for the adoption of new sections governing the same matters.

Cindy Brown, Chief Financial Officer, has determined that for each year of the first five years the proposed repeals are in effect, the proposed repeals do not have foreseeable significant implications relating to cost or revenue of the state or local governments.

Kenny Dudley, Director, State Mental Health Facilities, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit expected as a result of the adoption of the new rules is the provision of clear and concise information regarding the interstate transfer of persons with mental illness and mental retardation. It is anticipated that there

would be no economic cost to persons required to comply with the proposed repeals.

It is anticipated that the proposed repeals will not affect a local economy.

It is anticipated that the proposed repeals will not have an adverse economic effect on small businesses or micro businesses because new rules, which would not significantly alter requirements for small business or micro businesses, are proposed to replace the repealed rules.

Written comments on the proposal may be sent to Linda Logan, Director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

These sections are proposed for repeal under the Texas Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and the Interstate Compact on Mental Health, Texas Health and Safety Code, Chapter 612, which authorizes the adoption of rules to carry out the compact more effectively.

The proposed repeals would affect the Texas Health and Safety Code, Chapter 612, §571.008, and §533.011.

§411.351. Purpose.
§411.352. Application.
§411.353. Definitions.
§411.354. Prerequisite for Transfer.
§411.355. Legal Basis for Institutionalization.
§411.356. Coordinating Requests for Interstate Transfer.
§411.357. Requests for Persons with Mental Retardation To Be Transferred from Texas.
§411.358. Requests for Persons with Mental Illness To Be Transferred from Texas.
§411.359. Requests for Persons with Mental Retardation To Transfer to Texas.
§411.360. Requests for Persons with Mental Illness To Transfer to Texas.
§411.361. Exhibits.
§411.362. References.

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

Filed with the Office of the Secretary of State, on July 19, 2001.

TRD-200104178
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: September 2, 2001
For further information, please call: (512) 206-5216

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25 TAC §§411.351 - 411.362

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§411.351 - 411.362 of Chapter 411, Subchapter H, concerning interstate transfer. Existing §§411.351 - 411.362 of Chapter 411, Subchapter H, concerning the same, which the new sections would replace, are contemporaneously proposed for repeal in this issue of the *Texas Register*.

The subchapter would describe the procedures for transferring persons with mental retardation and mental illness between a TDMHMR facility and other states. The procedures contained in the subchapter comply with state statute; reflect current practice which as been determined to be an effective, efficient, and compassionate manner of interstate transfer; and facilitate coordination with other states that are parties to the Interstate Compact on Mental Health as well as the five state that are not parties to the compact.

A key difference between the proposed new sections and the sections proposed for repeal is that the prerequisite for transfer in the proposed new sections allows the legally authorized representative of the person to be transferred to be living in the state of proposed transfer, rather than to be a resident of the state. The proposed new sections also state that voluntary admission to a TDMHMR mental health and mental retardation facility is accomplished in accordance with applicable rules.

Cindy Brown, Chief Financial Officer, has determined that for each year of the first five years the proposed new rules are in effect, enforcing or administering the rules does not have foreseeable significant implications relating to cost or revenue of the state or local governments because the proposed new rules are not significantly different from the rules proposed for repeal.

Kenny Dudley, Director, State Mental Health Facilities, has determined that, for each year of the first five years the proposed new rules are in effect, the public benefit expected is the provision of clear and concise information regarding the interstate transfer of persons with mental illness and mental retardation. It is anticipated that there would be no additional economic cost to persons required to comply with the proposed rules because they do not impose additional requirements on such persons.

It is anticipated that the proposed new rules will not affect a local economy because the rules do not significantly alter the requirements contained in the rules proposed for repeal, which did not affect a local economy.

It is anticipated that the proposed new rules will not have an adverse economic effect on small businesses or micro-businesses because the rules do not significantly alter the requirements contained in the rules proposed for repeal.

Written comments on the proposal may be sent to Linda Logan, Director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

These sections are proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and the Interstate Compact on Mental Health, Texas Health and Safety Code, Chapter 612, which authorizes the adoption of rules to carry out the compact more effectively.

These proposed sections would affect the Texas Health and Safety Code, Chapter 612, §571.008, and §533.011.

§411.351. Purpose.
The purpose of this subchapter is to implement Texas laws authorizing the transfer of persons with mental retardation and mental illness between Texas and other states.

§411.352. Application.
This subchapter applies to the Texas Department of Mental Health and Mental Retardation and all of its facilities and local authorities.

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

(1) Family member--The person's spouse, parent, sibling, adult child, or any individual the person identifies as playing a significant role in the person's life.

(2) Informed consent--The knowing agreement of the person or the person's legally authorized representative (LAR) to a proposed transfer, given under the person's or LAR's ability to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion.

(3) Interstate compact coordinator (ICC)--The employee at TDMHMR's Central Office responsible for coordinating interstate transfers.

(4) Legally authorized representative (LAR)--An individual authorized by law to act on behalf of a person with regard to a matter described in this subchapter, and who may include a parent. guardian, or managing conservator of a child or adolescent, or a guardian of a person who is an adult.

(5) Local authority--An entity designated by the TDMHMR commissioner in accordance with the Texas Health and Safety Code, §533.035(a).

(6) Person--The individual for whom interstate transfer is requested.

(7) State mental health facility--A state hospital or a state center with an inpatient component that is operated by TDMHMR.

(8) State mental retardation facility--A state school or a state center with a mental retardation residential component that is operated by TDMHMR.

(9) TDMHMR--The Texas Department of Mental Health and Mental Retardation.

(10) TDMHMR facility--A state mental health facility or a state mental retardation facility.

(11) Transfer--The importation or deportation of a person under the provisions of the Texas Mental Health Code, Texas Health and Safety Code, Title 7, §571.008; the Texas Mental Health and Mental Retardation Act, Texas Health and Safety Code, Title 7, §533.011 and §533.014(a)(3); or the Interstate Compact on Mental Health, Texas Health and Safety Code, Title 7, Chapter 612.

§411.354. Prerequisite for Transfer.

(a) To transfer a person to another state from a TDMHMR facility:

(1) the person must be a resident or former resident of the receiving state;

(2) the person's LAR must be living in the receiving state; or

(3) the person must have a family member, who plays or who will play a significant role in the person's life, living in the receiving state.

(b) To transfer a person from an institution in another state to a TDMHMR facility:

(1) the person must be a resident of Texas;

(2) the person's LAR must be living in Texas; or

(3) the person must have a family member, who plays or who will play a significant role in the person's life, living in Texas.

§411.355. Legal Basis for Institutionalization.

(a) Persons with mental illness or mental retardation who are involuntarily committed by another state and who are transferred to Texas may be detained for a period not to exceed 96 hours. Detention in excess of 96 hours may only be in accordance with:

(1) a voluntary admission to a Texas facility;

(2) a commitment order of a Texas court; or

(3) an order of protective custody.

(b) An appropriate court in the county of a state mental health facility or local authority's location is authorized to conduct commitment proceedings of persons transferred to the state mental health facility or local authority from another state.

(c) Court commitments of persons with mental retardation to a state mental retardation facility are accomplished in accordance with the Texas Health and Safety Code, §593.041 and §593.052.

(d) Voluntary admission of a person with mental retardation to a state mental retardation facility is accomplished in accordance with Chapter 412, Subchapter F of this title (relating to Continuity of Services--State Mental Retardation Facilities).

(e) Voluntary admission of a person with mental illness to a state mental health facility is accomplished in accordance with Chapter 402, Subchapter A of this title (relating to Admissions, Transfers, Absences, and Discharges--Mental Health Facilities).

§411.356. Coordinating Requests for Interstate Transfer.

All requests for interstate transfer are coordinated by the Interstate Compact Coordinator (ICC), Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668. The ICC does not discriminate against any person or individual on the grounds of race, color, national origin, religion, sex, age, disability, or political affiliation.

§411.357. Requests for Persons with Mental Retardation To Be Transferred from Texas.

(a) Requests for interstate transfer may be initiated by the person, a family member of the person, or the person's LAR. Regardless of who initiates the request for transfer, the preferences of the adult person who has not been adjudicated incompetent prevail.

(b) In response to a transfer request, the TDMHMR facility in which the person resides is responsible for obtaining informed consent to the transfer from the person or the person's LAR and completing the "Consent to Interstate Transfer and to Release Confidential Information" form and the "Request for Interstate Transfer" form, which are referenced as Exhibits A and B, respectively in §411.361 of this title (relating to Exhibits).

(c) The TDMHMR facility forwards to the ICC:

(1) documentation of the person's prerequisite for transfer to the receiving state, in accordance with §411.354(a) of this title (relating to Prerequisite for Transfer);

(2) documentation of staff's discussion with the person regarding the proposed transfer and/or if appropriate documentation of staff's contact with the person's family, friends, or other available sources in ascertaining whether the transfer is in the person's best interest;

(3) the completed "Consent to Interstate Transfer and to Release Confidential Information" form;

(4) the completed "Request for Interstate Transfer" form;

(5) a copy of the person's diagnosis of mental retardation;

(6) a copy of the person's comprehensive medical history, including any medical evaluations, current physician's orders, and list of current medications;

(7) a summary of the person's social history, including a copy of any psychological evaluations;

(8) documentation that committing court has been notified of the proposed transfer, if applicable;

(9) copies of the person's current individual habilitation plan and annual planning conference documents;

(10) guardianship or other legal documentation pertaining to the individual requesting transfer; and

(11) a brief cover letter signed by the TDMHMR facility chief executive officer or designee stating the circumstances or reasons for requesting the transfer.

(d) While the request for transfer is pending, the TDMHMR facility is responsible for informing the ICC of any changes in the person's status, the request, or of anything that would affect the transfer request.

(e) Upon receipt of the elements described in subsection (c) of this section, the ICC contacts the receiving state and makes a reasonable effort to obtain authorization for the transfer.

(f) If the receiving state decides to accept the person for immediate transfer, then the TDMHMR facility shall:

(1) make all travel arrangements, choosing the most comfortable and expeditious mode of travel that is acceptable to the person being transferred and/or the LAR;

(2) be responsible for all transfer expenses;

(3) ensure that arrangements are made for an escort or escorts to accompany and assist the person in reaching the final destination;

(4) ensure that the following items accompany the person upon transfer to the receiving state:

(A) a copy of the person's birth certificate or appropriate substitute;

(B) all legal documents;

(C) the person's Social Security card;

(D) a copy of the person's immunization record;

(E) a copy of the person's weight and height record;

(F) a copy of the person's seizure record, if appropriate;

(G) a copy of the person's treatment and diet record;

(H) Medicaid, Medicare, or third-party insurance cards, if available;

(I) a copy of the person's current nursing care plan;

(J) a summary of the person's medical history, including all major surgeries, and significant acute illnesses and injuries requiring hospitalization or long recovery period;

(K) a summary of the person's medication history, including start/stop dates and dose ranges, effectiveness of all long-term medications, and antibiotic use including dates, effectiveness, sensitivities, and allergies;

(L) a summary of the person's dental history, including all oral surgeries, extractions, restorations, appliances, and types of anesthesia required for dental work;

(M) copies of all the person's laboratory reports of exams conducted within the past 30 days and any additional significant reports made within the past year (including, X-ray, EEG, and EKG);

(N) all personal belongings;

(O) transfer program summary; and

(P) the previously agreed-upon supply of all prescribed medication, not to exceed a 14-day supply; and

(5) inform the ICC in writing within 14 days after the transfer is complete.

(g) The ICC ensures that all authorized parties are informed of the progress made on the transfer request as allowed by the signed "Consent to Interstate Transfer and to Release Confidential Information" form.

§411.358. Requests for Persons with Mental Illness To Be Transferred from Texas.

(a) Requests for interstate transfer may be initiated by the person, a family member of the person, or the person's LAR. Regardless of who initiates the request for transfer, the preferences of the adult person who has not been adjudicated incompetent prevails.

(b) In response to a transfer request, the TDMHMR facility in which the person resides is responsible for obtaining informed consent to the transfer from the person or the person's LAR and completing the "Consent to Interstate Transfer and to Release Confidential Information" form and the "Request for Interstate Transfer" form, which are referenced as Exhibits A and B, respectively in §411.361 of this title (relating to Exhibits).

(c) The TDMHMR facility forwards to the ICC:

(1) documentation of the person's prerequisite for transfer to the receiving state, in accordance with §411.354(a) of this title (relating to Prerequisite for Transfer);

(2) documentation of staff's discussion with the person regarding the proposed transfer and documentation of staff's contact with the person's family, friends, or other available sources in ascertaining whether the transfer would be in the person's best interest;

(3) the completed "Consent to Interstate Transfer and to Release Confidential Information" form;

(4) the completed "Request for Interstate Transfer" form;

(5) a copy of the person's diagnosis of mental illness;

(6) a copy of the person's comprehensive medical history, including any medical evaluations, current physician's orders, and list of current medications;

(7) a summary of the person's social history and history of mental illness, including a copy of any psychiatric or psychological evaluations;

(8) documentation of approval to transfer from the committing court, as required by the Texas Health and Safety Code, §612.007(b);

(9) guardianship or other legal documentation pertaining to the individual requesting transfer; and

(10) a brief cover letter signed by the TDMHMR facility chief executive officer or designee stating the circumstances or reasons for requesting the transfer.

(d) While the request for transfer is pending, the TDMHMR facility is responsible for informing the ICC of any changes in the person's status, the request, or of anything that would affect the transfer request.

(e) Upon receipt of the elements described in subsection (c) of this section, the ICC contacts the receiving state and makes a reasonable effort to obtain authorization for the transfer.

(f) If the receiving state decides to accept the person for immediate transfer, the TDMHMR facility shall:

(1) make all travel arrangements, choosing the most comfortable and expeditious mode of travel acceptable to the person being transferred;

(2) be responsible for all transfer expenses;

(3) ensure arrangements are made for an escort or escorts to accompany and assist the person in reaching the final destination;

(4) ensure that the following items accompany the person upon transfer to the receiving state:

(A) all legal and other documents, as appropriate;

(B) copies of all the person's laboratory reports of exams conducted within the past 30 days and any additional significant reports made within the past year;

(C) all personal belongings; and

(D) the previously agreed-upon supply of all prescribed medication, not to exceed a 14-day supply; and

(5) inform the ICC in writing within 14 days after the transfer is complete.

(g) The ICC ensures that all authorized parties are informed of the progress made on the transfer request as allowed by the signed "Consent to Interstate Transfer and to Release Confidential Information" form.

§411.359. Requests for Persons with Mental Retardation to Transfer to Texas.

(a) A letter of request for transfer of a person to a TDMHMR facility, which is initiated by the person, a family member of the person, or the person's LAR, is sent by the requesting state's Interstate Compact Coordinator or designee to the ICC, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668. The letter of request must be accompanied by:

(1) documentation of the person's prerequisite for transfer to Texas, in accordance with §411.354(b) of this title (relating to Prerequisite for Transfer);

(2) a consent to the release of records to TDMHMR, signed by the person or the person's LAR;

(3) the completed "Request for Interstate Transfer" form, referenced as Exhibit B in §411.361 of this title (relating to Exhibits);

(4) a copy of the person's immunization record;

(5) a copy of the person's Social Security card;

(6) a copy of the person's birth certificate or appropriate substitute;

(7) a copy of the person's diagnosis of mental retardation;

(8) a copy of the person's comprehensive medical history, including any medical evaluations, current physician's orders, and list of current medications;

(9) a summary of the person's social history, including a copy of any psychological evaluations;

(10) documentation that committing court has been notified of the proposed transfer, if applicable;

(11) copies of the person's current individual habilitation plan and annual planning conference documents;

(12) guardianship or other legal documentation pertaining to the individual requesting transfer; and

(13) a brief cover letter signed by the institution's chief executive officer or designee stating the circumstances or reasons for requesting the transfer.

(b) Upon receipt of the letter of request, the ICC reviews the documents and consults with the appropriate local authority, who consults with the appropriate TDMHMR facility, to determine whether the person is eligible for admission to the facility.

(c) The ICC refers disputes relating to the benefit derived from a proposed transfer and clinical issues relating to eligibility for admission to a TDMHMR facility to the director of state mental retardation facilities at TDMHMR's Central Office for resolution.

(d) If the person is determined eligible for admission to a TDMHMR facility, then the person is referred to the appropriate local authority who arranges for the person's name to be placed on the register of the appropriate facility. The ICC notifies the sending state of TDMHMR's action regarding the request for transfer and supplies necessary transfer information.

(e) If the person is determined ineligible for admission to a TDMHMR facility, then the ICC notifies the requesting state of such ineligibility. The ICC also notifies the requesting state of the person's right to provide additional information to be considered in redetermining eligibility if the person believes that incomplete or inaccurate information was used to determine ineligibility.

(f) The ICC ensures that all authorized parties are informed of the progress made on the transfer request as allowed by the signed consent to release confidential information document or in accordance with law.

§411.360. Requests for Persons with Mental Illness to Transfer to Texas.

(a) A letter of request for transfer of a person to a TDMHMR facility, which is initiated by the person, a family member of the person, or the person's LAR, is sent by the requesting state's Interstate Compact Coordinator or designee to the ICC, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668. The letter of request must be accompanied by:

(1) documentation of the person's prerequisite for transfer to Texas, in accordance with §411.354(b) of this title (relating to Prerequisite for Transfer);

(2) a consent to the release of records to TDMHMR, signed by the person or the person's LAR;

(3) the completed "Request for Interstate Transfer" form, referenced as Exhibit B in §411.361 of this title (relating to Exhibits);

(4) a copy of the person's immunization record;

(5) a copy of the person's Social Security card;

(6) a copy of the person's birth certificate or appropriate substitute;

(7) a copy of the person's diagnosis of mental illness;

(8) a copy of the person's comprehensive medical history, including any medical evaluations, current physician's orders, and list of current medications;

(9) a summary of the person's social history and history of mental illness, including a copy of any psychiatric or psychological evaluations;

(10) documentation of approval to transfer from the committing court, if required;

(11) guardianship or other legal documentation pertaining to the individual requesting transfer; and

(12) a brief cover letter signed by the institution's chief executive officer or designee stating the circumstances or reasons for requesting the transfer.

(b) Upon receipt of the letter of request, the ICC reviews the documents and consults with the appropriate local authority, who consults with the appropriate TDMHMR facility, to determine whether the person is eligible for admission to the facility.

(c) The ICC refers disputes relating to the benefit derived from a proposed transfer and clinical issues relating to eligibility for admission to a TDMHMR facility to the director of state mental health facilities at TDMHMR's Central Office for resolution.

(d) If the person is determined eligible for admission to a TDMHMR facility, then the person is referred to the appropriate local authority who arranges for the person's name to be placed on the register of the appropriate facility. The ICC notifies the sending state of TDMHMR's action regarding the request for transfer and supplies necessary transfer information.

(e) If the person is determined ineligible for admission to a TDMHMR facility, then the ICC notifies the requesting state of such ineligibility. The ICC also notifies the requesting state of the person's right to provide additional information to be considered in redetermining eligibility if the person believes that incomplete or inaccurate information was used to determine ineligibility.

(f) The ICC ensures that all authorized parties are informed of the progress made on the transfer request as allowed by the signed consent to release confidential information document or in accordance with law.

§411.361. Exhibits.

The following exhibits referenced in this subchapter are available from the Texas Department of Mental Health and Mental Retardation, Office of Policy Development, P.O. Box 12668, Austin, Texas 78711-2668.

(1) Exhibit A--"Consent to Interstate Transfer and to Release Confidential Information"; and

(2) Exhibit B--"Request for Interstate Transfer."

§411.362. References.

Reference is made to the following statutes and rules:

(1) Texas Health and Safety Code, §§533.011, 533.014, 533.035, 571.008, 593.041, 593.052, and Chapter 612;

(2) Chapter 412, Subchapter F of this title (relating to Continuity of Services--State Mental Retardation Facilities); and

(3) Chapter 402, Subchapter A of this title (relating to Admissions, Transfers, Absences, and Discharges--Mental Health Facilities).

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

Filed with the Office of the Secretary of State, on July 19, 2001.

TRD-200104177
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: September 2, 2001
For further information, please call: (512) 206-5216

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER T. SUBMISSION OF CLEAN CLAIMS

28 TAC §§21.2803 - 21.2807, 21.2809, 21.2811, 28.2815 - 21.2820

The Texas Department of Insurance (Department) proposes amendments to §§21.2803 - 21.2807, 21.2809, 21.2811, 21.2815, and new §§21.2816 - 21.2820 concerning the submission of clean claims to health maintenance organizations (HMOs) and insurers who issue preferred provider benefit plans (preferred provider carriers). The purpose and objectives of the proposed revised and new sections are to further clarify and delineate requirements relating to submission and payment of clean claims.

These sections are necessary to provide greater clarity and more specificity in prompt payment procedures and will more fully implement legislation enacted by the 76th Legislature in House Bill 610, as contained in Texas Insurance Code Articles 3.70-3C §3A and 20A.18B.

House Bill 610, which became effective on September 1, 1999, basically gives HMOs and preferred provider carriers 45 days to pay or deny, in whole or in part, "clean claims" submitted by contracted physicians and providers. In addition, an HMO or preferred provider carrier that acknowledges coverage but intends to audit a claim is required to pay 85% of the contracted rate within the statutory claims payment period. House Bill 610 gives the Department the authority to determine, by rule, what constitutes a "clean claim." It further gives the Department authority to adopt rules as necessary to implement the statutory requirements.

On December 17, 1999, the Department proposed rules to provide definitions and procedures for determining and paying clean claims, which were adopted by order dated May 23, 2000. A revision to the sections concerning data elements and audit procedures was adopted by order dated February 14, 2001. In the original rule's adoption order, the Department, in responding to comments on various sections of the rule, stated its intent to monitor complaints and acknowledged that further agency action could be necessary to further refine clean claims submission and payment procedures as contemplated in House Bill 610.

The Department has noted a significant increase in the number of complaints received from physicians and providers involving delays in claims payment. These complaints, coupled with the Department's continuing communication with the physician and provider community, as well as with HMOs and preferred provider

carriers, indicate a need to further refine the rule to ensure that the original intent of House Bill 610 - the timely and efficient payment of clean claims - is being implemented.

The Department recognizes that future, additional rulemaking may be necessary to address ongoing concerns that have been or will be raised regarding implementation of House Bill 610 and other issues concerning physicians and providers and HMOs and preferred provider carriers. However, the current proposal reflects the Department's efforts to resolve recurring issues regarding prompt payment of clean claims.

The proposed amendment to §21.2803, which sets out the elements of a clean claim, clarifies that while attachments and additional elements can be required as part of a clean claim, such requests by HMOs and preferred provider carriers for required attachments and additional elements must be for documents which are contained within the physician's or provider's medical file. The Department has received numerous complaints from physicians and providers indicating that HMOs and preferred provider carriers are requiring documents that may be inaccessible to the physician or provider, such as police reports, documents from the registrar's office at colleges and universities, and tax statements from enrollees and insureds. For this reason, the Department believes that this section should be clarified. In the adoption order of the original rule, the Department recognized, in response to comments, that HMOs and preferred provider carriers would on occasion require information, such as police reports, which would be needed to resolve coverage issues. However, the adoption order made clear that the Department would monitor complaint trends and take appropriate action, if necessary.

The proposed amendments to §§21.2804 - 21.2806, which relate to required disclosures, further clarify that the disclosure of data elements, attachments, and additional clean claim elements must conform with the disclosure formats of proposed §21.2818. The proposal also clarifies that an HMO or preferred provider carrier must give the 60 day disclosure of required data elements, attachments or additional clean claim elements. The Department has received many complaints from providers and physicians who received the disclosure pursuant to §21.2804 or §21.2805, but had claims rejected before the end of the 60 days for failing to include the attachment or additional clean claim element referenced in the disclosure. The proposed amendments do not change the current practice, but further reinforce the language in §§21.2804 - 21.2806.

The proposed amendment to §21.2807 clarifies that the statutory claims payment period begins upon receipt of a claim at the address designated by the HMO or preferred provider carrier to receive claims. Regardless of whether the recipient of the claim is a delegated claims processor, or some other entity the HMO or preferred provider carrier designates, such as a clearinghouse or repricing company, receipt of the claim will begin the statutory claims payment period.

The proposed amendments to §21.2809 clarify the audit process utilized by HMOs and preferred provider carriers by providing a specific time limitation of 180 days to complete the audit process. In the original rule's adoption order, the Department stated its belief that since it was in the HMO's or preferred provider carrier's interest to quickly audit claims, it was not necessary at that time to implement a time frame. However, the Department has become aware of numerous complaints from physicians and providers alleging that clean claim audits by HMOs and preferred provider carriers are exceeding reasonable time frames. These complaints indicate a need to further refine the audit process to facilitate the timely and efficient payment of claims. It is the Department's understanding that the majority of audits are routinely completed in substantially less time than 180 days, and that a very small percentage of claims require 180 days to complete. The Department has proposed a maximum 180 day time frame as an outside limit, which it believes will provide HMOs and preferred provider carriers sufficient time to complete an audit. The Department expects that HMOs and preferred provider carriers will complete audits and make additional payments or request refunds within a much shorter time frame than the maximum number of days. The proposed amendments also provide that payments made to comply with the audit process are not admissions of liability on a claim, which replaces a similar provision in the current rule, and that an HMO or preferred provider carrier can continue to investigate claims past the audit period to determine its liability on those claims and seek a refund, if appropriate.

The proposed amendment to §21.2811 states that the disclosure of information regarding processing procedures to physicians or providers must conform with the formats in proposed new §21.2818.

The proposed amendment to §21.2815, failure to meet the statutory claims payment period, explains that while the HMO or preferred provider carrier can contract with the physician or provider for a penalty rate for late payment, the HMO or preferred provider carrier is required to pay the greater of the full amount of the billed charges submitted on the clean claim or any contracted penalty rate for the late payment. This is consistent with the requirements of House Bill 610, which provides penalties for failure to comply. The Department believes that clarification of this requirement is necessary, based on the complaints the Department has received that some contracts between HMOs or preferred provider carriers and physicians and providers contain nominal penalty rates, which effectively circumvent the legislatively established incentive for claims to be paid in a timely manner as established by House Bill 610. The proposed amendment to §21.2815 also clarifies that if an HMO or preferred provider carrier fails to pay a clean claim correctly or denies a valid clean claim, that failure is considered a violation of Article 20A.18B(c) or Article 3.70-3C §3A(c). By failing to pay the clean claim correctly or by incorrectly denying a valid clean claim, the HMO or preferred provider carrier has failed to take any of the measures outlined in existing §21.2807 and §21.2809.

Proposed §21.2816, concerning date of claim receipt, clarifies how the physician or provider can demonstrate that a claim has been received by an HMO or preferred provider carrier. Although the Department did not include a similar provision in the original rule, it has subsequently received numerous complaints from physicians and providers who state that the HMO or preferred provider carrier maintains it has not received a mailed claim, or that only some claims sent were received. The proposed section provides a mechanism to establish a rebuttable presumption of the receipt of a claim and clarifies when the 45 day time period begins. For situations in which multiple claims are included in one mailing or hand delivery, proposed §21.2816 outlines a method for either party to identify individual claims sent in a single mailing or delivery. By identifying in §21.2816 when a claim is presumed to have been received by the HMO or preferred provider carrier, each party should be able to ensure that claims sent are also received, which will result in claims being paid in the appropriate time frame. The proposed section also identifies the information that should be included in a claims mail log, if a

physician or provider chooses to maintain one, and includes an example form.

Proposed new §21.2817 outlines statutory and regulatory provisions in Article 20A.18B, Article 3.70-3C and new proposed §21.2809 which cannot be altered by contracts between the HMOs and preferred provider carriers and physicians and providers. The Department has received reports that some contracts between physicians or providers and HMOs and preferred provider carriers include language which circumvents the intent of Article 20A.18B or Article 3.70-3C by extending the 45 day time frame for paying clean claims or by limiting a physician's or provider's right to reasonable attorney fees if the physician or provider resorts to the judicial system to obtain payment for their services.

Proposed new §21.2818 clarifies that when a document containing a required disclosure is sent by the HMO or preferred provider carrier to the physician or provider, the document must contain a heading that demonstrates that the document contains a disclosure. Proposed §21.2818 is designed to address concerns that required disclosures may not be evident to the physician or provider if it is contained in a document that fails to properly identify its contents.

Proposed new §21.2819 provides that the proposed amendments and new sections apply to claims filed for non-confinement services, treatment or supplies rendered on or after September 5, 2001 and to claims filed for services, treatments, or supplies for in-patient confinements in a hospital or other institution that began on or after September 5, 2001.

Proposed §21.2820 provides for severability of the rule, and has been renumbered to accommodate the new proposed sections in the rule. The proposed repeal of §21.2816 is published elsewhere in this issue of the Texas Register.

The Department will consider the adoption of the proposed amendments to §§21.2803 - 21.2807, 21.2809, 21.2811, 21.2815, and new §§21.2816 - 21.2820 concerning submission of clean claims by physicians and providers to HMOs and preferred provider carriers in a public hearing under Docket Number 2490 scheduled for August 22, 2001, at 9:30 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

Kim Stokes, Senior Associate Commissioner of Life, Health and Licensing, has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Stokes has determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of the proposed sections will be that all clean claims are paid in a timely manner, as required by House Bill 610, and that there will be a reduction in the number of disputes between physicians or providers and HMOs and preferred provider carriers. The proposed rules will clarify when the statutory time frames begin and will more clearly define those elements that can be included in a clean claim. By ensuring that HMOs and preferred provider carriers clearly identify documents which contain disclosures related to claims, physicians and providers will be able to more effectively incorporate the necessary changes to submit a clean claim. The proposed rules rearticulate that before requiring an element, the HMO or preferred provider carrier must provide 60 days notice of the new element, which ensures that claims sent without the new element during the 60 days after the notice are promptly paid pursuant to statutory time frames. The intent of the proposed rules is to minimize or eliminate disputes between HMOs or preferred provider carriers and physicians and providers when a clean claim is not paid correctly or when a valid clean claim is denied. Except as specifically enumerated below, any cost to persons required to comply with these sections each year of the first five years the proposed sections will be in effect are the result of the legislative enactment of House Bill 610 and not the result of the adoption, enforcement or administration of the sections.

If an HMO or preferred provider carrier fails to comply with the required time frames, House Bill 610 requires HMOs and preferred provider carriers to pay the full amount of billed charges submitted on a clean claim or the contracted penalty rate for late payment. Since House Bill 610 does not identify which amount should be payable when an HMO or preferred provider carrier fails to meet required time frames, it is necessary for the Department to utilize its rulemaking authority under the statute to make that determination. Consistent with the intent of House Bill 610 to facilitate prompt payment of clean claims to physicians and providers and to discourage noncompliance, the Department has determined that requiring HMOs and preferred provider carriers to pay the greater of the full amount of billed charges submitted on a clean claim or any contracted penalty rate for late payment will encourage prompt payment of claims. Any costs associated with the failure to pay clean claims in a timely manner is attributed to House Bill 610 and the provisions of House Bill 610 which outline the result of failure to comply with required time frames. The Department anticipates and contemplates compliance with the required time frames. HMOs and preferred provider carriers that are in compliance will not incur costs. The proposed rule will result in more efficient processing of clean claims, which will benefit HMOs, preferred provider carriers, physicians, providers, insureds and enrollees.

The proposed rules establish a means for a physician or provider to establish a rebuttable presumption that a claim was received by an HMO or preferred provider carrier, thereby reducing the need for multiple resubmissions of the same claim and the use of personnel to track claims sent or received. The proposed rules do not require that the claims mail log be maintained, and the Department believes that most physician or provider practices currently have a method for keeping track of claims sent by mail or hand delivery. The proposed rule does not require HMOs and preferred provider carriers to use the claims mail log. The proposed rule provides a mechanism for HMOs and preferred provider carriers to verify that the mailed or hand delivered claims include the claims identified in the claims mail log. This allows the HMO or preferred provider carrier to contact the physician or provider about any claims that may or may not have been included with the mailed or hand delivered claims. The anticipated result will be that claims will not be missed and will be paid within the required time frames. If an HMO or preferred provider carrier does not have a process in place to coordinate faxed claims mail logs with mailed or hand delivered claims, the HMO or preferred provider carrier may choose to implement a process. Based on discussions with industry, the Department anticipates that the cost of personnel necessary to process claims mail logs would be one full-time employee paid at $25,000 per year processing claims mail logs for every 150,000 enrollees. The actual cost would vary depending on how many claims are filed in a given time frame and whether there is currently adequate personnel

who could include claims mail log processing within their job activities. The cost would also vary from carrier to carrier, based on enrollment and the type of carrier.

The proposed rules also establish specific time frames for completing the audit process and either issuing subsequent payment or recouping refunds based on audit results. Since House Bill 610 established an audit process, any economic costs of performing an audit are the result of the legislative enactment of House Bill 610 and not the result of the adoption, enforcement, or administration of the amendments. However, since the proposed rules specify when the audit process ends, it is possible that on very limited occasions, some HMOs and preferred provider carriers could incur costs associated with the timely completion of the audit process. Auditing costs will vary depending on the number of claims audited by the preferred provider carrier or HMO. Based on discussions with industry, it has been represented to the Department that a claims examiner for an HMO or preferred provider carrier with limited plan codes and/or sophisticated computer systems can examine 100-150 claims per day. A claims examiner for an HMO or preferred provider carrier with multiple plan codes and/or less sophisticated computer systems can examine 50-75 claims per day. Information obtained from the industry indicate that a claims examiner is paid an average of $38,000 per year and that approximately 5% or less of claims require continued examination following the 180th day after receipt by the HMO or preferred provider carrier. Total costs attributed to the specified time frame for completing the audit process will vary based on the number of claims examined and whether adequate personnel are already in place to perform claims examination. Costs will also vary depending on the number of claims an HMO or preferred provider carrier will choose to audit 45 days after receipt.

House Bill 610 requires that upon completion of the audit process an additional payment would be made to the physician or provider or that a refund would be due to the HMO or preferred provider carrier within 30 calendar days. By imposing a specific time frame on the audit process, it is possible that on very limited occasions, the HMO or preferred provider carrier will lose the time value of the additional payment amount made within 30 days of the completion of the audit until the day the carrier determines it was not liable. The loss of the time value of the additional payment will vary depending on the number of claims the HMO or preferred provider carrier will continue to investigate after the 180th day and on the number of those claims for which the HMO or preferred provider carrier determines it was not liable. The additional payment is based on a percentage of the contracted benefit amount for the claim; therefore, the loss of the time value of the additional payment will vary depending upon the contracted benefit amount of the claim. Since each claim is examined individually, and each claim is for different amounts, it is not possible for the Department to estimate by precise dollar amount how much in additional payments may be made by the HMO or preferred provider carrier within the 30 days of the completion of the audit process.

The cost per hour of labor or loss of time value on additional payments will not vary between the smallest and largest businesses, assuming that HMOs and preferred provider carriers which qualify as small or micro businesses deal with approximately the same percentage number of mailed or hand delivered claims. There is no anticipated difference between the costs of personnel necessary to audit claims for micro, small or large HMOs and preferred provider carriers, since the cost is proportionate to the percentage of claims audited. In addition, there is no anticipated difference between amounts of additional payment for micro, small or large HMOs and preferred provider carriers since the cost is proportionate to the amount of the audited claim. Therefore, it is the Department's position that the adoption of these proposed sections will have no adverse effect on small or micro businesses. Regardless of the fiscal effect, the Department does not believe it is legal or feasible to reduce or waive the requirement for small or micro businesses. To do so would allow the differentiation of claims handling of small preferred provider carriers and HMOs to the claims handling of large preferred provider carriers and HMOs.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on September 4, 2001 to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Pat Brewer, HMO Project Director, Mail Code 103-6A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The amendments and new sections are proposed under the Insurance Code Articles 20A.18B, 20A.22, 3.70-3C §3A, 3.70-3C §9 and §36.001. Article 20A.18B(a) provides that a clean claim is determined under the Department's rules and Article 20A.18B(o) provides that the commissioner may adopt rules as necessary to implement the Prompt Payment of Physician and Providers section. Article 20A.22(a) provides broad rulemaking authority of the Texas Health Maintenance Organization Act. Article 3.70-3C §3A(a) provides that a clean claim is determined under the Department's rules and Article 3.70-3C §3A(n) provides that the commissioner may adopt rules as necessary to implement the Prompt Payment of Preferred Providers section. Article 3.70-3C §9 allows the commissioner to adopt rules to implement the provisions relating to Preferred Provider Benefit Plans. Section 36.001 provides that the Commissioner of Insurance may adopt rules to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

The following articles are affected by this proposal: Insurance Code Articles 20A.18B and 3.70-3C

§21.2803. Elements of a Clean Claim.

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

(c) Attachments. In addition to the required data elements set forth in subsection (b) of this section, HCFA has developed a variety of manuals that identify various attachments required of different physicians or providers for specific services. An HMO or a preferred provider carrier may use the appropriate Medicare standards for attachments in order to properly process claims for certain types of services. An HMO or a preferred provider carrier may only require as attachments information that is contained in the physician's or provider's medical file. Before any attachments may be required, the HMO or preferred provider carrier shall satisfy the notification procedures set forth in §21.2804 of this title (relating to Disclosure of Necessary Attachments).

(d) Additional clean claim elements. Additional elements beyond the required data elements and attachments identified in subsections (b) and (c) of this section may be required. Before any additional clean claim elements may be required, the HMO or the preferred provider carrier shall satisfy the notification procedures set forth in §21.2805 of this title (relating to Disclosure of Additional Clean Claim Elements). An HMO or a preferred provider carrier may only require as additional clean claim elements information that is contained in the physician's or provider's medical file.

(e)-(g) (No change.)

§21.2804. Disclosure of Necessary Attachments.

For attachments described in §21.2803(c) of this title (relating to Elements of a Clean Claim) to be required as part of a clean claim, the HMO or preferred provider carrier shall comply with §21.2818 of this title (relating to Disclosure Formats) and paragraphs (1), (2), or (3) of this section. An [~~If an~~] HMO or preferred provider carrier may not require [~~requests such~~] an attachment unless it has given the physician or provider the disclosure mandated by this section at least 60 calendar days before requiring the attachment as an element of the clean claim and complied [~~fails to comply~~] with paragraphs (1), (2), or (3) of this section[~~, the request will not extend the statutory claims payment period~~]. Claims filed during the 60 day period after receipt of the disclosure do not have to include the required attachment identified in the disclosure.

(1) Written notice. The HMO or preferred provider carrier may provide written notice to all affected physicians or providers that such attachments are necessary. The notice shall identify with specificity the attachment(s) required and must be received by the physician or provider at least 60 calendar days before requiring such attachment as an element of a clean claim.

(2) Manual or other document that sets forth the claims filing procedures. The HMO or preferred provider carrier may provide updated revisions to the physician or provider manual or other document that sets forth the claims filing procedures. The revision shall identify with specificity the attachment(s) required and must be received by the physician or provider at least 60 calendar days before requiring such attachment as an element of a clean claim.

(3) Contract. The HMO or preferred provider carrier may provide for such attachments to be required as part of a clean claim in the contract between the HMO or preferred provider carrier and the physician or provider. As a means of setting forth the attachments that are required as part of a clean claim, the contract shall either identify with specificity the attachments that are required as elements of a clean claim or reference the physician or provider manual or other document that sets forth the claims filing procedures. If the contract identifies with specificity the attachments that are required as elements of a clean claim, the additional written notice as specified in paragraphs (1) and (2) of this section is not required. If the contract references the physician or provider manual or other document that sets forth the claims filing procedures as a means of setting forth the attachments that are required as part of a clean claim, the notice specified in paragraph (2) of this section is required. If the contract provides for mutual agreement of the parties as the sole mechanism for requiring attachments, then the written notice specified in paragraphs (1) and (2) of this section does not supersede the requirement for mutual agreement.

§21.2805. Disclosure of Additional Clean Claim Elements.

An HMO or preferred provider carrier may require additional elements for clean claims beyond the required data elements and attachments identified in §21.2803(b), (c) and (e) of this title (relating to Elements of a Clean Claim). To require such additional elements as part of a clean claim, the HMO or preferred provider carrier shall comply with §21.2818 of this title (relating to Disclosure Formats) and paragraphs (1), (2), or (3) of this section. An [~~If an~~] HMO or preferred provider carrier may not request [~~requests~~] additional elements as part of a clean claim unless it has given the physician or provider the disclosure mandated by this section at least 60 calendar days before requiring the additional element as an element of the clean claim and complied [~~fails to comply~~] with paragraphs (1), (2), or (3) of this section[~~, the request will not extend the statutory claims payment period~~].

(1) Written notice. The HMO or preferred provider carrier may provide written notice to all affected physicians or providers that such additional elements are necessary. The notice shall identify with specificity the additional required elements and must be received by the physician or provider at least 60 calendar days before the HMO or preferred provider carrier designates such additional elements as a requirement of a clean claim.

(2) Manual or other document that sets forth the claims filing procedures. The HMO or preferred provider carrier may provide updated revisions to the physician or provider manual or other document that sets forth the claims filing procedures. The revision shall identify with specificity the additional required elements and must be received by the physician or provider at least 60 calendar days before the HMO or preferred provider carrier designates such additional elements as a requirement of a clean claim.

(3) Contract. The HMO or preferred provider carrier may provide for such additional elements to be required in the contract between the HMO or preferred provider carrier and the physician or provider. As a means of setting forth the additional elements that are required as part of a clean claim, the contract shall either identify with specificity the additional required elements or reference the physician or provider manual or other document that sets forth the claims filing procedures. If the contract identifies with specificity the additional required elements, the additional written notice as specified in paragraphs (1) and (2) of this section is not required. If the contract references the physician or provider manual or other document that sets forth the claims filing procedures as a means of setting forth the additional required elements, the notice specified in paragraph (2) of this section is required. If the contract provides for mutual agreement of the parties as the sole mechanism for requiring additional clean claim elements, then the written notice specified in paragraphs (1) and (2) of this section does not supersede the requirement for mutual agreement.

§21.2806. Disclosure of Revision of Data Elements, Attachments, or Additional Clean Claim Elements.

An HMO or preferred provider carrier may revise its requirements for data elements, attachments or additional clean claim elements that have previously been properly included as elements of a clean claim pursuant to §§21.2803(b), (c), (d), and (e), 21.2804, and 21.2805 of this title (relating to Elements of a Clean Claim, Disclosure of Necessary Attachments, and Disclosure of Additional Clean Claim Elements). To revise the requirements for data elements, attachments, or additional clean claim elements, the HMO or preferred provider carrier shall provide advance written notice to all affected physicians or providers of such revisions in accordance with §21.2818 of this title (relating to Disclosure Formats). The notice shall identify with specificity the revisions to data elements, attachments, or additional clean claim elements, and must be received by the physician or provider at least 60 calendar days before the HMO or preferred provider enforces such revisions to the requirements of a clean claim. If the contract between the HMO or preferred provider carrier and the physician or provider provides for mutual agreement of the parties as the sole mechanism for requiring revised data elements, attachments or additional clean claim elements that have previously been properly included as elements of a clean claim pursuant to §§21.2803(b), (c), (d), and (e), 21.2804, and 21.2805 of this title, then the written notice specified in this section does not supersede the requirement for mutual agreement.

§21.2807. Effect of Filing a Clean Claim.

(a) The statutory claims payment period begins to run upon receipt of a clean claim from a physician or provider at the address designated by the HMO or preferred provider carrier, in accordance with §21.2811 of this title (relating to Disclosure of Processing Procedures),

whether it be the address of the HMO, preferred provider carrier, [~~or~~] a delegated claims processor, or any other entity, including a clearinghouse or a repricing company, designated by the HMO or preferred provider carrier to receive claims. The date of claim payment is as determined in §21.2810 of this title (relating to Date of Claim Payment).

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

§21.2809. Audit Procedures.

(a) If an HMO or preferred provider carrier is unable to pay or deny a clean claim, in whole or in part, within the statutory claims payment period specified in §21.2802(25)(B) of this title (relating to Definitions), the unpaid portion of the claim shall be classified as an audit, and the HMO or preferred provider carrier shall pay 85% of the contracted rate on the unpaid portion of the clean claim within the statutory claims payment period. [~~Payment of 85% of the contracted rate on the clean claim is not an admission that the HMO or preferred provider carrier acknowledges liability on that claim.~~]

(b) The [~~Upon completion of the audit, if the~~] HMO or preferred provider carrier shall complete the audit within 180 calendar days from the date the clean claim is received. If the HMO or preferred provider carrier determines upon completion of the audit that a refund is due from a physician or provider, such refund shall be made within 30 calendar days of the later of written notification to the physician or provider of the results of the audit or exhaustion of any subscriber or patient appeal rights if a subscriber or patient appeal is filed before the 30-calendar-day refund period has expired, and may be made by any method, including chargeback against the physician or provider, or agreements by contract. The written notification of the results of the audit shall include a listing of the specific claims paid and not paid pursuant to the audit, including specific claims and amounts for which a refund is due. Unless otherwise agreed to by contract, if an HMO or preferred provider carrier intends to make a chargeback, the written notification shall also include a statement that the HMO or preferred provider carrier will make a chargeback unless the physician or provider contacts the HMO or preferred provider carrier to arrange for reimbursement through an alternative method. Nothing in this provision shall invalidate or supersede existing or future contractual arrangements that allow alternative reimbursement methods in the event of overpayment to the physician or provider.

(c) Upon completion of the audit as required by subsection (b) of this section, if [~~the HMO or preferred provider carrier determines that~~] additional payment is due to the physician or provider, such [~~additional~~] payment shall be made within 30 calendar days after the completion of the audit.

(d) Payments made pursuant to this section on a clean claim are not an admission that the HMO or preferred provider carrier acknowledges liability on that claim.

(e) Following completion of the audit process, an HMO or preferred provider carrier is not precluded from continuing to investigate its liability on a previously audited claim and seeking a refund of claim payment.

§21.2811. Disclosure of Processing Procedures.

(a) In contracts with physicians or providers, or in the physician or provider manual or other document that sets forth the procedure for filing claims, or by any other method mutually agreed upon by the contracting parties, an HMO or preferred provider carrier must disclose to its physicians and providers in accordance with §21.2818 of this title (relating to Disclosure Formats):

(1) the address, including a physical address, where claims are to be sent for processing;

(2) the telephone number at which physicians' and providers' questions and concerns regarding claims may be directed;

(3) any entity along with its address, including physical address and telephone number, to which the HMO or preferred provider carrier has delegated claim payment functions, if applicable; and

(4) the address and physical address and telephone number of any separate claims processing centers for specific types of services, if applicable.

(b) An HMO or preferred provider carrier shall provide no less than 60 calendar days prior written notice of any changes of address for submission of claims, and of any changes of delegation of claims payment functions, to all affected physicians and providers with whom the HMO or preferred provider carrier has contracts.

§21.2815. Failure to Meet the Statutory Claims Payment Period.

An HMO or preferred provider carrier that fails to comply with the requirements of §21.2807(b) of this title (relating to Effect of Filing a Clean Claim) and §21.2809(a) and (c) of this title (relating to Audit Procedures) shall pay the greater of the full amount of the billed charges submitted on the clean claim or any [~~pay the~~] contracted penalty rate for late payment set forth in the contract between the provider or physician and the HMO or preferred provider carrier. Failure to pay a clean claim correctly or denial of a valid clean claim that results in a failure to comply with the requirements of §21.2807(b) and §21.2809(a) and (c) of this title is considered a violation of Article 20A.18B(c) or Article 3.70-3C §3A(c). Any amount previously paid or any charge for a non-covered service shall be deducted from the payment. This section shall not apply when there is failure to comply with a contracted claims payment period of less than 45 calendar days as provided in §21.2802(25)(A) of this title (relating to Definitions), and Article 3.70-3C, §3(m) or Article 20A.09(j) of the Insurance Code.

§21.2816. Date of Claim Receipt.

(a) For purposes of establishing a rebuttable presumption to demonstrate the date of mailing or delivery of a claim, the physician or provider shall, as appropriate:

(1) submit the claim by United States mail, first class, by United States mail return receipt requested or by overnight delivery service, and maintain a log that complies with subsection (f) of this section that identifies each claim included in the submission, include a copy of the log with the relevant submitted claim, fax a copy of the log to the HMO, preferred provider carrier or delegated claims processor on the date of the submission and maintain a copy of the fax transmission acknowledgment;

(2) submit the claim electronically and maintain proof of the electronically submitted claim;

(3) fax the claim and maintain proof of facsimile transmission; or

(4) hand deliver the claim, maintain a log that complies with subsection (f) of this section that identifies each claim included in the delivery, include a copy of the log with the relevant hand delivery and maintain a copy of the signed receipt acknowledging the hand delivery.

(b) If a claim for medical care or health care servicesr

by the HMO or preferred provider carrier or the HMO's or preferred provider carrier's clearinghouse. If the HMO's or the preferred provider carrier's clearinghouse does not provide a confirmation of receipt of the claim within 24 hours of submission by the physician or provider or the physician's or provider's clearinghouse, the physician's or provider's clearinghouse shall provide the confirmation. The physician's or provider's clearinghouse must be able to verify that the claim contained the correct payor identification of the entity to receive the claim.

(d) If a claim is faxed, the claim is presumed received on the date of the transmission acknowledgment.

(e) If a claim is hand delivered, the claim is presumed received on the date the delivery receipt is signed.

(f) The claims mail log maintained by physicians and providers should include the following information: name of claimant; address of claimant; telephone number of claimant; name of addressee; name of carrier; date of mailing or hand delivery; subscriber name; subscriber ID number; patient name; date(s) of service/occurrence, total charge, and delivery method.

(g) An example of a claims mail log that may be maintained by physicians and providers is as follows:
Figure: 28 TAC §21.2816(g)

§21.2817. Terms of Contracts.
Contracts between HMOs or preferred provider carriers and physicians and providers shall not include terms which:

(1) extend the statutory or regulatory time frames; or

(2) waive the physician's or provider's right to recover reasonable attorney fees pursuant to Articles 20A.18B(g) and 3.70-3C §3A(g).

§21.2818. Disclosure Formats.
Any document containing a disclosure required under §§21.2804, 21.2805, 21.2806 or 28.2811 of this title (relating to Disclosure of Necessary Attachments, Disclosure of Additional Clean Claim Elements, Disclosure of Revision of Data Elements, Attachments or Additional Clean Claim Elements, and Disclosure of Processing Procedures) shall include a heading on the first page of the document in a prominent location and in a type that is boldfaced, capitalized, underlined or otherwise set out from the surrounding written material so as to be conspicuous that identifies the document as one containing a required disclosure.

§21.2819. Applicability.
The amendments to §§21.2803 - 21.2807, 21.2809, 21.2811, 21.2815 of this title (relating to Elements of a Clean Claim, Disclosure of Necessary Attachments, Disclosure of Additional Clean Claim Elements, Disclosure of Revision of Data Elements, Attachments or Additional Clean Claim Elements, Effect of Filing a Clean Claim, Audit Procedures, Disclosure of Processing Procedures, and Failure to Meet the Statutory Claims Payment Period), and new §§21.2816 - 21.2818 of this title (relating to Date of Claim Receipt, Terms of Contracts, and Disclosure Formats) apply to claims filed for non-confinement services, treatments or supplies rendered on or after September 5, 2001, and to claims filed for services, treatments, or supplies for in-patient confinements in a hospital or other institution that began on or after September 5, 2001.

§21.2820. Severability.
If a court of competent jurisdiction holds that any provision of this subchapter is inconsistent with any statutes of this state, is unconstitutional, or is invalid for any reason, the remaining provisions of this subchapter shall remain in full effect.

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

Filed with the Office of the Secretary of State, on July 20, 2001.

TRD-200104209
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 2, 2001
For further information, please call: (512) 463-6327

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28 TAC §21.2816

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

The Texas Department of Insurance proposes repeal of §21.2816 concerning submission of clean claims. Repeal of this section is necessary so that proposed new §21.2816 may be adopted to implement legislation enacted by the 75th Legislature in House Bill 610, as contained in Texas Insurance Code Articles 3.70-3C §3A and 20A.18B. This section will be renumbered and proposed as §21.2820. Simultaneous to this proposed repeal, proposed new §§21.2816 - 21.2820 and amendments to §§21.2803 - 21.2807, 21.2809, 21.2811, and 21.2815 are published elsewhere in this issue of the Texas Register.

Kimberly Stokes, Senior Associate Commissioner, Life/Health/Licensing, has determined that during the first five years that the proposed repeal is in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the sections. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Stokes has also determined that for each year of the first five years the repeal of the section is in effect, the public benefit anticipated as a result of administration and enforcement of the repealed sections will be that clean claims are paid in a timely manner. There is no anticipated economic cost to persons who are required to comply with the proposed repeal. There is no anticipated difference in cost of compliance between small and large businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on September 4, 2001 to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Pat Brewer, HMO Project Director, Mail Code 103-6A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing must be submitted separately to the Office of Chief Clerk.

The repeal of §21.2816 is proposed pursuant to the Insurance Code Articles 20A.18B, 3.70-3C §3A and §36.001. Articles 20A.18B(a) and 3.70-3C §3A(a) provide that a clean claim is determined under the Department's rules. Articles 20A.18B(o) and 3.70-3C §3A(n) provide that the commissioner may adopt rules as necessary to implement the Prompt Payment of

Physician and Providers section. Section 36.001 provides that the Commissioner of Insurance may adopt rules to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

The proposed repeal affects regulation pursuant to the following statutes: Insurance Code Articles 20A.18B and 3.70-3C

§21.2816. Severability.
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 20, 2001.

TRD-200104210
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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PART 2. TEXAS WORKERS' COMPENSATION COMMISSION

CHAPTER 131. BENEFITS--LIFETIME INCOME BENEFITS

28 TAC §131.1

The Texas Workers' Compensation Commission (the commission) proposes amendments to §131.1, concerning the Initiation of Lifetime Income Benefits. The amendment of §131.1 is proposed in response to the amendments to Texas Labor Code, §408.161(a), as passed by the 77th Legislature, 2001 (House Bill 2600, Article 9) and specifies when lifetime income benefits related to burns should be initiated.

House Bill 2600 amended Texas Labor Code, §408.161(a) to include payment of lifetime income benefits for compensable injuries resulting in third degree burns that cover at least 40% of the body and require grafting, and for third degree burns covering the majority of either both hands or one hand and the face. This statutory provision is applicable to dates of injury on or after June 17, 2001. A previous statutory amendment (in 1997) is applicable to certain losses for dates of injury on or after September 1, 1997. Because eligibility for lifetime income benefits is determined in accordance with the statute and rules in effect on the date of injury, §131.1 has been amended to clarify the dates of injury to which each type of loss applies.

Because the permanent nature of such an injury is readily discernable shortly after the injury, the commission is amending the rule to require carriers to initiate lifetime income benefits after the eighth day of disability as a result of the burn injury, or as soon as the qualification for lifetime income benefits is satisfied.

Proposed amendments to §131.1 also replace references to statutory subsections with references to subsections of the rule. Existing citations in the rule to the Workers' Compensation Act have been updated to reflect codification of the Texas Labor Code.

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

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

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

Mr. Hatch has also determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule will be as follows.

Amendments to §131.1 allow injured employees suffering third degree burns covering at least 40% of their body and requiring grafting, or third degree burns covering the majority of either both hands or one hand and the face to receive lifetime income benefits immediately upon meeting the eligibility criteria. The inclusion of these is mandated by statute.

Insurance carriers who are liable for these burn injuries may experience an increase in benefit expenditures due to a small increase in the number of injured employees qualifying for benefits beyond 401 weeks. The number of injured employees satisfying the statutory eligibility requirements for lifetime income benefits for burns is projected to be small. In addition, insurance carriers who are liable for these burn injuries may decrease costs by reaching an agreement with the injured employee for monthly payment of lifetime income benefits or purchasing an annuity for lifetime income benefits in accordance with §131.4, or this title (relating to Change in Payment Period; Purchase of Annuity for Lifetime Income Benefits), in contrast to regular issuance of income benefit checks. The impact of the statute and rule will therefore be minimal for carriers.

There will be no adverse economic impact on small businesses or on micro-businesses as a result of the proposed rule amendments. There will be only a proportionate difference in the cost of compliance for small businesses and micro-businesses as compared to the largest businesses, including state and local government entities.

Comments on the proposal must be received by 5:00 p.m., September 20, 2001. You may comment via the Internet by accessing the commission's website at *www.twcc.state.tx.us* and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by e-mailing your comments to *RuleComments@twcc.state.tx.us* or by mailing or delivering your comments to Nell Cheslock at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

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

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

rule as proposed, in whole or in part, may wish to comment to that effect.

A public hearing on this proposal will be held on September 20, 2001, at the Austin home office of the commission (Southfield Building, 4000 South IH-35, Austin, Texas). Those persons interested in attending the public hearing should contact the Commission's Office of Executive Communication at (512) 440-5690 to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the commission's website at *www.twcc.state.tx.us*.

The amendment to §131.1 is proposed under: the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code, §406.010, which authorizes the commission to adopt rules on claims service activities of insurance carriers; the Texas Labor Code, §408.081, which authorizes establishment of rules to pay monthly income benefits; the Texas Labor Code §408.082, which sets out when the right to income benefits accrues; and the Texas Labor Code, §408.161, as amended by the 77th Legislature, which describes eligibility for Lifetime Income Benefits.

This proposed amendment to §131.1 does not affect any other code, statute, or article.

§131.1. Initiation of Lifetime Income Benefits.

(a) Eligibility for lifetime income benefits is determined in accordance with the statute and rules in effect on the date of injury:

(1) for total and permanent loss of sight in both eyes, applicable to a compensable injury that occurs on or after January 1, 1991;

(2) for loss of both feet at or above the ankle, applicable to a compensable injury that occurs on or after January 1, 1991;

(3) for loss of both hands at or above the wrist, applicable to a compensable injury that occurs on or after January 1, 1991;

(4) for loss of one foot at or above the ankle and the loss of one hand at or above the wrist, applicable to a compensable injury that occurs on or after January 1, 1991;

(5) for an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg, applicable to a compensable injury that occurs on or after January 1, 1991

(6) for:

(A) an injury to the skull resulting in incurable insanity or imbecility, applicable to a compensable injury that occurs on or after January 1, 1991 and before September 1, 1997

(B) a physically traumatic injury to the brain resulting in incurable insanity or imbecility, applicable to a compensable injury that occurs on or after September 1, 1997

(7) for third degree burns that cover at least 40 percent of the body and require grafting, or for third degree burns covering the majority of either both hands or one hand and the face, applicable to a compensable injury that occurs on or after June 17, 2001.

(b) [~~(a)~~] Lifetime income benefits begin to accrue as provided by the Texas Workers' Compensation Act (the Act), §408.082 [~~§4.22~~], and are payable retroactively from the date of disability:

(1) for losses described in subsection [~~the Act, §4.31~~] (a)(2), (3), [-] (4), or (7); or

(2) for changing from temporary income benefits to lifetime income benefits, when maximum medical improvement is certified for losses described in subsection [~~the Act, §4.31~~] (a)(1), (5), or (6)[~~, or §4.31(b)~~].

(c) [~~(b)~~] The weekly benefits paid under this section shall not be less than the minimum weekly benefit established by the commission under the Act, §408.062 [~~§4.12~~].

(d) [~~(c)~~] In a claim where total and permanent loss of use is pending as provided under the Act, §408.161 [~~§4.31~~](b), either party may request a benefit review conference to determine whether a lifetime income benefit designation is appropriate.

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

Filed with the Office of the Secretary of State, on July 20, 2001.

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Susan Cory
General Counsel
Texas Workers' Compensation Commission
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For further information, please call: (512) 804-4287

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CHAPTER 133. GENERAL MEDICAL PROVISIONS
SUBCHAPTER C. SECOND OPINIONS FOR SPINAL SURGERY

28 TAC §133.206

The Texas Workers' Compensation Commission (the commission) proposes amendments to §133.206 concerning the Spinal Surgery Second Opinion Process.

Section 408.026 of the Texas Workers' Compensation Act (the Act) requires a Spinal Surgery Second Opinion process for all nonemergency spinal surgery. House Bill 2600 (HB-2600), passed by the 77th Legislature, 2001, amended §408.026, by deleting the second opinion process directive and requiring the addition of spinal surgery to the list of health care treatments and services that require express preauthorization and concurrent review.

Additionally, §413.014 of the Act, relating to Preauthorization, requires the commission to specify by rule which health care treatments and services require express preauthorization by the insurance carrier (carrier). The enactment of HB-2600 establishes carrier liability for the costs related to nonemergency spinal surgery under the provision of §413.014 and directs that all non-emergency spinal surgery procedures require preauthorization approval prior to surgery, and concurrent review approval for the continuation of treatment beyond previously approved treatment.

The *Texas Register* published text shows the proposed amended language and should be read to determine all proposed amendments.

To comply with the provisions of HB-2600 the commission has, by separate rulemaking, proposed amendments to §134.600 of this title relating to Preauthorization, Concurrent Review, and Precertification of Health Care. To clarify that recommendations

for spinal surgery submitted prior to the effective date of the proposed amendments to §134.600 are to be processed pursuant to the rule and statute in effect at the time of the submission, proposed subsection (m) amends the current language of §133.206 to specify its applicability.

Tom Hardy, Director of the Medical Review Division (Division), has determined the following with respect to fiscal impact for the first five-year period the proposed amendment is in effect.

With regard to enforcement and administration of the rule by state or local governments, the commission anticipates minimal fiscal implications. The spinal surgery preauthorization and concurrent review requirements are anticipated to more closely monitor the delivery of medical care to injured employees, and on a more timely basis.

Savings resulting from the gradual deletion of the internal management of the spinal surgery second opinion process by the Division may be offset by the increased level of internal management of medical disputes within the Division. The volume of appeals to the commission for Medical Dispute Resolution may increase for the resolution of preauthorization and concurrent review disputes regarding the need for spinal surgery, resulting from denials by the insurance carrier (carrier) or their delegated agents. If the number of medical disputes increases, there will be additional cost to the commission to resolve these disputes. These costs are the result of statutory mandate.

Local government and state government, as covered regulated entities, will be impacted in the same manner as persons required to comply with the amendment as proposed.

Tom Hardy has determined that for each year of the first five years the rule, as proposed, is in effect, the public benefits anticipated as a result of enforcing the rule will be an improved system for the prospective and concurrent review of spinal surgery that will provide positive benefits to all participants in the system. The participants in the system are: injured employees, employers, insurance carriers and health care providers.

The intent of the amendment to §133.206 is to comply with the statutory mandate in the Texas Labor Code as amended by HB-2600, adopted during the 2001 Texas Legislative Session. The enactment of HB-2600 establishes carrier liability for the costs related to non-emergency spinal surgery under the provision of §413.014 and directs that all non-emergency spinal surgery procedures require preauthorization approval and concurrent review approval for the respective provision of or continuation of treatment beyond previously approved health care. All of the benefits and costs are attributable to the statutory revision.

The amended language should benefit all participants in the system by clarifying the applicable process for the approval of spinal surgery. The statutory and rule language establishes that on or after the effective date of this proposed rule amendment, (March 1, 2002) recommendations for spinal surgery will no longer be subject to the spinal surgery second opinion process. Requests for preauthorization of spinal surgery will be submitted to the insurance carrier or the carrier's delegated agent by telephone or facsimile. All TWCC-63 forms submitted prior to March 1, 2002 will be processed in accordance with the statute and rules in effect at the time the form was filed with the commission.

The insurance carrier or its delegated agent are provided the opportunity to prospectively review and determine the medical appropriateness of the spinal surgery. It is beneficial to the carrier and the requestor and the employee that the requestor is afforded the opportunity to discuss the medical necessity of the proposed surgery prior to a denial of the procedure, as this should reduce disputes and facilitate delivery of care as and when needed. The employee should also benefit from discussion of medical needs by medical professionals.

The preauthorization process should take place in less time than is allowed under the spinal surgery second opinion process. This benefit to the injured employee is anticipated to result in the injured employee receiving necessary surgery in a more timely fashion than the current second opinion process. In addition, whereas the second opinion process currently allows two (2) second opinion physical examinations of the injured employee, the preauthorization process would be primarily a paper review. Only in the event of a dispute could the injured employee be subjected to a second physical examination per statutory mandate. No economic costs are anticipated for injured employees to comply with the requirements of the proposed amendment.

Benefit to insurance carrier is anticipated to result in an overall reduction in costs. The inclusion of spinal surgery under preauthorization is anticipated to increase costs due to the greater volume of preauthorization requests received; however, the increased cost should be greatly offset by the reduced number of second opinion examinations that occur at the expense of the carrier currently allowed under §133.206.

Health care providers should experience no financial impact as a result of the proposed amended rule. Whereas doctors currently submit recommendations for spinal surgery on a commission-adopted form, under the proposed amendment, the doctors will simultaneously request spinal surgery and the hospital admission for the surgery by telephone or transmission of a facsimile. The reduction in paperwork should result in a more efficient delivery of appropriate treatment. Any costs to the doctor are expected to be offset by more efficiently reviewing and discussing the efficacy of treatment prior to the delivery of the services, resulting in a reduction in disputes.

The cost savings to the employer affected by the proposed amendment is anticipated to reduce the medical costs per claim to the carrier, possibly resulting in a premium reduction to the employer and an overall savings to the system. In addition, the more efficient and timely delivery of necessary surgery resulting from the preauthorization process instead of the spinal surgery second opinion process, may result in a shortened period off the job and more readily return the employee to full work status.

There will be no adverse economic impact on small businesses or micro-businesses as a result of the proposed amendment to this section because the preauthorization requirement replaces an existing second opinion process. There will be no difference in the cost of compliance for small businesses or micro-businesses as compared to large businesses.

Comments on the proposal must be received by 5:00 p.m., September 20, 2001. You may comment via the Internet by accessing the commission's website at *http://www.twcc.state.tx.us* and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments. You may also comment by e-mailing your comments to *RuleComments@twcc.state.tx.us* or by mailing or delivering your comments to Nell Cheslock at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

A public hearing on this proposal will be held on September 20, 2001, at the Austin central office of the commission (Southfield Building, 4000 South IH-35, Austin, Texas). Those persons interested in attending the public hearing should contact the commission's Office of Executive Communications at (512) 804-4430 to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the commission's website at *www.twcc.state.tx.us.*

The amendment is adopted under the Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; the Texas Labor Code, §402.072, which mandates that only the Commission can impose sanctions which deprive a person of the right to practice before the Commission, receive remuneration in the workers' compensation system, or revoke a license, certification or permit required for practice in the system; the Texas Labor Code, §408.022, which requires an employee receiving treatment under the workers' compensation system to choose a doctor from a list of doctors approved by the Commission and establishes the extent of an employee's option to select an alternate doctor; the Texas Labor Code §408.026, (as amended by HB-2600, 2001 Texas Legislature) that requires the preauthorization of spinal; the Texas Labor Code Chapter 410, which provides procedures for the adjudication of disputes; the Texas Labor Code §413.014 (as amended by HB-2600, 2001 Texas Legislature) that requires the commission to specify by rule, except for treatments and services required to treat a medical emergency, which health care treatments and services require express preauthorization and concurrent review by the carrier as well as allowing health care providers to request precertification and allowing the carriers to enter agreements to pay for treatments and services that do not require preauthorization or concurrent review. This mandate also states the carrier is not liable for the cost of the specified treatments and services unless preauthorization is sought by the claimant or health care provider and either obtained or ordered by the commission; the Texas Labor Code §413.031, which provides a process for dispute resolution for disputes involving medical services; the Texas Labor Code, §415.034, which allows a party charged with an administrative violation or the Executive Director of the Commission to request a hearing with the State Office of Administrative Hearings; and the Texas Government Code, §2003.021(c), which requires the State Office of Administrative Hearings to conduct hearings under the Texas Labor Code, Title 5, in accordance with the applicable substantive rules and policies of the Texas Workers' Compensation Commission.

The proposed amended rule affects the following statutes: the Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; the Texas Labor Code, §402.072, which mandates that only the Commission can impose sanctions which deprive a person of the right to practice before the Commission, receive remuneration in the workers' compensation system, or revoke a license, certification or permit required for practice in the system; the Texas Labor Code, §408.022, which requires an employee receiving treatment under the workers' compensation system to choose a doctor from a list of doctors approved by the Commission and establishes the extent of an employee's option to select an alternate doctor; the Texas Labor Code §408.026, (as amended by HB-2600, 2001 Texas Legislature) that requires the preauthorization of spinal; the Texas Labor Code Chapter 410, which provides procedures for the adjudication of disputes; the Texas Labor Code §413.014 (as amended by HB-2600, 2001 Texas Legislature) that requires the commission to specify by rule, except for treatments and services required to treat a medical emergency, which health care treatments and services require express preauthorization and concurrent review by the carrier as well as allowing health care providers to request precertification and allowing the carriers to enter agreements to pay for treatments and services that do not require preauthorization or concurrent review. This mandate also states the carrier is not liable for the cost of the specified treatments and services unless preauthorization is sought by the claimant or health care provider and either obtained or ordered by the commission; the Texas Labor Code §413.031, which provides a process for dispute resolution for disputes involving medical services; the Texas Labor Code, §415.034, which allows a party charged with an administrative violation or the Executive Director of the Commission to request a hearing with the State Office of Administrative Hearings; and the Texas Government Code, §2003.021(c), which requires the State Office of Administrative Hearings to conduct hearings under the Texas Labor Code, Title 5, in accordance with the applicable substantive rules and policies of the Texas Workers' Compensation Commission.

§133.206. Spinal Surgery Second Opinion Process

(a)-(l) (No change.)

(m) This section shall be effective for all Form TWCC-63's [~~63s~~] filed with the Commission [~~commission~~] on or after July 1, 1998 and prior to March 1, 2002. On or after March 1, 2002, spinal surgery shall be subject to §134.600 as it may be amended or revised. Form TWCC-63's [~~63s~~] filed prior to July 1, 1998, shall be subject to the rule in effect at the time the form was filed with 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.

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Susan Cory
General Counsel
Texas Workers' Compensation Commission
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For further information, please call: (512) 804-4287

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

SUBCHAPTER G. PROSPECTIVE AND CONCURRENT REVIEW OF HEALTH CARE

28 TAC §134.600

The Texas Workers' Compensation Commission (the commission) proposes amendments to §134.600, concerning the procedures for requesting preauthorization of specific treatments and services.

The *Texas Register* published text shows the proposed amended language and should be read to determine all proposed amendments.

Section 413.014 of the Texas Workers' Compensation Act (the Act) requires the commission to specify by rule which health care treatments and services require express preauthorization.

House Bill 2600 (HB-2600), passed by the 77th Texas Legislature in its 2001 session, amended Texas Labor Code §413.014 by adding the concept of concurrent review to preauthorization and identifying categories of services for which the commission must require express preauthorization and concurrent review by the insurance carrier (carrier). These services are: spinal surgery; work-hardening or work-conditioning services provided by a health care facility that is not credentialed by an organization recognized by commission rules; inpatient hospitalization; outpatient or ambulatory surgical services; and any investigational or experimental services or devices. The statute defines "investigational or experimental service or device" and provides that an insurance carrier is not liable for payment for treatments and services that require preauthorization unless preauthorization is sought and obtained from the insurance carrier or ordered by the commission.

House Bill 2600 (HB-2600) also amends §408.026 of the Act, regarding spinal surgery second opinions to clarify that spinal surgery is now subject to preauthorization.

Amended §413.014 of the Act also provides that a carrier and a health care provider may not be prohibited from voluntarily discussing health care treatment and treatment plans, either prospectively or concurrently, nor may the carrier be prohibited from certifying or agreeing to pay for health care consistent with those agreements.

House Bill 3697 (HB-3697) passed by the 76th Legislative Session, 1999, required that the Texas Workers' Compensation Insurance Fund enter into a joint venture with the Research and Oversight Council (ROC) on workers' compensation for interim studies. These studies were to include examination of the quality and cost-effectiveness of the current workers' compensation health care delivery system as compared to other health care delivery systems in Texas and workers' compensation health care delivery systems in other states.

Research studies commissioned by the ROC pursuant to HB-3697 confirm perceptions that Texas workers' compensation medical costs are higher than those in other states and other health care delivery systems. The ROC has concluded that, "These cost differences result primarily from more medical testing and treatment provided to Texas injured workers for longer periods of time than for workers with similar injuries in other state workers' compensation systems and in group health plans."

The Workers' Compensation Research Institute (WCRI), in its December 2000 publication, *The Anatomy of Workers' Compensation Medical Costs and Utilization: A Reference Book* finds, "Across all claim types, the average medical cost per claim in Texas is significantly higher than that of the median state, a function of higher utilization overall. Higher utilization is most pronounced for chiropractors: The average number of visits per claim is almost double that of the median state. The payment per chiropractic service is also the highest among the eight states. And the utilization rate and per-service payment for physical/occupational therapists also are among the highest." In addition to incorporating the revisions made to the Act by HB-2600, the Commission proposes the amendments to §134.600 to focus on those highly utilized treatments and services.

The proposal amends the title of Subchapter G from, "Treatments and Services Requiring Pre-Authorization," to "Prospective and Concurrent Review of Health Care," and further amends the title of §134.600 from "Procedure for Requesting Pre-Authorization of Specific Treatments and Services," to, "Preauthorization, Concurrent Review, and Precertification of Health Care." These proposed title changes more accurately describe the purpose of the amendments and incorporate the new concepts of concurrent review and precertification.

As in current §134.600, preauthorization is not required for treatments and services related to an emergency. Proposed subsection (a)(1) uses the definition of emergency as defined in commission-adopted §133.1 of this title, (relating to Definitions for Chapter 133). This language better defines what constitutes an emergency and provides consistency among commission rules.

Proposed subsection (a)(2) clarifies when an approval results in carrier liability for treatments and services listed in subsection (h). Proposed amended language in subsection (a)(2) clarifies the requestor to be the treating doctor, the prescribing or referral doctor, or the injured employee. A doctor's office staff may make the request for approval at the direction of the doctor.

The treating doctor is primarily responsible for coordinating the injured employee's health care for an injury. The treating doctor may provide treatment, may prescribe treatment to be rendered by another health care provider (e.g. physical therapist), or may refer the injured employee to another doctor for treatment (e.g. surgeon). If the treating doctor or a referral doctor prescribes treatment by another health care provider, the prescribing doctor is responsible for making the request for approval. This holds a doctor responsible for requesting preauthorization or concurrent review for the treatment the doctor proposes to provide or prescribe. In addition, limiting the requestor to a treating, prescribing or referral doctor, or an injured employee reduces the number of persons who must have access to confidential medical records.

Subsection (a)(2) establishes carrier liability when the requestor has received approval from the carrier through one of three processes: preauthorization (prospective approval of treatments and services listed in subsection (h)); concurrent review (approval of an extension of on-going treatments or services beyond what was previously approved); and precertification or agreement (voluntary approval of treatments and services not included in subsection (h)). To establish carrier liability, each of these approvals must occur prior to the provision of or continuation of the requested health care.

No changes are proposed to subsection (a)(3), which establishes carrier liability when payment is ordered by the commission.

The proposal deletes current subsection (b) and replaces it with new subsection (b) for compliance with the statutory changes to §408.026 and §413.014 enacted by HB-2600. Language in current subsection (b), regarding the Second Opinions for Spinal Surgery, is deleted per statute, placing non-emergency spinal surgery under preauthorization and concurrent review processes.

Proposed subsection (b) clarifies that even if preauthorization is approved, the approval does not guarantee payment if there has been a final adjudication that the injury is not compensable or that the health care was provided for a condition unrelated to the compensable injury. Subsection (b) further defines final adjudication as the issuance of a final commission decision or order that is no longer subject to appeal by either party.

Proposed subsection (c) incorporates simplified language and clerical modifications without substantive change to current language. The description of a request has been amended to include a request for concurrent review (approval) for the continuation of on-going health care that was previously approved under preauthorization or concurrent review.

The proposal deletes current subsection (d) and adds new subsection (d) which outlines the procedure for requesting preauthorization or concurrent review. Preauthorization must be requested and approved prior to providing the treatment or service. The request may be transmitted to the insurance carrier by telephone or facsimile. Subsection (d) describes what information must be included in the request, including medical information to substantiate the need for the treatment or service recommended.

The proposal deletes current subsection (e) and adds new subsection (e) to better clarify the procedure for insurance carrier response to a request for preauthorization or concurrent review. This procedure provides consistency with other commission rules and Texas Department of Insurance (TDI) rules for Utilization Reviews for Health Care Provided Under Workers' Compensation Insurance Coverage (UR). Time frames from the current rule were not altered; however, the reference to twenty-four hours is replaced with the proposed term "one working day," and a time frame of one working day for concurrent review is added. In accordance with HB-2600, notification requirements are expanded to require the carrier to notify an injured employee of the right to timely request review of a medical service for which preauthorization is sought by the doctor and denied by the carrier.

Proposed subsection (e) sets out what information must be included in an approval and in a denial, and requires that decisions be based solely upon the reasonableness and medical necessity of the requested health care. The medical necessity for the requested treatment must be addressed even if a dispute arises or is pending regarding compensability, liability for the claim, extent of or relatedness to the injury, or the fact that the employee has reached maximum medical improvement. Proposed subsection (e) also affords the requestor a reasonable opportunity to discuss the plan of treatment and the clinical basis for a denial with the appropriate doctor or health care provider performing the review.

Proposed amended subsection (f) includes the requirement for the requestor and the carrier to maintain accurate records. Records maintained must accurately reflect information regarding requests for preauthorization or concurrent review, approvals and/or denials, and appeals, if any. The maintenance of accurate records should facilitate the dispute resolution process. Additional language is proposed requiring the carrier and the requestor (other than the injured employee) to submit summary information to the commission if requested to do so. This detailed information concerning volume of requests, denials/approvals and appeals will allow tracking of outcome data to monitor compliance with the process and determine the efficiency and financial impact of the preauthorization, concurrent review and precertification processes.

The proposal deletes current subsection (g) and adds new subsection (g), which addresses the steps and required timeframes in the event of a denial of preauthorization or concurrent review. The requestor must request reconsideration of a denial by the carrier prior to seeking Medical Dispute Resolution. The request for reconsideration must be submitted within five working days from receipt of the written denial. Subsection (g) requires the carrier to respond to reconsideration requests within 5 working days for preauthorization and within 1 working day for concurrent review. Subsection (g) further addresses the requestor's entitlement to timely request a review of the medical necessity of the denied health care through Medical Dispute Resolution at the commission.

The current subsection (h) lists the categories of treatments and services that require express preauthorization by the carrier. Proposed subsection (h) amends the language to include concurrent review to extend treatment beyond that which was previously approved. The current list language identifies sixteen categories or treatments that require preauthorization or concurrent review. The proposed amended language adds the categories mandated by HB-2600, and adds and revises other categories as necessary to achieve the statutory purposes of timely delivery of appropriate medical care and effective medical cost containment. Proposed subsections have been renumbered as a result of statutory inclusions and commission additions.

Inpatient hospitalization is one of the statutorily mandated categories. Proposed subsection (h)(1) clarifies that preauthorization for inpatient hospital admissions includes the preauthorization of the primary treatments and/or services to be performed and the length of stay. If the length of stay needs to be extended, a request for concurrent review is required.

In accordance with HB-2600, proposed subsection (h)(2) includes all outpatient surgical services and ambulatory surgical services in the list of treatments and services requiring preauthorization and concurrent review. This includes all outpatient surgical procedures and other ambulatory surgical services, wherever provided. The current rule requires preauthorization of ambulatory surgical center care.

Proposed subsection (h)(3) adds spinal surgery to the list as required by HB-2600 amendments to §408.026 of the Texas Labor Code, as well as §413.014.

The current rule requires preauthorization for all psychiatric or psychological therapy or testing, except as a part of a work hardening program. Proposed subsection (h)(4), amends language regarding testing to clarify that, except as part of a preauthorized rehabilitation program, psychological testing and psychotherapy require preauthorization, as well as all repeat evaluations and repeat interviews. The intent is that if these services are part of a preauthorized rehabilitation program, they will not require additional separate preauthorization. If, however, these services are stand-alone procedures, they do require separate preauthorization. Initial psychiatric or psychological evaluations and interviews are essential assessment tools and will not require preauthorization; however, repeat evaluations and interviews will require preauthorization and concurrent review as a cost containment feature.

Proposed subsections (h)(5) - (10) are unchanged from the current rule except for the addition of acupuncture treatment in proposed subsection (h)(6). The inclusion of acupuncture is based on a review of literature regarding the use of acupuncture. A review of studies regarding acupuncture treatment was performed by the Cochrane Review Groups (an international not-for-profit organization that reviews randomized controlled trials of health care). The evidence summarized in Cochrane Review Abstracts did not indicate acupuncture to be effective for the treatment of back pain. Because of the lack of consistent evidence-based

clinical research regarding the efficacy of acupuncture and confirmation of its indications, this treatment has been added to the list of treatments and services requiring preauthorization.

Proposed subsection (h)(11) includes biofeedback treatments except as part of a preauthorized rehabilitation program.

The current rule requires preauthorization for physical therapy or occupational therapy beyond eight weeks of treatment. The treatments and services in this category represent a large portion of system costs and are performed at a high frequency. Proposed subsection (h)(12) replaces the term, "physical therapy or occupational therapy" with "physical medicine and rehabilitation modalities and procedures," to reflect the terminology for this category of treatments and/or services as established by the American Medical Association (AMA) in the Current Procedural Terminology (CPT) Manual. CPT codes reflecting tests and measurements within this category of physical medicine and rehabilitation are exempt from the requirement of preauthorization. The references to physical medicine and rehabilitation do not include vocational rehabilitation pursuant to §401.011(19), the definition of "health care." Subsection (h)(12) allows 18 sessions of physical medicine and rehabilitation services prior to the requirement of preauthorization. In addition, 18 sessions of physical medicine and rehabilitation services are allowed following surgery.

Current subsection (h)(11) and (h)(12) were deleted and have been incorporated into proposed subsection (h)(13). Proposed subsection (h)(13)(A) and (B) incorporate the statutory requirement for preauthorization and concurrent review for work hardening and work conditioning, provided by a health care facility that is not credentialed by an organization recognized by commission rules. Although the 1996 Medical Fee Guideline recognizes the Commission on Accreditation of Rehabilitation Facilities (CARF) for purposes of higher reimbursement as opposed to non-CARF accredited facilities, no accreditation entities or organizations are recognized by the commission for exclusion from prospective and concurrent review of health care. CARF accreditation does not accomplish prospective UR of health care. It is not the facility but the medical reasonableness and medical necessity of the health care that is being preauthorized. The commission is therefore proposing that preauthorization be required for all work hardening and work conditioning. The inclusion of all rehabilitation programs under preauthorization will operate as an initiative to cost containment. The programs in paragraph (13)(C) outpatient medical rehabilitation and paragraph (13)(D) chronic pain management/interdisciplinary pain rehabilitation also include the more widely accepted terminology in rehabilitation settings and require preauthorization for the initiation of treatment and concurrent review for the continuation of treatment beyond any previously approved health care

Proposed subsection (h)(14) includes both the purchase and expected cumulative rental of durable medical equipment (DME) greater than $500 per item, consistent with the commission's currently proposed medical fee guidelines (§§134.202 - 134.208).

Proposed subsections (h)(15) - (17) are unchanged from the current language except for the deletion of the term "pain clinics" in (h)(16). Pain clinics are incorporated in subsection (h)(13)(D) as rehabilitation programs.

Proposed subsection (h)(18) adds manipulative treatments or manipulations after 18 visits that include either manipulative treatment or manipulations. This has been added to the preauthorization list as a cost containment feature. The treatments and services in this category also represent a large portion of system costs and are performed at a high frequency.

As required by HB-2600, proposed subsection (h)(19) adds to the preauthorization list services and devices that are considered investigational or experimental including those for which the American Medical Association (AMA) has no specifically defined investigational or Current Procedural Terminology (CPT) code.

HB-2600 amended §413.014 of the Labor Code to provide that the commission may not prohibit a carrier and a health care provider from voluntarily discussing health care treatment and treatment plans either prospectively or concurrently and may not prohibit a carrier from certifying or agreeing to pay for health care consistent with those agreements. In accordance with this directive, proposed subsection (i) allows a doctor to voluntarily request precertification or concurrent certification of health care and treatment plans from the carrier, either prospectively or concurrently. Further, subsection (i)(2) allows the carrier to prospectively certify (precertify) or agree to pay for health care consistent with those agreements. This subsection allows requests and payment agreements for treatments and services that do not require preauthorization or concurrent review under subsection (h) of this section. Subsection (i)(3) establishes that voluntary requests and responses under this mandate are subject to the provisions of subsections (a) and (b) relating to carrier liability. A carrier is liable for treatment that is voluntarily precertified or concurrently certified under subsection (i) in the same manner that the carrier is liable for health care that is preauthorized or concurrently reviewed. Proposed subsection (i)(4) provides that denials of precertification requests may not be disputed through the preauthorization dispute resolution, although the treatment may be retrospectively reviewed for medical necessity.

Proposed subsection (j) provides that additional preauthorization or reduced preauthorization requirements may be applied to individual doctors or individual workers' compensation medical claims, in accordance with the Act and other commission rules adopted pursuant to statutory changes made by HB-2600.

Proposed subsections (k), (l), and (m) address the applicability of the proposed rule. These subsections establish when the proposed amended rule applies to requests for preauthorization, concurrent review and precertification of health care, as well as recommendations for spinal surgery. Subsection (k) provides that requests for preauthorization and/or concurrent review shall be responded to in accordance with the rules in effect at the time of the submission of the request. This provides clear guidance regarding what rules will be applicable to a particular request. Subsection (k) also provides for severability of portions of the rule or continuation of the rule as it existed prior to amendment in the event that a court finds a portion of the rule invalid. To smoothly transition from the current spinal surgery second opinion process to the preauthorization process for approval of spinal surgery, subsection (l) clarifies that current §133.206, Spinal Surgery Second Opinion Process, will remain in effect only for recommendations for or resubmissions of recommendations for spinal surgery submitted prior to the effective date of this section. Section 133.206 is also proposed to be amended to make this limited applicability clear. At some point in the future, §133.206 will be repealed. Proposed subsection (m) establishes the effective date of this section as May 1, 2002.

Tom Hardy, Director of the Medical Review Division, has determined the following with respect to fiscal impact for the first five-year period the proposed amended rule is in effect.

With regard to enforcement and administration of the rule by state or local governments, the commission anticipates experiencing minimal fiscal implications. Clarification and modifications provided by the proposed amended language should facilitate the implementation of HB-2600 and reduce errors in interpretation of the rule. The proposed amendment adds additional categories of treatments and services to the list of treatments and services requiring preauthorization, and further includes the addition of the concurrent review mandate for the services. Some of these additions are required by HB-2600. The increased preauthorization and concurrent review requirements are anticipated to more closely monitor the delivery of medical care to injured employees. Because additional categories are added, the volume of appeals to the commission for Medical Dispute Resolution may increase for the resolution of preauthorization and concurrent review disputes; however, the opportunity for the requestor to discuss a possible denial with the carrier may eliminate some disputes. If the number of medical disputes increases, there will be additional cost to the commission to resolve these disputes.

Local government and state government as covered regulated entities, will be impacted in the same manner as persons required to comply with the rule as proposed to be amended.

Tom Hardy has determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule will be an improved system for prospective and concurrent review of health care that will provide positive benefits to all participants in the system. The participants in the system are: injured employees, employers, carriers and health care providers.

Preauthorization is prospective utilization review. Concurrent review is review of the continuation of treatment beyond previously approved health care. The intent of the list is to effect cost containment while ensuring employee access to quality health care, and to prevent the injured employee from being subjected to unnecessary care by assuring the appropriate utilization of services and treatments included on the list. Any savings that result from elimination of unnecessary services or treatments has a positive financial impact for carriers, and for employers who ultimately pay insurance premiums.

The intent of amendments to §134.600 is to comply with statutory mandates in the Texas Labor Code as amended by HB-2600, adopted during the 2001 Texas Legislative Session. The commission has included additional requirements to achieve the joint statutory purposes of the timely delivery of appropriate medical care and effective medical cost containment.

The enactment of HB-2600 establishes carrier liability for the costs related to non-emergency spinal surgery under the provision of §413.014 and basically directs that all non-emergency spinal surgery procedures require preauthorization and concurrent review for the continuation of treatment beyond previously approved health care. The mandate requires the commission to specify by rule which health care treatments and services require express preauthorization as well as the health care treatments and services that may require concurrent review. HB-2600 identifies categories of services for which the commission must require express preauthorization and concurrent review. The system further benefits by the statutory definition of an "investigational or experimental service or device" and the statute and proposed rule include this category in the list of health care treatments and services that require preauthorization and concurrent review.

The amended language should benefit all participants in the system. The amended language establishes a requestor and specifies that a requestor is the treating doctor, prescribing or referred doctor, or the injured employee. This limits who can request preauthorization and concurrent review to those persons who will have access to the medical records to justify the need for requested treatment, and provides a more efficient and more effective process. This benefits the injured employee, the health care provider, and the carrier.

The rule plainly establishes when the carrier is liable and when the carrier is not liable for the payment of the services which require preauthorization and/or concurrent review, and/or any other services requested under precertification. Through simplified language, the meanings of both preauthorization and concurrent review are established, thereby reducing confusion and misinterpretation. The proposed amended rule contains expanded language to clarify the steps required by the requestor to submit and the carrier's delegated agent to process requests for preauthorization and concurrent review. This also provides a more efficient and effective process beneficial to the injured employee, health care provider, and carrier.

The addition of concurrent review allows case management and cost containment by the carrier and ensures ongoing treatment of the injured employee without delay or interruption. The addition of precertification allows prospective carrier review of health care not listed in subsection (h), encourages communication between the doctor and the carrier, and provides assurance of carrier liability for approved health care other than those treatments and services which require preauthorization under subsection (h). This provides quality health care and cost containment and may reduce disputes by encouraging communications regarding appropriatness of care.

The expanded language regarding record keeping, requiring the requestor to maintain records, as well as the carrier, will primarily be of benefit to the injured employee and the requestor by facilitating the resolution of a dispute that might arise. The tracking of summary information by the carriers will allow monitoring and tracking of the volume of requests for the services and treatments that require express preauthorization and concurrent review under this section. This information will provide insight into the effectiveness of the process in achieving the goals of cost containment and delivery of quality medical care. It should also help the commission identify carriers and doctors whose practices are outside of norms. If identified, this would allow the commission to take action against the doctors to improve their practices. This will improve access to reasonable and necessary care and reduce costs.

The carrier and their designated agents are provided the opportunity to prospectively review and determine the medical appropriateness of the treatments or services prior to the delivery of the health care. It is beneficial to the carrier and the requestor, that the requestor is afforded the opportunity to discuss the medical necessity of treatments prior to a denial of the preauthorization request for treatment. This should reduce the number of disputes, which in turn benefits doctors, carriers, employees, employers, and the commission. Further, the rule addresses a requestor's ability to timely request resolution to disputes over the denials of preauthorization and/or concurrent review by the carrier, which benefits all parties to a dispute.

The injured employee will also benefit from the requirement that the requestor be afforded the opportunity to discuss the denial of requested treatments with an appropriate doctor or health care

provider. This allows the injured employee's medical needs to be discussed by appropriate medical professionals. The opportunity to discuss the request with a doctor or health care provider prior to a denial will enhance communication between requestors and the respondents in the preauthorization process. The increased communication should reduce the number of disputes, saving time for and expense to health care providers, and facilitate the delivery of care to injured employees, as and when needed.

The benefits of the proposed amended rule to employers is the assurance that their injured employees are receiving appropriate and medically necessary treatment in a timely manner for their compensable injury in anticipation of an early return-to-work. Conversely, the proposed rule will assist in the prevention of unnecessary, costly treatment. In addition, savings that may result from this preauthorization process should ultimately be reflected in the cost to provide workers' compensation coverage to employees.

The expansion of the list of services that require preauthorization and concurrent review should benefit all system participants as well. In addition to the statutorily mandated list inclusions, the revision and addition of language regarding preauthorization of psychiatric and psychological treatment, acupuncture, physical medicine, manipulative treatments, and all rehabilitation programs, clarifies the intent for use by both requestor and carrier. The primary benefit of preauthorizing these services is cost control. Additional benefits to the injured employee include protection from the possibility of the utilization of unnecessary, experimental or investigational services or devices, as well as the over utilization of other listed services and treatments.

Health care providers will be impacted as a result of the proposed rule due to the changes to the list of items that will require preauthorization. Health care providers that regularly prescribe or provide health care that is listed in the rule will be required to request preauthorization more often than is currently required. While administrative management of additional requests may increase costs, the costs are expected to be offset by a more efficient process and the statutory guarantee of payment for approvals.

There will be some anticipated economic costs to persons who are required to comply with the amended rule as proposed. No economic costs are anticipated for injured employees to comply with the requirements of the proposed amended rule.

Some health care providers may experience minimal financial impact as a result of the proposed amended rule. The financial impact may result from an increase in the number of requests for preauthorization for newly added services for compliance with HB-2600 and additional requirements imposed by the commission. The costs are expected to be offset by more efficiently reviewing and discussing the efficacy of treatment and treatment plans prior to the delivery of the services. The prospective review and discussion and the use of precertification are expected to reduce the number of costly disputes a health care provider would submit.

Carrier costs may increase because the proposed amended list of treatments or services requiring preauthorization is expanded to include new services as well as those mandated by HB-2600. New mandated services requiring preauthorization include: spinal surgeries, outpatient surgeries, investigational or experimental services or devices, and several additions for cost containment. If not already in place, the carrier or review company will be required to develop screening criteria for these treatments and/or services, as well as develop criteria for managing concurrent review. This may require the carrier to employ additional personnel qualified to review the requests for appropriateness of initiating or continuing specific treatment for a specific injury. The broader list of items and use of a precertification process should help carriers prospectively prevent unnecessary medical care from being provided, thus reducing medical costs. Additional administrative costs to the carriers should be offset by the carrier's ability to control costs in monitoring health care utilization, and should be no more than is already required under Texas Department of Insurance rules governing UR.

The cost savings to the employer affected by a broader amended list is expected to reduce the medical costs per claim to the carrier, possibly resulting in premium reductions to the employers and an overall savings to the system. Savings that may result from a more efficient preauthorization process should ultimately be reflected in the cost to provide workers' compensation coverage to employees.

There will be no adverse economic impact on small businesses or on micro-businesses as a result of the proposed rule amendments. There will be only a proportionate difference in the cost of compliance for small businesses and micro-businesses as compared to the largest businesses, including state and local government entities. The same basic processes and procedures apply, regardless of the size or volume of the business. The business size cost difference will be in direct proportion to the volume of business that falls under the purview of these proposed rules.

Comments on the proposal must be received by 5:00 p.m., September 20, 2001. You may comment via the Internet by accessing the commission's website at *http://www.twcc.state.tx.us* and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments. You may also e-mail your comments to *RuleComments@twcc.state.tx.us* or mail or deliver your comments to Nell Cheslock at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

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

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon the commissioners' action at the public meeting, the rule as adopted may be revised from the rule as proposed in whole or in part (e.g. the addition or deletion of treatments and services listed in subsection (h)). Persons in support of the rule as proposed, in whole or in part, may wish to comment to that effect with reference to specifics in the proposed rule amendments.

A public hearing on this proposal will be held on September 20, 2001, at the Austin central office of the commission (Southfield Building, 4000 South IH-35, Austin, Texas). Those persons interested in attending the public hearing should contact the commission's Office of Executive Communication at (512) 804-4430

to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the commission's website at *www.twcc.state.tx.us*.

The amendment is proposed under: the Texas Labor Code, §401.011 which contains definitions used in the Texas Workers' Compensation Act; the Texas Labor Code, §401.024, which provides the Commission the authority to require use of facsimile or other electronic means to transmit information in the system; the Texas Labor Code, §402.042, which authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form and manner and procedure for transmission of information to the Commission; the Texas Labor Code, the Texas Labor Code: §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code §406.010 that authorizes the commission to adopt rules regarding claims service; the Texas Labor Code §408.021(a) that states an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed; the Texas Labor Code, §408.025, which requires the Commission to specify by rule what reports a health care provider is required to file; the Texas Labor Code §408.026, (as amended by HB-2600, 2001 Texas Legislature) that requires the preauthorization of spinal surgery; the Texas Labor Code, §409.021, which requires insurance carriers to timely initiate or dispute compensation; the Texas Labor Code, §409.022, which requires a notice of refusal to specify the insurance carrier's grounds for disputing a claim and requires the reason to be reasonable; the Texas Labor Code §413.002, that requires the commission to monitor health care providers and carriers to ensure compliance with commission rules relating to health care including medical policies and fee guidelines; the Texas Labor Code §413.011 that requires the commission by rule to establish medical policies relating to necessary treatments for injuries and designed to ensure the quality of medical care and to achieve effective medical cost control; the Texas Labor Code, §413.012 which requires the Commission to review and revise medical policies and fee guidelines at least every two years to reflect current medical treatment and fees that are reasonable and necessary; the Texas Labor Code, §413.013 which requires the Commission by rule to establish a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services; a program for the systematic monitoring of the necessity of the treatments administered and fees charged and paid for medical treatments or services including the authorization of prospective, concurrent or retrospective review and a program to detect practices and patterns by insurance carriers in unreasonably denying authorization of payment for medical services, and a program to increase the intensity of review; the Texas Labor Code §413.014 (as amended by HB-2600, 2001 Texas Legislature) that requires the commission to specify by rule, except for treatments and services required to treat a medical emergency, which health care treatments and services require express preauthorization and concurrent review by the carrier as well as allowing health care providers to request precertification and allowing the carriers to enter agreements to pay for treatments and services that do not require preauthorization or concurrent review. This mandate also states the carrier is not liable for the cost of the specified treatments and services unless preauthorization is sought by the claimant or health care provider and either obtained or ordered by the commission; the Texas Labor Code §413.017 that establishes medical services to be presumed reasonable when provided subject to prospective, concurrent review and are authorized by the carrier; the Texas Labor Code §413.031, that establishes the right to access medical dispute resolution; the Texas Labor Code §414.007, that allows the review of referrals from the Medical Review Division by the Division of Compliance and Practices; the Texas Labor Code, §415.002 which establishes an administrative violation for an insurance carrier to: unreasonably dispute the reasonableness and necessity of health care, to violate a Commission rule or to fail to comply with the Act; the Texas Labor Code §415.003 that establishes an administrative violation for a health care provider to: administer improper, unreasonable, or medically unnecessary treatment or services, to violate a commission rule, or to fail to comply with the act; the Texas Labor Code §415.0035 that establishes administrative violations for health care providers and carriers, including a carrier denying preauthorization in a manner that is not in accordance with commission rules; and the Texas Insurance Code, Article 21.58A, which provides requirements for the certification of health care utilization review agents, standards for utilization review, and provides for appeal of adverse determinations of utilization review agents.

The proposed amended rule affects the following statutes: the Texas Labor Code, §401.011 which contains definitions used in the Texas Workers' Compensation Act; the Texas Labor Code, §401.024, which provides the Commission the authority to require use of facsimile or other electronic means to transmit information in the system; the Texas Labor Code, §402.042, which authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form and manner and procedure for transmission of information to the Commission; the Texas Labor Code, the Texas Labor Code: §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code §406.010 that authorizes the commission to adopt rules regarding claims service; the Texas Labor Code §408.021(a) that states an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed; the Texas Labor Code, §408.025 which requires the Commission to specify by rule what reports a health care provider is required to file; the Texas Labor Code §408.026, (as amended by HB-2600, 2001 Texas Legislature) that requires the preauthorization of spinal surgery; the Texas Labor Code, §409.021, which requires insurance carriers to timely initiate or dispute compensation; the Texas Labor Code, §409.022, which requires a notice of refusal to specify the insurance carrier's grounds for disputing a claim and requires the reason to be reasonable; the Texas Labor Code §413.002, that requires the commission to monitor health care providers and carriers to ensure compliance with commission rules relating to health care including medical policies and fee guidelines; the Texas Labor Code §413.011 that requires the commission by rule to establish medical policies relating to necessary treatments for injuries and designed to ensure the quality of medical care and to achieve effective medical cost control; the Texas Labor Code, §413.012 which requires the Commission to review and revise medical policies and fee guidelines at least every two years to reflect current medical treatment and fees that are reasonable and necessary; the Texas Labor Code, §413.013 which requires the Commission by rule to establish a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services; a program for the systematic monitoring of the necessity of the treatments administered and fees charged and paid for medical treatments or services including the authorization of prospective, concurrent or retrospective review and a program to detect practices and patterns by insurance carriers in unreasonably denying

authorization of payment for medical services, and a program to increase the intensity of review; the Texas Labor Code §413.014 (as amended by HB-2600, 2001 Texas Legislature) that requires the commission to specify by rule, except for treatments and services required to treat a medical emergency, which health care treatments and services require express preauthorization and concurrent review by the carrier as well as allowing health care providers to request precertification and allowing the carriers to enter agreements to pay for treatments and services that do not require preauthorization or concurrent review. This mandate also states the carrier is not liable for the cost of the specified treatments and services unless preauthorization is sought by the claimant or health care provider and either obtained or ordered by the commission; the Texas Labor Code §413.017 that establishes medical services to be presumed reasonable when provided subject to prospective, concurrent review and are authorized by the carrier; the Texas Labor Code §413.031, that establishes the right to access medical dispute resolution; the Texas Labor Code §414.007, that allows the review of referrals from the Medical Review Division by the Division of Compliance and Practices; the Texas Labor Code, §415.002 which establishes an administrative violation for an insurance carrier to: unreasonably dispute the reasonableness and necessity of health care, to violate a Commission rule or to fail to comply with the Act; the Texas Labor Code §415.003 that establishes an administrative violation for a health care provider to: administer improper, unreasonable, or medically unnecessary treatment or services, to violate a commission rule, or to fail to comply with the act; the Texas Labor Code §415.0035 that establishes administrative violations for health care providers and carriers, including a carrier denying preauthorization in a manner that is not in accordance with commission rules; and the Texas Insurance Code, Article 21.58A, which provides requirements for the certification of health care utilization review agents, standards for utilization review, and provides for appeal of adverse determinations of utilization review agents.

§134.600. Preauthorization, Concurrent Review, and Precertification of Health Care [~~Procedure for Requesting Pre-Authorization of Specific Treatments and Services~~].

(a) The insurance carrier (carrier) is liable for the reasonable and necessary medical costs relating to the health care treatments and services listed in subsection (h) of this section, required to treat a compensable injury, when any of the following situations occur:

(1) there is an [~~a documented life threatening degree of a medical~~] emergency, as defined in §133.1 of this title (relating to Definitions for Chapter 133) necessitating treatments or services listed in subsection (h) of this section;

(2) requestor the treating doctor, the prescribing or referral doctor [~~his/her designated representative~~], or the injured employee (employee) has received approval [~~pre-authorization~~] from the carrier through: [~~prior to the health care treatments or services; or~~]

(A) preauthorization (prospective approval) of any health care listed in subsection (h) of this section prior to providing the health care treatments or services;

(B) concurrent review (an extension of treatment or services beyond previous approval) of any health care listed in subsection (h) of this section; or

(C) precertification or agreement under subsection (i)(2) of this section; or

(3) when ordered by the commission.

(b) The carrier is not liable under subsection (a) of this section if there has been a final adjudication that the injury is not compensable or that the health care was provided for a condition unrelated to the compensable injury. "Final adjudication" means that the commission has issued a final decision or order that is no longer appealable by either party. [~~Second opinions for spinal surgery are addressed in Chapter 133, Subchapter C, of this title (relating to Second Opinions for Spinal Surgery).~~]

(c) The [~~insurance~~] carrier shall designate an accessible direct telephone number, and may also designate a facsimile number for use by the requestor [~~treating doctor or the injured employee~~] to request preauthorization or concurrent review [~~pre-authorization~~] during normal business hours. The direct number shall be answered or the facsimile responded to, by the carrier's agent who is delegated to approve or deny requests for preauthorization or concurrent review [~~pre-authorization~~], within the time limits established in subsection (e) of this section.

(d) The requestor shall request preauthorization from the carrier prior to providing proposed treatments or services. An extension of treatments or services beyond what was preauthorized requires concurrent review and approval prior to treatments or services. Concurrent review may be requested prior to the conclusion of the specific number of treatments or period of time preauthorized. The requestor shall: [~~Prior to the date of the proposed treatment or service, the treating doctor, or his/her designated representative, shall notify the insurance carrier's delegated agent by telephone or transmission of a facsimile of the recommended treatment or service listed in subsection (h) of this subsection. Notification shall include the medical information to substantiate the need for the treatment or service recommended. If requested to so by the carrier, the treating doctor shall also notify the insurance carrier of the location and estimated date of the recommended treatment or service, and the name of the health care provider performing the treatment or service, if other than the treating doctor.~~]

(1) contact the carrier or carrier's delegated agent by telephone or facsimile to request preauthorization or concurrent review;

(2) include in the request for preauthorization or concurrent review:

(A) the specific treatment or service listed in subsection (h) of this section;

(B) the specific number of treatments or services and/or the specific period of time; and

(C) the medical information to substantiate the need for the treatment or service recommended

(D) an accessible telephone number and also may designate a facsimile number for use by the carrier or the carrier's delegated agent; and

(3) if requested by the carrier or the carrier's delegated agent, provide the:

(A) name of the health care provider performing the treatment or service, if other than the requestor; and

(B) facility name and estimated date of proposed treatment or service.

(e) The carrier or carrier's delegated agent shall: [~~Within three working days of the treating doctor's request for pre-authorization, the insurance carrier's delegated agent shall notify the treating doctor by telephone or transmission of a facsimile of the insurance carrier's decision to grant or deny pre-authorization. When the insurance carrier denies or approves pre-authorization, the insurance carrier shall send~~

~~written approval, or, if denying pre-authorization, documentation identifying the reasons for denial. Notification shall be sent to the injured employee, injured employee's representative if known, and the treating doctor, or the treating doctor's designated representative, within 24 hours after notification of denial or approval.~~]

(1) approve or deny requests for preauthorization or concurrent review based solely upon the reasonableness and medical necessity of the health care required to treat the injury, regardless of:

(A) unresolved issues of compensability, extent of or relatedness to the compensable injury;

(B) the carrier's liability for the injury; or

(C) the fact that the employee has reached maximum medical improvement.

(2) prior to the issuance of a denial, afford the requestor a reasonable opportunity to discuss the clinical basis for a denial with the appropriate doctor or health care provider performing the review;

(3) contact the requestor by telephone or facsimile with the decision to approve or deny the request:

(A) within three working days of receipt of a request for preauthorization; or

(B) within one working day of receipt of a request for concurrent review;

(4) send written notification of the approval or denial of the request, within one working day of the decision to:

(A) the employee;

(B) the employee's representative; and

(C) the requestor, if not previously sent by facsimile;

(5) include in an approval the specific:

(A) treatment or service; and

(B) number of treatments or services and/or the specific period of time;

(6) include in a denial:

(A) plain language notifying the injured employee of the right to appeal in a timely manner under subsection (g) of this section; and

(B) principal reasons for, clinical basis for, and description or source of screening criteria used in making the denial.

(f) The [~~insurance~~] carrier and requestor must maintain accurate records to reflect information regarding the preauthorization or concurrent review requests, [~~pre-authorization request and~~] approval/denial, decisions, and appeals, if any. If requested by the commission, the carrier and requestor (other than an employee) shall submit summary information with the total numbers of requests by category of treatment or service, and the total number of approvals, denials, and appeals in the form and format prescribed by the commission [~~process~~].

(g) If the response is a denial of preauthorization or concurrent review, the requestor is entitled to a review of the medical necessity for the denied health care. [~~If a dispute arises over the denial of pre-authorization by the insurance carrier, the doctor or the injured employee may proceed to a medical dispute resolution as described in the Act, §8.26, and §133.305 of this title (relating to Request for Medical Dispute Resolution).~~]

(1) The requestor may, within 5 working days of receipt of a written denial, request that the carrier reconsider the denial and shall document the reconsideration request.

(2) The carrier shall respond:

(A) within 5 working days of receipt of a request for reconsideration of denied preauthorization; or

(B) within 1 working day of receipt of a request for reconsideration of denied concurrent review.

(3) The requestor may dispute the denial of a reconsideration request in accordance with Texas Labor Code, §413.031 and §133.305 of this title (relating to Medical Dispute Resolution).

(h) The health care treatments and services requiring preauthorization and/or concurrent review [~~pre-authorization~~] are:

(1) inpatient hospital admissions including: [~~all nonemergency hospitalizations, ambulatory surgical center care, and transfers between facilities;~~]

(A) primary treatment(s) and/or service(s); and

(B) length of stay;

(2) outpatient surgical or other ambulatory surgical services;

(3) spinal surgery;

(4) except as part of a rehabilitation program, repeat evaluations and interviews, all psychological testing, and all psychotherapy;

[~~(2) psychiatric or psychological therapy or testing except as a part of work hardening;~~]

(5) [~~(3)~~] all external and implantable bone growth stimulators;

(6) [~~(4)~~] all chemonucleolysis, acupuncture, facet, or trigger point injections;

(7) [~~(5)~~] all nonemergency myelograms, discograms, or surface electromyograms;

(8) [~~(6)~~] unless otherwise specified, repeat individual diagnostic study, with a fee established in the current Medical Fee Guideline of greater than $350 or DOP (documentation of procedure). (Diagnostic study is defined as any test used to help establish or exclude the presence of disease/injury in symptomatic persons; the test can help determine the diagnosis, screen for specific diseases/injury, guide the management of an established disease/injury and help formulate a prognosis.);

(9) [~~(7)~~] video fluoroscopy;

(10) [~~(8)~~] radiation therapy or chemotherapy;

(11) [~~(9)~~] biofeedback except as a part of a preauthorized rehabilitation program [~~work hardening~~];

(12) all physical medicine and rehabilitation modalities and procedures (excluding tests and measurements) beyond 18 sessions, and/or beyond 18 sessions following surgery;

(13) all rehabilitation programs, including but not limited to:

(A) work conditioning/general occupational rehabilitation;

(B) work hardening/comprehensive occupational rehabilitation;

(C) outpatient medical rehabilitation; and

(D) chronic pain management/interdisciplinary pain rehabilitation;

[(10) physical therapy or occupational therapy beyond eight weeks of treatment;]

[(11) work hardening, in excess of six weeks (limited to a one-time two-week extension);]

[(12) work conditioning, in excess of four weeks (limited to a one-time two-week extension);]

(14) [(13)] all durable medical equipment in excess of $500 per item (either purchase or expected cumulative rental) and all TENS units;

(15) [(14)] nursing home, convalescent, residential, and all home health care services and treatments;

(16) [(15) pain clinics,] chemical dependency clinics, or weight loss clinics; [and]

(17) [(16)] all nonemergency dental services, including reconstructive dental care or dental appliances; [.]

(18) manipulative treatments or manipulations after 18 visits that include either manipulative treatment or manipulations; and

(19) any investigational or experimental service or device for which:

(A) there is no current or investigational CPT code; or

(B) there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, service, or device but is not yet broadly accepted as the prevailing standard of care.

(i) This subsection governs requests for precertification and/or requests for concurrent certification of ongoing health care that does not require preauthorization and/or concurrent review under subsection (h) of this section.

(1) The requestor may voluntarily request precertification and/or concurrent certification of on-going treatment plans, treatments and services, from the carrier.

(2) The carrier may voluntarily precertify and agree to pay for health care requested under paragraph (1) of this subsection.

(3) Carrier precertification, concurrent certification, or agreement to pay, subjects the carrier to liability in accordance with subsections (a) and (b) of this section.

(4) Denials under this subsection are not subject to preauthorization dispute resolution.

(j) An increase or decrease in review and preauthorization controls may be applied by the commission to individual doctors or individual workers' compensation claims, in accordance with the Texas Labor Code and other sections of this title.

(k) Requests for preauthorization and/or concurrent review shall be responded to in accordance with rules in effect at the time of submission of the request. Where any terms or portions of this section are determined by a court of competent jurisdiction to be invalid, the remaining terms and provisions of this section shall remain in effect to the extent possible. If a portion of this section is declared invalid in a final judgment that is not subject to appeal, or is suspended by order of the court which is given immediate effect, this section as it existed prior to the effective date of this section shall remain in effect for all requests for preauthorization to the extent necessary.

(l) Section 133.206 will remain in effect only for recommendations or resubmissions of recommendations for spinal surgery submitted prior to the effective date of this section.

(m) The effective date of this section is March 1, 2002.

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

Filed with the Office of the Secretary of State, on July 20, 2001.

TRD-200104207
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: September 2, 2001
For further information, please call: (512) 804-4287

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CHAPTER 166. WORKERS' HEALTH AND SAFETY--ACCIDENT PREVENTION SERVICES

28 TAC §166.2

The Texas Workers' Compensation Commission (the commission) proposes an amendment to §166.2, concerning Initial Licensing and Resumption of Writing of Workers' Compensation Insurance. The amendment is proposed to make §166.2 consistent with §411.061, of the Texas Labor Code, as amended by Senate Bill (SB) 994 of the 77th Texas Legislature, 2001. The proposed amendment makes the requirement that an insurance company file their Accident Prevention Services Plan for evaluation and approval with the commission's Division of Workers' Health and Safety (the division), a prerequisite for writing workers' compensation insurance in Texas, rather than a prerequisite for licensing to write workers' compensation insurance in Texas. The amendment also updates the reference to other commission rules.

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

SB 994, passed by the 77th Texas Legislature, 2001, amended §411.061, of the Labor Code effective September 1, 2001, to read as follows: (a) As a prerequisite for writing workers' compensation insurance in this state, an insurance company must maintain or provide accident prevention facilities that are adequate to provide accident prevention services required by the nature of its policyholders' operations. Previously §411.061 required the maintenance of accident prevention facilities as a prerequisite for obtaining a license to write workers' compensation insurance. The proposed change to §166.2, necessitated by SB 994, will allow an insurance company to be issued its initial license to write workers' compensation insurance in Texas prior to filing a plan with the division. However, the company shall not write workers' compensation insurance in Texas until they have filed a plan with the division, and it is approved, describing the accident prevention services they will provide. In addition, proposed §166.2 changes the reference to Chapter 145 of the commission's rules to Chapter 148 to reflect the rules which are applicable to disputes related to the approval of Accident Prevention Services Plans.

Robert M. Marquette, Director of the Worker's Health and Safety Division, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule. Local government and state government as a covered regulated entity will be impacted in the same manner as described in this preamble for persons required to comply with the rule as proposed.

Mr. Marquette has also determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule will be compliance with amendments to the Texas Labor Code and simplification of the initial licensing process for insurance companies.

There will be no anticipated economic costs to persons who are required to comply with the rule as proposed. The statute and the rule will allow an insurance company to delay the costs associated with filing and obtaining approval of a plan until after a license has been issued for that company to write workers' compensation insurance in Texas.

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

Comments on the proposal must be received by 5:00 p.m., September 20, 2001. You may comment via the Internet by accessing the commission's website at *www.twcc.state.ts.us* and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by e-mailing your comments to *RuleComments@twcc.state.tx.us* or by mailing or delivering your comments to Nell Cheslock at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

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

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

A public hearing on this proposal will be held on September 20, 2001, at the Austin central office of the commission (Southfield Building, 4000 South IH-35, Austin, Texas). Those persons interested in attending the public hearing should contact the commission's Office of Executive Communication at (512) 804-4430 to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the commission's website at *www.twcc.state.tx.us*.

The amendment is proposed under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act, and the Texas Labor Code, §411.061, which requires an insurance company to provide accident prevention services.

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

§166.2. Initial Writing [~~Licensing~~] and Resumption of Writing of Workers' Compensation Insurance.

(a) Initial Writing After Being Licensed to Write Workers' Compensation Insurance [~~Licensing~~].

(1) An insurance company prior [~~seeking~~] to writing [~~obtain~~] its initial [~~license to write~~] workers' compensation insurance policy in Texas or with Texas exposure shall file with the division a plan describing the accident prevention services that the company will provide. The plan shall describe how the company will meet all requirements listed in §166.4(c) of this title (relating to Required Accident Prevention Services).

(A) The division shall evaluate the plan's compliance with the requirements listed in §166.4(c) of this title (relating to Required Accident Prevention Services) and resolve any discrepancies with the insurance company. If the insurance company disagrees with the evaluation rendered by the division, the insurance company may request a hearing as provided by Chapter 148 [~~145~~] of this title (relating to Hearings Conducted by the State Office of Administrative Hearings [~~under the Administrative Procedure and Texas Register Act~~)].

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

(2) (No change.)

(3) An insurance company acting [~~seeking license to act~~] exclusively as a workers' compensation excess insurer or reinsurer is not required to submit an accident prevention services plan, but must provide to the division, a legally binding document confirming it will not act as a primary insurer. Should the insurance company subsequently elect to become a primary insurer, it shall [~~will~~] submit an accident prevention services plan as described in subsection (a) of this section for evaluation and approval prior to writing insurance as a primary provider.

(b) (No change.)

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

Filed with the Office of the Secretary of State, on July 20, 2001.

TRD-200104204
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: September 2, 2001
For further information, please call: (512) 804-4287

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

The Texas Water Development Board (the board) proposes amendments to 31 TAC §§375.15, 375.212, 375.214 and

375.222, and new §§375.301-375.305 concerning the Clean Water State Revolving Fund (the "CWSRF"). The amendments and new sections will implement legislative changes to enable "persons" to receive CWSRF loans for nonpoint source pollution control and abatement and estuary management projects. The changes will also add flexibility to managing loan applications in situations where the program capacity is adequate to invite all applications for projects listed on an intended use plan. Additionally, the amendments correct a legal reference, delete a reference to the Davis-Bacon Act, and increase the interest rate subsidy for federally funded "tier three" projects.

In the past, the demand for CWSRF program funds have exceeded the amount of funds available. It is currently estimated that sufficient funds will be available to serve all requests, except in a circumstance where a borrower requests an unusually large amount. The proposed amendments to §375.15(m) will allow the board to impose a cap on the maximum amount of funds available to any single applicant. This amendment will allow the board to limit funds on any one large request for funds when the limitation is necessary in order to be able to fund all of the applicants that have requested assistance. The amendments also provide that it is the policy of the board to fund all projects listed on the intended use plan whenever possible so that the maximum number of projects can be funded. The proposed amendments to §375.15(n) provide that, if funds are available to do so, the executive administrator will invite the submittal of all applicants on the annual intended use plan. This represents a change from previous practice whereby the executive administrator could invite the submittal of only those applications for which limited funds were available. The amendments also specify timelines applicable to such applications so that the board may more efficiently identify those projects that will actually seek commitments for this funding year.

§375.15 (o) is renumbered to account for the new section. Proposed amendments to §375.212 will remove a reference to the Davis-Bacon Act, relating to wage rate requirements. This reference is removed because the United States Environmental Protection Agency recently notified the board that Davis-Bacon requirements were not applicable to the CWSRF program. The proposed amendment to §375.214 corrects a citation to a federal act with which CWSRF funding must comply. The proposed amendment to §375.222 provide an increased interest rate subsidy for the purpose of encouraging more borrowers to apply for available funds by reducing the cost of such funds.

New §§375.301-375.305 comprise new Subchapter C, Nonpoint Source Pollution Loan and Estuary Management Program. The proposed new sections implement Senate Bills 2 and 312 of the 77th Texas legislative session and further compliance with the federal Clean Water Act. §375. 301 provides notice to applicants for funds that applications for nonpoint source pollution control and estuary management projects will be administered under the requirements of the general provisions of this title.

To assist customers in the understanding of the nonpoint source pollution and estuary management programs, §375.302 , relating to Definitions of Terms, provides additional definitions of terms that apply to the two programs, including a new definition of an eligible applicant for funds. §375.303 informs customers of the types of projects that will be eligible to receive funding pursuant to the nonpoint source pollution loan program. Proposed §375.304 provides additional information to customers on the application process when loans for nonpoint source pollution or estuary management are sought. In order to be processed, applications must contain sufficient information for the board to understand the details of the proposed project. §375.305 advises customers of a board option for borrowing through the use of promissory note and loan agreement with the board.

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

Ms. Hancock has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be an expansion of funding available to applicants through the CWSRF, removal of an incorrect reference, and ensuring that board rules comply with federal requirements. Ms. Hancock has determined there will be no economic costs to small businesses or individuals required to comply with the sections as proposed.

Comments on the proposed amendments will be accepted for 30 days following publication and may be submitted to Jeff Walker, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, by e-mail to jeff.walker@twdb.state.tx.us or by fax @ (512) 475-2086.

SUBCHAPTER A. GENERAL PROVISIONS
DIVISION 2. PROGRAM REQUIREMENTS

31 TAC §375.15

The amendments are proposed under the authority of the Texas Water Code §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State including specifically the SRF program.

The statutory provisions affected by the proposed amendments are Texas Water Code, Chapter 15, Subchapter J.

§375.15. Criteria and Methods for Distribution of Funds.

(a) - (l) (No change.)

(m) It is the policy of the board to fund all projects listed in the intended use plan whenever possible. To implement this policy, the board may impose a cap on the maximum amount of funds available to any single applicant.

(n) If no shortage of funds exists for a fiscal year the executive administrator will invite the submittal of applications from all applicants. After official invitation, applicants will be given until August 31 of that fiscal year to submit an application and an additional two months to receive a loan commitment.

(o) [~~m~~] Notwithstanding the provisions of subsections (e), (f), and (h) of this section, the executive administrator may request additional information regarding any portion of the application for assistance, after the application has been submitted, without affecting the priority rating status of the application.

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

Filed with the Office of the Secretary of State, on July 23, 2001.

TRD-200104218

Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: September 19, 2001
For further information, please call: (512) 463-7981

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SUBCHAPTER B. PROVISIONS PERTAINING TO USE OF CAPITALIZATION GRANT FUNDS DIVISION 2. PROGRAM REQUIREMENTS

31 TAC §375.212, §375.214

The amendments are proposed under the authority of the Texas Water Code §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State including specifically the SRF program.

The statutory provisions affected by the proposed amendments are Texas Water Code, Chapter 15, Subchapter J.

§375.212. Capitalization Grant Requirements.

(a) All projects which receive assistance from the fund and will be constructed in whole or part with funds directly made available by capitalization grants shall satisfy the following federal requirements:

(1) National Environmental Policy Act of 1969, PL 91-190;

(2) Archeological and Historic Preservation Act of 1974, PL 93-291;

(3) Clean Air Act, 42 USC 7506(c);

(4) Coastal Barrier Resources Act, 16 USC 3501 et seq;

(5) Coastal Zone Management Act of 1972, PL 92-583, as amended;

(6) Endangered Species Act, 16 USC 1531, et seq;

(7) Executive Order 11593, Protection and Enhancement of the Cultural Environment;

(8) Executive Order 11988, Floodplain Management;

(9) Executive Order 11990, Protection of Wetlands;

(10) Farmland Protection Policy Act, 7 USC 4201 et seq;

(11) Fish and Wildlife Coordination Act, PL 85-624, as amended;

(12) National Historic Preservation Act of 1966, PL 89-665, as amended;

(13) Safe Drinking Water Act, §1424(e), PL 92-523, as amended;

(14) Wild and Scenic Rivers Act, PL 90-542, as amended;

(15) Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended;

(16) Clean Air Act, §306 and Clean Water Act, §508, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans;

(17) Age Discrimination Act, PL 94-135;

(18) Civil Rights Act of 1964, PL 88-352;

(19) PL 92-500, §13; Prohibition against sex discrimination under the Federal Water Pollution Control Act;

(20) Executive Order 11246, Equal Employment Opportunity;

(21) Executive Orders 11625 and 12138, Women's and Minority Business Enterprise;

(22) Rehabilitation Act of 1973, PL 93-112 (including Executive Orders 11914 and 11250);

(23) Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 91-646;

(24) Executive Order 12549, Debarment and Suspension;

(25) The Wilderness Act, 16 USC 1131 et seq.;

(26) Environmental Justice, Executive Order 12898;

(27) Clean Water Act, PL 92-500, as amended; and

(28) Section 129, Small Business Administration Reauthorization and Amendment Act of 1988, PL 100-590. [~~; and~~]

[~~(29) Davis-Bacon Act, 40 U.S.C. §§276a-276a-5, as amended, to the extent required by §513 of the Clean Water Act, 33 U.S.C. §1372, as amended.~~]

(b) (No Change.)

§375.214. Required Environmental Review and Determination.

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

(d) Application of other laws and authorities. In addition to the requirements of state law and rules, the Act, and the NEPA, the board must, as required by the initial guidance for the state water pollution control revolving fund and the capitalization grant agreement, insure that each project proposed to receive CWSRF financial assistance complies with the following federal laws and authorities respecting the human environment: the Archeological and Historic Preservation Act of 1974, Public Law 93-191; the Historic Sites Act; the Clean Air Act, 42 United States Code 7506(c); the Coastal Barrier Resources Act, 16 United States Code 3501 et seq., the Coastal Zone Management Act of 1972, Public Law 92-583, as amended; the Endangered Species Act, 16 United States Code 1531 et seq.; Executive Order 11953, Protection and Enhancement of the Cultural Environment; Executive Order 11988, Floodplain Management; the Flood Disaster Protection Act of 1973, Public Law 93-234; Executive Order 11990, Protection of Wetlands; the Farmland Protection Policy Act, 7 United States Code 4201 et seq.; the Fish and Wildlife Coordination Act, Public Law 85-624, as amended; the National Historic Preservation Act of 1966, Public Law 89-665, as amended; the Safe Drinking Water Act, §1424(e), Public Law 92-523, as amended; and the Wild and Scenic Rivers Act, Public Law 90-542, as amended. Because particular federal and/or state agencies are charged with the enforcement of or permitting under many of these laws and authorities, the executive administrator will provide guidance to applicants to the fund regarding consultation requirements and will encourage proper coordination of project planning with the appropriate agencies. Because of their complexity and critical importance to the board's administration of the fund, the board has adopted the following sections to effect proper compliance with the requirements of the Flood Disaster Protection Act of 1973, the Coastal Barrier Resources Act, and Executive Order 11988, Floodplain Management.

(1) - (2) (No Change.)

(3) Pursuant to the requirements of Executive Order 11988, the board will avoid direct and indirect support of development in floodplains wherever there is a practicable alternative. Therefore,

both to preserve the significant natural functions and values of floodplains and to protect human health and safety.

(A) The board may provide financial assistance from the fund for the transportation or treatment of wastewater generated in a floodplain only when the proposed project will provide service to:

(i) - (ii) (No change.)

(iii) areas of projected growth if an EID demonstrates that the proposed development will be consistent with FEMA's floodplain management criteria for flood prone areas (44 [~~40~~] Code of Federal Regulations 60.3) and will have no significant impacts on natural functions and values of floodplains; and

(iv) (No change.)

(B) - (D) (No Change.)

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

Filed with the Office of the Secretary of State, on July 23, 2001.

TRD-200104219
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: September 19, 2001
For further information, please call: (512) 463-7981

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DIVISION 3. PREREQUISITES TO RELEASE OF FUNDS

31 TAC §375.222

The amendments are proposed under the authority of the Texas Water Code §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State including specifically the SRF program.

The statutory provisions affected by the proposed amendments are Texas Water Code, Chapter 15, Subchapter J.

§375.222. Lending Rates.

(a) (No change.)

(b) Fixed rates. The fixed interest rates for CWSRF loans under this chapter are set at rates 170 [~~120~~] basis points below the fixed rate index rates for borrowers plus an additional reduction under paragraph (1) of this subsection, or if applicable, are set at the total basis points below the fixed rate index for borrowers derived under paragraph (2) of this subsection. The fixed rate index rates shall be established for each uninsured borrower based on the borrower's market cost of funds as they relate to the Delphis Hanover Corporation Range of Yield Curve Scales (Delphis) or the 90 index scale of the Delphis for borrowers with either no rating or a rating less than investment grade, using individual coupon rates for each maturity of proposed debt based on the appropriate index's scale. The fixed rate index rates shall be established for each insured borrower based on the higher of the borrower's uninsured fixed rate index scale or the Delphis 96 index scale.

(1) Under §375.18(c) of this title (relating to Administrative Cost Recovery) an additional 25 basis points reduction will be used, for total fixed interest rates of 195 [~~145~~] basis points below the fixed index rates for such borrower.

(2) (No change.)

(c) - (d) (No change.)

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

Filed with the Office of the Secretary of State, on July 23, 2001.

TRD-200104220
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: September 19, 2001
For further information, please call: (512) 463-7981

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SUBCHAPTER C. NONPOINT SOURCE POLLUTION LOAN AND ESTUARY MANAGEMENT PROGRAM

31 TAC §§375.301 - 375.305

The new sections are proposed under the authority of the Texas Water Code §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State including specifically the SRF program.

The statutory provisions affected by the proposed new sections are Texas Water Code, Chapter 15, Subchapter J.

§375.301. Scope of Subchapter.

Subchapter C shall pertain to requests for financial assistance to persons from the Clean Water Pollution Control Revolving Fund established by the Texas Water Code, Chapter 15, Subchapter J, for nonpoint source pollution control and abatement projects and estuary management projects. Unless in conflict with the provisions of this subchapter, the provisions of Subchapter A of this chapter (relating to General Provisions) shall apply to nonpoint source and estuary protection projects.

§375.302. Definitions of Terms.

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

(1) BMP--Best management practices are those practices determined to be the most efficient, practical, and cost-effective measures identified to guide a particular activity or address a particular problem.

(2) Person--An individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state or any interstate body, as defined by Section 502 of the Act, including a political subdivision as defined by Texas Water Code, §15.602(9), if the person is eligible for financial assistance under federal law establishing the revolving fund.

(3) National Estuary Program--Program created by the Water Quality Act of 1987 and administered according to Section 320 of the Act.

(4) NPS Loan Program--Nonpoint Source Pollution Loan Program, the loan program funded by the board to provide for low interest loans to persons for the implementation of approved nonpoint source pollution control and abatement projects and estuary management projects.

(5) NPS Management Report--The Texas Nonpoint Source Pollution Assessment Report and Management Program.

(6) Individual Water Quality Management Plan--An approved land management plan which considers site-specific characteristics (such as soil types, slope, climate, vegetation and land usage) to improve or conserve water resources.

§375.303. Eligible Projects.

Projects eligible for funding from the NPS Loan Program must be:

(1) an identified practice within a Water Quality Management Plan; or

(2) a nonpoint source management activity that has been identified in the Texas Comprehensive Groundwater Protection Program; or

(3) a BMP listed in the NPS Management Report; and

(4) must be consistent with the EPA approved Nonpoint Source Management Plan or the National Estuary Program efforts.

§375.304. Application for Assistance.

An applicant for financial assistance for a nonpoint source or estuary protection project pursuant to this subchapter shall submit an application in the form and number prescribed by the executive administrator. The executive administrator may request any additional information needed to evaluate the application, and may return any incomplete application.

§375.305. Promissory Notes and Loan Agreements.

(a) The board may provide financial assistance to applicants by either purchasing bonds issued by such applicant or by receiving a promissory note and entering into a loan agreement with such applicant. If, however, an applicant is a governmental entity that is fully authorized to issue bonds, the applicant may not enter into a loan agreement as provided in this section.

(b) If an applicant executes a promissory note and loan agreement with the board, the executive administrator may waive the hiring or employment of a financial advisor required pursuant to these rules.

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

Filed with the Office of the Secretary of State, on July 23, 2001.

TRD-200104221
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: September 19, 2001
For further information, please call: (512) 463-7981

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER K. HOTEL OCCUPANCY TAX

34 TAC §3.163

The Comptroller of Public Accounts proposes an amendment to §3.163, concerning refund of hotel occupancy tax. The 77th Legislature, in House Bill 2914, amended the Tax Code, Chapter 156, to require state agencies to use a fiscal year quarter when requesting a refund of state hotel occupancy taxes.

Subsection (b) is being amended to change calendar quarter to fiscal year quarter. Reference to municipal and county hotel tax refunds in subsection (b) is being deleted.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the amendment will be in effect there will be no significant revenue impact on the state or local government.

Mr. LeBas also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of adopting the amendment will be in providing new information regarding tax responsibilities. This amendment is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements Tax Code, §156.154(c).

§3.163. Refund of Hotel Occupancy Tax.

(a) State agency. A state agency is an agency, institution, board, or commission of the State of Texas other than an institution of higher education as defined in Education Code, §61.003.

(b) Refunds. A state agency may request a refund for each fiscal year [~~calendar~~] quarter for the state[~~, municipal, and county~~] hotel tax paid directly to a hotel or the amount of state[~~, municipal, and county~~] hotel tax for which the agency reimbursed [~~to~~] a state employee on a state travel voucher. A state agency must directly contact the applicable city or county to apply for a refund of municipal or county hotel tax for which the agency reimbursed a state employee.

(c) Time limitation. A state agency may apply for a refund of state hotel tax no later than two years after the end of the fiscal year in which the travel occurred as provided by State of Texas Travel Allowance Guide, §1.17 and §8.06. A state agency may apply for a refund of municipal or county hotel occupancy tax for each calendar quarter according to the local city or county ordinance. In the absence of a local ordinance, the same time limitation that applies to the refund of state hotel tax will apply to municipal and county taxes.

(d) Documentation required.

(1) Documentation must be maintained to substantiate the claim, including a copy of the hotel folio, billing statement, invoice, or other document, that contains the following information:

(A) name of the hotel,

(B) location address of hotel,

(C) name of city where hotel is located,

(D) name of county where hotel is located,

(E) date(s) of lodging,

(F) amount of state, municipal, and county hotel tax paid separately stated,

(G) method of payment (travel voucher reimbursement, state credit card, state purchase order, direct billing, other), and

(H) name of employee, if tax reimbursed on travel voucher.

(2) A municipality or county may, by local ordinance, require additional documentation or require documentation be submitted with a claim for refund of local tax.

(e) Separate refund claim required. A separate refund claim form must be filed with each municipality or county.

(f) Form. Each claim for refund for state hotel occupancy tax must be filed on a form furnished by the comptroller. The municipal and county hotel occupancy tax refund claim form, herein adopted by reference, must be substantially in the form set out as follows. Copies of the certificate are available for inspection at the office of the Texas Register or may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711. Copies may also be requested by calling our toll-free number 1-800-252-1385. In Austin, call 463-4600. From a Telecommunication Device for the Deaf (TDD) only, call 1-800-248-4099 toll free. In Austin the local TDD number is 463-4621

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

Filed with the Office of the Secretary of State, on July 19, 2001.

TRD-200104176
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: September 2, 2001
For further information, please call: (512) 463-4062

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SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.357

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

The Comptroller of Public Accounts proposes the repeal of §3.357, concerning labor relating to nonresidential real property repair, remodeling, restoration, maintenance, new construction, and residential property. The content of the existing §3.357 has been restructured and updated as a new §3.357.

James LeBas, Chief Revenue Estimator, has determined that repeal of the rule will have no significant fiscal impact on the state or units of local government.

Mr. LeBas has also determined that there will be no cost or benefit to the public from the repeal of this rule. This repeal is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeal.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This repeal is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The repeal implements Tax Code, §111.002.

§3.357. Labor Relating to Nonresidential Real Property Repair, Remodeling, Restoration, Maintenance, New Construction, and Residential Property.

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

Filed with the Office of the Secretary of State, on July 19, 2001.

TRD-200104182
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: September 2, 2001
For further information, please call: (512) 463-3699

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34 TAC §3.357

The Comptroller of Public Accounts proposes a new §3.357, concerning nonresidential real property repair, remodeling, and restoration; real property maintenance. The new section incorporates changes made to Tax Code, §§151.0047, 151.311, and 151.429, by prior legislation. The new section includes definitions of consumable items, equipment, exempt contract, incorporated materials, and prior contract. The change to §151.0047 excludes increased capacity at petrochemical plants and refineries from the definition of real property repair and remodeling. The change to §151.311 broadens the entities included in exempt contracts and restricts the exemption to incorporated materials, qualifying consumables, and qualifying taxable services. The change to §151.429 provides for a refund of tax paid to service providers on restoration or remodeling of structures used by an enterprise project. The substance of existing §3.357 has been reorganized and other changes are included for clarification.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period that the rule is in effect, there will be no significant fiscal impact on the state or units of local government.

Mr. LeBas has also determined that for each year of the first five years that the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing taxpayers with additional information regarding their tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This new section is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt,

and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The new section implements Tax Code, §§151.0047, 151.311, and 151.429.

§3.357. Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance.

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

(1) Consumable items -- Nondurable tangible personal property that is used to improve real property and that, after being used once for its intended purpose, is completely used or destroyed. Examples include, but are not limited to, nonreusable concrete forms, nonreusable drop cloths, barricade tape, natural gas, and electricity. Consumable items do not include incorporated materials, machinery, equipment, accessories to machinery and equipment, repair and replacement parts of machinery and equipment, or any rented or leased item.

(2) Contractor -- Any person who builds new improvements to residential or nonresidential real property; completes any part of an uncompleted structure that is an improvement to residential or nonresidential real property; makes improvements to real property as part of periodic and scheduled maintenance of nonresidential real property; or repairs, restores, maintains, or remodels residential real property; and who, in making the improvement, incorporates tangible personal property into the real property that is improved. The term includes subcontractors but does not include material men, suppliers, or persons who provide taxable real property services. Contractors should refer to §3.291 of this title (relating to Contractors). Persons who provide real property services should refer to §3.356 of this title (relating to Real Property Service). Persons who repair, restore, or remodel chemical plants or petrochemical refineries should refer to §3.362 of this title (relating to Labor Relating to Increasing Capacity in a Production Unit in a Petrochemical Refinery or Chemical Plant).

(3) Disaster area -- An area that the Governor of Texas declares a disaster under the Government Code, Chapter 418, or that the President of the United States declares a disaster under 42 United States Code, §5141.

(4) Equipment -- Tangible personal property that is used in the performance of a contract to improve real property, such as tools, machinery, implements, accessories, repair and replacement parts, or any item that is rented or leased. Equipment includes all items that do not meet the definitions of consumable items or incorporated materials.

(5) Incorporated materials -- Tangible personal property that loses its distinct and separate identity when incorporated into real property. Examples of incorporated materials include framing lumber, bricks, concrete, doors, and windows.

(6) Labor -- For the purposes of this section, labor means all components of a transaction or contract directly related to the remodeling, repair, or restoration other than those components attributable to materials incorporated into the realty. Unrelated components, such as charges by engineers and architects, are also part of the labor component unless separately stated to the customer.

(7) Maintenance on real property -- For operational and functional improvements to realty, maintenance means scheduled, periodic work that is necessary to sustain or support safe, efficient, continuous operations, or to prevent the decline, failure, lapse, or deterioration of the improvement. Taxable real property services that are described by §3.356 of this title (relating to Real Property Service) do not qualify as maintenance. Maintenance does not include work to remodel, modify, upgrade, perform major repair, or restore, even if the work is scheduled or periodic.

(A) As it relates to maintenance, the term "scheduled" means anticipated and designated to occur within a given time period or production level.

(B) As it relates to maintenance, the term "periodic" means ongoing or continual or at least occurring at intervals of time or production that are reasonably predictable.

(C) The scheduled shutdown or turnaround of a manufacturing or processing plant is considered to be maintenance within the meaning of this definition.

(8) New construction -- All new improvements to real property including initial finish out work to the interior or exterior of the improvement. An example is a multiple story building that has had only its first floor finished and occupied. The initial finish out of each additional floor before initial occupancy or use is considered new construction. New construction also includes the addition of new, usable square footage to an existing structure. Examples are the addition of a new wing onto an existing building, or the addition of a new mezzanine level within an existing building. Reallocation of existing square footage inside a structure is remodeling and does not constitute the addition of new, usable square footage. For example, the removal or relocation of interior walls to expand the size of a room, or the finish out of an office space that was previously used for storage, is remodeling. Raising the ceiling of a room or the roof of a building is not new construction unless new, usable square footage is created.

(9) Prior contract -- A written contract, or a written bid that becomes a written contract, into which the parties enter before the effective date of the applicable section of the Tax Code. See §3.319 of this title (relating to Prior Contracts).

(10) Real property -- Land, including structures and other improvements that are embedded into or permanently affixed to the land.

(11) Remodeling or modification -- To rebuild, replace, alter, modify, or upgrade existing real property. However, the replacement of an item that is within an operational and functional improvement to realty is not taxable remodeling or modification when the work is scheduled and periodic maintenance as defined in paragraph (7) of this subsection. Improvements to manufacturing or production units of chemical plants or petrochemical refineries that meet the definition of increased capacity are not remodeling or modification services. See §3.362 of this title (relating to Labor Relating to Increasing Capacity in a Production Unit in a Petrochemical Refinery or Chemical Plant). Work that is performed after the initial finish out has been completed is remodeling even when the improvement has not been occupied or used. For example, a prospective tenant wants the unit of a completely finished out shopping complex repainted before the tenant leases the unit. The repainting is remodeling. Partial demolition of existing nonresidential realty is taxable remodeling. The complete demolition of an existing nonresidential improvement to real property is neither remodeling nor modification and is not taxable.

(12) Repair -- To mend or bring back real property that was broken, damaged, or defective as near as possible to its original working order. However, minor repair work that is performed on operational and functional improvements to realty is not taxable repair if the work is done in accordance with paragraph (7) of this subsection.

(13) Residential property -- Property that is used as a family dwelling, multifamily apartment or housing complex, nursing home, condominium, or retirement home. The term includes homeowners association-owned and apartment-owned swimming pools,

laundry rooms, and other common areas for tenants' use. Common areas of mixed residential and nonresidential property are allocated or prorated based on the ratio of residential to nonresidential use of the property. The term does not include any commercial area open to nonresidents, retail outlets, hospitals, hotels, or any other facilities that are subject to the hotel occupancy tax.

(14) Restoration -- An activity that is performed to bring back real property that is still operational and functional but that has faded, declined, or deteriorated, as near as possible to its original condition. Minor restorative work that is performed within the meaning of paragraph (7) of this subsection is maintenance, not restoration.

(15) Unrelated service. A service is unrelated if:

(A) it is not the repair, remodeling, or restoration of nonresidential real property, nor a service or labor that is taxable under any other provision of the Tax Code, Chapter 151;

(B) it is of a type that is commonly provided on a stand-alone basis; and

(C) the performance of the service is distinct and identifiable. Examples of unrelated services that may be excluded from the tax base are the creation of engineering plans or architectural designs, new construction, increased capacity, and maintenance on real property.

(b) Tax responsibilities of persons who repair, remodel, or restore nonresidential real property.

(1) All persons who repair, restore, or remodel nonresidential real property must obtain Texas sales and use tax permits. Persons who construct new improvements to realty, perform maintenance on real property, or repair, restore, or remodel residential real property should refer to §3.291 of this title (relating to Contractors).

(2) All persons who repair, restore, or remodel nonresidential real property must collect tax on the total sales price to the customer less separately stated charges for unrelated services. The total sales price does not include Texas sales or use tax that the service provider must collect from customers. See §3.286 of this title (relating to Seller's and Purchaser's Responsibilities). The service provider may, in good faith, accept valid resale, exemption, or direct payment exemption certificates in lieu of tax. Previously, lump-sum and separated contracts were treated differently for tax purposes. This distinction is no longer valid when the contract is for the repair, remodeling, or restoration of nonresidential real property.

(3) A contract that involves both nonresidential repair, restoration, or remodeling and new construction is taxable in total unless the charge for new construction labor is separately stated to the customer as outlined in paragraph (7) of this subsection. An example is remodeling a restaurant's kitchen at the same time that a new dining area outside the existing structure is added. Work on the kitchen is taxable as remodeling, while the construction of the new dining area is nontaxable new construction. Minor repair, restoration, or remodeling that is performed in connection with new construction is not taxable if the portion of the charge that is attributed to repair, restoration, or remodeling is 5.0% or less of the overall lump-sum charge. All separately stated charges for repair, restoration, remodeling, or other taxable services are taxable, even if they constitute 5.0% or less of the total contract price.

(4) All persons who repair, restore, or remodel nonresidential real property owe tax at the time of purchase on all machinery, equipment, materials, and supplies that are used but not incorporated into the realty. The service provider is not entitled to a credit for tax paid on taxable items that are used but not incorporated into the realty.

(5) Items used in performing repairs, remodeling, or restoration for exempt entities.

(A) Persons who repair, remodel, or restore real property or make improvements to real property for entities exempted by Tax Code, §151.309 or §151.310, may claim an exemption for tangible personal property used in those activities if the tangible personal property is incorporated into real property in the performance of the contract.

(B) Person who repair, remodel, or restore real property or make improvements to real property for entities that are exempted under Tax Code, §151.309 or §151.310, may claim an exemption for the purchase of taxable services that are used in those activities if the service is performed at the job site and if the contract requires the specific service to be provided or purchased by the person who makes the improvement to realty, or the service is integral to the performance of the contract.

(C) Persons who use consumable items in the improvement of realty that is repaired, remodeled, or restored for entities that are exempt under Tax Code, §151.309 or §151.310, may claim an exemption for the purchase of a consumable item if use of the item is necessary for the performance of the contract and the item is completely consumed at the job site.

(D) Persons who repair, restore, or remodel real property may issue a properly completed exemption certificate in lieu of tax for the purchase of items that are identified in subparagraphs (A) through (C) of this paragraph. The exemption certificate must show the service provider as the purchaser and must identify the exempt entity for whom the improvements are made and the project for which the items are purchased.

(6) Repair, restoration, or remodeling that is performed upon a structure that is used both for residential and commercial purposes is taxable in total unless the labor on the residence is separately identified. The labor to repair, restore, or remodel the residence will not be taxable if separately stated. The charge for repair, restoration, or remodeling to common areas of mixed residential and nonresidential property is taxed based upon the ratio of residential to nonresidential use of the property.

(7) If a combination of repair, restoration, or remodeling and new construction is performed under the same contract, and the repair, restoration, or remodeling portion exceeds 5.0% of the overall charge, then the parties to the contract must separately identify taxable and nontaxable labor along with the charges that apply to each or else the entire contract is presumed to be for repair, restoration, and remodeling and is taxable. Both parties must retain documentation that clearly defines the work that is performed to show that, had the new construction and remodeling been done independently, the charge for each would reasonably approximate the amount allocated. Examples of acceptable documentation are written contracts that detail the scope of work, bid sheets, tally sheets, schedules of values, and blueprints. If no written contract clearly shows agreement on the taxable and nontaxable work that is performed, then the customer and the service provider must prepare a written certification that verifies the allocation of charges for repair, restoration, or remodeling and new construction. The comptroller may recalculate the charges if the allocation appears unreasonable, and either party may be held responsible for the additional tax due.

(8) Repainting is presumed to be a restoration or remodeling activity. Either party may overcome the presumption by showing that the scope of the work meets the definition of maintenance found in subsection (a)(7) of this section. Persons who perform repainting or other restoration activities should collect sales tax on the total charge

to the customer unless the customer provides a properly completed exemption certificate as outlined in subsection (c)(2) or (4) of this section.

(9) If a combination of taxable services (e.g., repair of nonresidential property), nontaxable services (e.g., new construction, residential repair, or maintenance), and nontaxable unrelated services are sold or purchased for a single charge and the portion that relates to taxable services represents more than 5.0% of the total charge, the total charge is presumed to be taxable. The service provider may overcome this presumption by submission of documentary evidence that establishes the percentages of the total charge that relate to taxable services and to nontaxable services. Examples of acceptable documentation include written contracts that detail the scope of work, bid sheets, tally sheets, schedules of values, and blueprints.

(c) Tax responsibilities of persons who perform maintenance on real property.

(1) A person who performs maintenance on real property and incorporates tangible personal property into the realty acts as a contractor and is subject to §3.291 of this title (relating to Contractors).

(2) A person who performs maintenance on real property and does not incorporate tangible personal property into the realty as part of that service provides nontaxable services and owes tax on all taxable items that are used to perform those services.

(d) Exemptions, exceptions, and exclusions.

(1) A person who performs taxable services has the burden of obtaining an exemption certificate for any exemption that a customer claims. However, if the customer is a governmental entity, a purchase order from the governmental entity is sufficient documentation.

(2) Maintenance on real property is a nontaxable service.

(A) To qualify a purchase as nontaxable real property maintenance, a service provider's customer must prove by way of maintenance schedules or work orders or other similar forms of evidence that the services meet the definition of maintenance on real property that is stated in subsection (a)(7) of this section. If the service provider does not have a written contract, but is only hired on a per job basis, then the service provider must presume that the service is repair or restoration and must therefore collect tax. If the customer has documentation to prove that the service qualifies as maintenance, then the customer may issue to the service provider an exemption certificate in lieu of paying tax or provide the documentation required to overcome the presumption. The certificate must state that the labor is maintenance as defined in subsection (a)(7) of this section, rather than repair or restoration as defined in subsection (a)(13) and (15) of this section, and that the customer is liable for any additional tax that is due in the event that the comptroller determines that a taxable service was performed.

(B) Repairs or restoration that are performed under a claimed maintenance contract will not change a nontaxable maintenance contract into a taxable repair or restoration contract so long as the charges that are attributable to the repairs or restoration are 5.0% or less of the overall charge. Note: The 5.0% test applies to each contract and subcontract. For example, if five different companies provide lump-sum contracts for services, then each contract stands alone for the purposes of determining whether the taxable services are 5.0% or less of that contract. In the absence of a written contract, the 5.0% test will apply to the total charge billed by each service provider.

(C) A contract that includes maintenance and repair or restoration will be taxable in total if the charges for repairs and/or restoration services exceed 5.0% of the total charges and are not separately identified to the customer in the contract or billing. All separately stated charges for repair, restoration, remodeling, or other taxable services are taxable, even when the taxable services constitute 5.0% or less of the total contract price.

(3) The modification of parts of existing structures solely to support the addition of new space will not change a new construction contract into a remodeling contract so long as the charges that are attributable to remodeling are 5.0% or less of the overall charge. Examples are conversion of a one-story building into a two-story building with the addition of a stairway to the existing structure to provide access to the new space, or the removal of an existing wall to allow the addition of structural support in the process of construction of a new room outside of the existing structure. Contracts with remodeling charges that exceed 5.0% are taxable in total unless the charges for remodeling are separately identified to the customer. However, see subsection (b)(9) of this section.

(4) A service provider may accept a properly completed exemption certificate in place of tax for the separately stated charges for labor to remodel, restore, or repair buildings that are listed in the National Register of Historic Places. The service provider is a contractor under §3.291 of this title (relating to Contractors).

(5) A service provider may accept a properly completed exemption certificate in lieu of tax for both materials and labor charges from an entity that is exempt under Tax Code, §151.309 or §151.310(a)(3), (4), or (5), or that is exempt under Texas Civil Statutes. A service provider may accept a properly completed exemption certificate for both materials and labor charges from an entity that is exempted by Tax Code, §151.310(a)(1) or (2), if the repair, restoration, or remodeling appears reasonably related to the exempt purpose of the organization. See §3.322 of this title (relating to Exempt Organizations).

(6) A service provider who enters into a contract with a nonexempt entity to improve real property for the primary use and benefit of an entity that is exempted under Tax Code, §151.309 or §151.310, may accept a properly completed exemption certificate in lieu of tax. If the improvement is for the primary use and benefit of an entity that is exempted under Tax Code §151.310(a)(1) or (2), then the primary use and benefit must relate to the exempt purpose of that entity.

(7) A service provider who enters into a contract with a nonexempt entity to add improvements to real property that will become government property may accept a properly completed exemption certificate if the nonexempt entity dedicates the real property and the improvement to a governmental entity before any work begins and the governmental entity accepts the real property and the improvement. If, at a later date, the governmental entity fails to accept the improvement, the non-exempt entity will owe tax on the service.

(8) A service provider may accept a properly completed exemption certificate from a manufacturer for separately stated charges for equipment that qualifies for the manufacturing exemption. See §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing).

(9) The labor to repair real or tangible personal property that is damaged within a disaster area by the condition or occurrence that caused the area to be declared a disaster area is exempt from tax if the charge for labor is separately stated to the customer. The materials that are used to perform the repairs are taxable. A person who has property repaired under this paragraph should issue to the service provider an exemption certificate in lieu of tax. The service provider must presume that all work is taxable until the customer issues an exemption certificate that covers the separately stated labor portion of the bill. If the charge for the repair is lump-sum, the total charge is taxable.

(10) No sales tax is due on the wages or salary paid by an employer to an employee who provides the labor to repair, remodel, or restore real property that belongs to and is used by the employer. A person is considered the employee of the employer if the employer pays the person's wages or salary, withholds applicable federal taxes from the employee's wages or salary, pays employment-related benefits such as health insurance, and exercises direct control over the work that the employee performs.

(e) Resale certificates.

(1) Persons who repair, restore, and remodel real property may issue a resale certificate in lieu of tax to suppliers of tangible personal property only if the tangible personal property will be incorporated into the customer's realty. For example, a repairman or remodeler purchases paint to repaint a repaired or remodeled area. The paint is transferred to the customer as a part of the finished job. The repairman or remodeler may purchase the paint tax free by issuing a resale certificate. Tax is due on the total amount that is charged the customer, including amounts that are charged for the paint and for the services. A resale certificate may not be issued for materials and supplies used or consumed by the repairman or remodeler that are not incorporated into the customer's realty.

(2) A resale certificate may be issued for a service if the buyer intends to transfer the service as an integral part of taxable services. A service will be considered as an integral part of a taxable service if the service purchased is essential to the performance of the taxable service and is of a type without which the taxable service could not be performed. Examples of services for which a resale certificate may be issued in lieu of tax are landscaping and surveying services if the landscaping or surveying is performed upon the property that is remodeled.

(f) Local taxes. Local taxes (city, county, transit authority, city transit department, and special purpose districts) apply to services in the same way as they apply to tangible personal property.

(1) Generally, service providers must collect local sales taxes if their place of business is within a local taxing jurisdiction, even if the service is actually provided at a location outside that jurisdiction.

(2) Transit sales taxes do not apply to services that are provided outside the boundaries of a transit area.

(3) If the service provider's place of business is outside a local taxing jurisdiction but the service is provided to a customer who is located within a local taxing jurisdiction, then local use taxes apply and the service provider is required to collect the local taxes.

(4) For information on the collection and reporting responsibilities of providers and purchasers of taxable services, see §3.374 of this title (relating to Collection and Allocation of the City Sales Tax), §3.375 of this title (relating to City Use Tax), §3.424 of this title (relating to Collection and Allocation of Transit Sales Tax), and §3.425 of this title (relating to Transit Use Tax).

(g) Use tax. If a seller of a service is not engaged in business in Texas or in a specific local taxing jurisdiction, and is not required to collect Texas tax, then the Texas customer must report and pay the use tax directly to the Texas comptroller.

(h) Enterprise project. An entity that qualifies as an enterprise project may qualify to claim a refund of sales tax that is paid on the total charge for nonresidential repair, restoration, or remodeling. See §3.329 of this title (relating to Enterprise Projects, Enterprise Zones, and Defense Readjustment Zones).

(i) Prior contracts. Prior contracts that are signed before the effective date of a statutory change that affects nonresidential real property repair, remodeling, and restoration shall be governed by the provisions of §3.319 of this title (relating to Prior Contracts).

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

Filed with the Office of the Secretary of State, on July 19, 2001.

TRD-200104181
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: September 2, 2001
For further information, please call: (512) 463-3699

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 23. VEHICLE INSPECTION
SUBCHAPTER D. VEHICLE INSPECTION RECORDS

37 TAC §23.52

The Texas Department of Public Safety proposes amendment to §23.52, relating to Vehicle Inspection Forms. The main purpose of the rulemaking is to provide a new form for the collection of fees and surcharges for Texas Emission Reduction Plan Fund.

The new form created in §23.52 is used in the verification of the Vehicle Identification Number (VIN) for out-of-state vehicles during first time state inspection under Texas Transportation Code §548.256.

Tom Haas, Chief of Finance, has determined that for each year of the first five years this amendment is in effect there will be no fiscal impact for the state or local governments as a result of this amendment. He has also determined there is no anticipated economic cost to individuals, small businesses, or micro-businesses.

Mr. Haas has also determined that for the eight-year period the section is in effect, the public benefit anticipated is to provide funding under the plan for the diesel emissions reduction incentive program, the motor vehicle purchase or lease incentive program, the new technology research and development program, and to provide funding for the energy efficiency grant program. The ultimate goal is to provide improved air quality for the public.

Comments on the proposal may be submitted to E. Eugene Summerford, Legal Counsel, Vehicle Inspections and Emissions, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0543, (512) 424-2777.

This amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, Texas Transportation Code, §548.002,

and §548.256(c), as amended by the provisions of Senate Bill 5 passed by the 77th Legislature.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 and §548.256(c) are affected by the amendments.

§23.52. Vehicle Inspection Forms.

(a) Rejection receipt, Form VI-7, shall be executed in duplicate by the certified inspector when a vehicle fails to conform to the standards of safety. The original shall be given to the driver of the rejected vehicle; duplicates shall be kept in the vehicle inspection station's records.

(1) The owner or operator of the vehicle shall pay the inspection fee for each complete inspection conducted on a vehicle.

(A) An inspection certificate shall be issued for the vehicle if it meets all inspection requirements.

(B) If the vehicle fails to meet inspection requirements, the owner or operator of the rejected vehicle may:

(i) have the necessary repairs made on the vehicle by the inspection station;

(ii) pay the required inspection fee, accept a rejection receipt showing all defects for which the vehicle was rejected, and have the vehicle repaired at any place he chooses;

(iii) after required adjustments have been made, return the vehicle to the vehicle inspection station that issued the rejection for one reinspection without charge, provided the vehicle is returned within 15 days of the date of the initial inspection.

(C) If a vehicle inspection station cannot reinspect a vehicle for which it has issued a rejection receipt, it will return the inspection fee to the owner or operator of the vehicle.

(2) A rejection receipt issued to a vehicle which does not have a valid current inspection certificate does not entitle such vehicle to legally operate on a public street or highway.

(b) Every vehicle inspection station shall have a signature card, Form VI-13, on file with the department.

(1) The owner, or person whose signature appears on the inspection station application, Form VI-2, shall endorse the signature card in the space provided at the bottom of the signature card. Signatures of other designated employees may be affixed to the signature card upon approval by the vehicle inspection station owner or operator.

(2) A requisition, Form VI-18, shall be signed by a person who is associated with the business requesting certificates or by the owner or employee with the proper signature as it appears on the signature card on file with the department.

(3) The vehicle inspection station owner or operator shall notify the department representative when an employee authorized to sign the requisition, Form VI-18, resigns or otherwise leaves the vehicle inspection station.

(c) Requisition for certificates, Form VI-18.

(1) The initial order for certificates is supplied by the department representative when the vehicle inspection station is placed into operation.

(2) Any subsequent order for certificates shall be submitted by the vehicle inspection station and directed to the Texas Department of Public Safety, Vehicle Inspection Section, Austin, or those local Texas Department of Public Safety offices which have certificates available.

(3) Requisition, Form VI-18, shall be accompanied by a cashier's check or money order made payable to the Texas Department of Public Safety.

(4) All information required on the requisition, VI-18, shall be completed. The signature on the requisition shall be a signature that has been authorized on the signature card, VI-13, on file with the department, or the signature of a person who is associated with the business requesting certificates.

(5) The original and one copy of the requisition, Form VI-18, shall be submitted by the vehicle inspection station.

(d) Vehicle inspection station reports, Forms VI-8 and VI-8a, shall be executed in duplicate with the original showing all required information on inspections for the previous period. It shall be mailed to Vehicle Inspection Records Bureau in Austin. The duplicate shall be retained by the vehicle inspection station for one year.

(e) Warning notice, Form VI-20, will be issued to the owner or operator of a vehicle inspection station or to the certified inspector at a vehicle inspection station for a violation of the provisions of the Uniform Act or the Rules and Regulations Manual for Official Vehicle Inspection Stations and Certified Inspectors. The warning notice:

(1) will be filled out as directed by the department;

(2) no penalty will be assessed;

(3) will be entered into the vehicle inspection station's record at the department if it is an inspection station warning; and

(4) will be entered into the certified inspector's record at the department if it is a certified inspector warning.

(f) Receipt for Texas inspection certificate, Form VI-41, will be issued by the department representative investigating a motor vehicle traffic accident when it is apparent that the vehicle involved is damaged to the extent that repair would be necessary before passing inspection. Reinspection of the vehicle is required within 30 days after receipt is issued.

(g) Out-of-State Verification Forms. The department shall furnish serially numbered identification certificates[~~, Form VI-30-A,~~] to all vehicle inspection stations for the purpose of verifying the vehicle identification number on vehicles coming into Texas from another state or country. Effective September 1, 2001 until August 30, 2008, two separate forms are used:

(1) Vehicle Identification Certificate, VI-30, shall be executed in triplicate by the certified inspector when the vehicle is presented for inspection for the purpose of registration in this state and the vehicle is subject to collection of the Texas Emissions Reduction Plan Fund Fee.

(A) The original of the identification certificate will be presented to the driver of the vehicle for use in registering and titling the vehicle. The first copy of the identification certificate will be forwarded to the department weekly with the Texas Emissions Reduction Plan Fund Fee collected, minus the statutorily authorized station administrative cost. The second copy of the inspection certificate will be retained in the certificate book by the inspection station.

(B) Form VI-30 will be obtained from the department by requisition using Form VI-18, signed by a person who is the owner or employee of the inspection station with the proper signature as it appears on the signature card on file with the department. These requisitions shall be submitted by the vehicle inspection station and directed to the Texas Department of Public Safety, Vehicle Inspection Records, Austin, or those local Texas Department of Public Safety offices, which

have certificates available. Inspection stations will maintain a sufficiently reasonable number of VI-30 forms on-hand to adequately provide for out-of-state vehicles, however requisitions of VI-30 forms in bulk numbers are not allowed.

(C) The issuance of Form VI-30 by inspection stations will be recorded on the VI-8, VI-8a, and VI-8b.

(2) Vehicle Identification Certificate VI-30A, shall be executed in duplicate by the certified inspector when the vehicle is presented for inspection for the purpose of registration in this state and the owner of the vehicle is exempt from the Texas Emissions Reduction Plan Fund Fee.

(A) The original of the identification certificate will be presented to the driver of the vehicle for use in registering and titling the vehicle. The copy of the identification certificate will be retained by the inspection station.

(B) Form VI-30A will be obtained from the department by requisition using Form VI-18, signed by a person who is the owner or employee of the inspection station with the proper signature as it appears on the signature card on file with the department. These requisitions shall be submitted by the vehicle inspection station and directed to the Texas Department of Public Safety, Vehicle Inspection Records, Austin, or those local Texas Department of Public Safety offices, which have certificates available. Inspection stations, particularly those on or near military bases, will maintain a sufficiently reasonable number of VI-30A forms on-hand to adequately provide for out-of-state vehicles, however orders of bulk numbers of this form for exempted vehicle owners are not allowed.

(C) The issuance of Form VI-30A by inspection stations will be recorded on the VI-8, VI-8a, and VI-8b.

(3) Form VI-30 or Form VI-30A certificates shall be safeguarded in the same manner required to safeguard safety inspection certificates.

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

Filed with the Office of the Secretary of State, on July 23, 2001.

TRD-200104237
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: September 2, 2001
For further information, please call: (512) 424-2135

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SUBCHAPTER F. VEHICLE INSPECTION STATION OPERATION

37 TAC §23.80

The Texas Department of Public Safety proposes new §23.80, Out-of-State Vehicle Identification Number Verification. The main purpose of this rulemaking is to provide procedures for the collection of Texas Emission Reduction Plan Fund fee. The fee is collected during the verification of the Vehicle Identification Number (VIN) for out-of-state vehicles during first time state inspection under Texas Transportation Code §548.256.

During this verification procedure, inspection stations collect $225.00 and retain $5.00 to cover administrative costs and remit the remainder to the Department of Public Safety for deposit with the Comptroller of Public Accounts for credit to the Texas Emissions Reduction Plan Fund.

Tom Haas, Chief of Finance, has determined for the eight-year period the proposed amendment will be in effect there will be a significant revenue impact of approximately $105,737,060 per annum for the Texas Emission Reduction Plan Fund. The Department of Public Safety will incur costs of $1,673,832 in fiscal year 2002 and $464,963 in each subsequent year. These costs would be associated with computer equipment, programming and in the first year and additional accounting, mail-handling, and inspections records tracking activities in all years. It has been determined that the revenue impact and costs to local government is minimal.

There is an anticipated economic cost to individuals, small businesses, or micro-businesses. The entities, which bring motor vehicles from other states to be titled in this state, will incur a fee increase from $1.00 to $225.00 for the verification of the vehicle identification number for each such vehicle.

Mr. Haas has also determined that for the eight-year period the section is in effect, the public benefit anticipated is to provide funding under the plan for the diesel emissions reduction incentive program, the motor vehicle purchase or lease incentive program, the new technology research and development program, and to provide funding for the energy efficiency grant program. The ultimate goal is to provide improved air quality for the public.

Comments on the proposal may be submitted to E. Eugene Summerford, Legal Counsel, Vehicle Inspections and Emissions, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0543, (512) 424-2777.

This amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.256(c) as amended by the provisions of Senate Bill 5 passed by the 77th Legislature.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.256 are affected by the amendments.

§23.80. Out-of-State Vehicle Identification Number Verification.

(a) Purpose. The purpose of this rule is to implement Texas Transportation Code, §548.256, as amended by Senate Bill 5, 77th Legislature (2001), relating to the verification form for the registration of out-of-state vehicles.

(b) Duration. This rule is effective from September 1, 2001 until August 30, 2008.

(c) Vehicle inspection stations shall perform a vehicle identification number (VIN) verification on all vehicles brought into the state prior to registration by persons other than manufacturers or importers. This vehicle identification verification shall only be performed after the vehicle has passed the compulsory state safety inspection, to include emissions testing if the inspection station is in a designated county as defined in §23.93 of this title relating to Vehicle Emissions Inspection Requirements.

(d) During the verification a certified inspector shall record the complete vehicle identification number exactly as it appears on the vehicle. The number will not be taken from any title, old registration or any other document. If the vehicle identification is missing, obscured or mutilated, verification form will be completed showing "NONE",

"OBSCURED", or "MUTILATED" in the blanks provided for the vehicle identification number. In addition to the vehicle identification number, the information listed below shall be recorded on the verification form.

(1) The number appearing on the odometer of the vehicle at the time of the inspection, if the vehicle has an odometer. In the event the vehicle has no odometer, then "NONE" shall be recorded in the blank provided on the form.

(2) The model year of the vehicle inspected.

(3) The make of the vehicle inspected.

(4) The body style of the vehicle inspected.

(5) If previously registered in another state, the state or country in which the vehicle was last registered to include:

(A) the year of the license where last licensed, and

(B) the license number where last licensed, or

(C) "NPR" (no previous registration).

(e) Inspection stations shall collect the Texas Emissions Reduction Plan Fund Fee of $225 for all Vehicle Identification Number (VIN) verifications performed except where the vehicle owner is exempt. Exempt vehicle owners are officers, enlisted persons, selectees, or draftees of the Army, Army Reserve, Army National Guard, Air National Guard, Air Force, Air Force Reserve, Navy, Navy Reserve, Marine Corps, Marine Corps Reserve, Coast Guard, or Coast Guard Reserve of the United States, and the spouse and children of such officers, enlisted persons, selectees, or draftees. Proof of exemption will be provided by presentation of a valid and current Department of Defense Identification (ID) Card for Members of the Uniformed Services, their Dependents, and Other Eligible Individuals: DD Form 2 (all versions), DD Form 1173 (all versions), DD Form 4 (Enlistment/Reenlistment Document Armed Forces Of The United States), DD Form 47 (Record Of Induction), or a letter signed by the individual's commanding officer or designate. A copy of this documentation must be provided to the inspection station for retention.

(f) The Vehicle Identification Number verification shall be recorded on one of two different forms. The appropriate form, form handling instructions, and appropriate fees are explained below.

(1) Form VI-30. This form shall be used for all Vehicle Identification Number (VIN) verifications except where the vehicle owner is exempt from the payment of the Texas Emissions Reduction Plan Fee.

(A) Inspection stations shall collect $225 for each VI-30 completed. This fee is in addition to any other vehicle inspection fee, including emissions testing, and can not be waived. The inspection station may retain $5 of this fee for administrative costs and remit the remainder to the department as provided in subparagraph (C)(ii) of this paragraph.

(B) Form VI-30 is provided by the department to inspection stations in a triplicate form. The certified vehicle inspector shall complete the VI-30 to include all information included in subsection (d) of this section.

(C) The disposition of completed VI-30 forms are as follows:

(i) The original, or top page, of the VI-30 will be forwarded to the department together with the state's portion of the fees collected for the Texas Emissions Reduction Plan Fund. On the final business day, every week, inspection stations shall send all completed VI-30 forms from the preceding week with a completed negotiable check or money order in an amount equal to $220 for each completed form. Inspections stations shall mail both the completed VI-30 forms and a check or money order in an appropriate sized envelope to: Department of Public Safety, Attn: Central Cash Receiving, P.O. Box 149246, Austin, TX 78714.

(ii) The first copy, or second page, of the VI-30 will be presented to the driver of the vehicle for use in registering and titling the vehicle.

(iii) The second copy, or last page of the VI-30 certificate will be retained in the certificate book by the inspection station and be subject to audit by department personnel.

(2) Form VI-30A. This form shall be used for all VIN verifications where the vehicle owner is exempt from the payment of the Texas Emissions Reduction Plan Fee.

(A) Inspection stations shall collected $1.00 for each VI-30A completed. This fee is in addition to any other vehicle inspection fee, including emissions testing, but may be waived. The inspection station retains this fee to cover administrative costs.

(B) Form VI-30A is provided by the department to inspection stations in a duplicate form.

(C) The disposition of completed VI-30A forms are as follows:

(i) The original, or top page, of the VI-30A will be presented to the driver of the vehicle for use in registering and titling the vehicle.

(ii) The copy, or last page of the VI-30A will be retained by the inspection station, along with a copy of the vehicle owner's proof of exemption and be subject to audit by department personnel.

(g) Forms VI-30 and VI-30A shall be completed by the certified inspector performing the vehicle identification number verification, using a permanent marking pen or typewriter. The certified inspector will not sign the identification certificate until all blanks have been completed. The certified inspector shall insure that each carbon copy of this form is legible.

(h) If any error is made while recording any of the information required on the either the Form VI-30 or Form VI-30A certificate, VOID the form and fill out another certificate with the correct information. Inspection stations shall keep all copies of all voided forms.

(i) Failure to comply with this or other sections concerning the issuance and safeguarding of out-of-state vehicle identification verification certificates, collection of the Texas Emissions Reduction Plan Fund Fee, or remittance of the fee to the state shall result in the immediate suspension and or revocation of the certification of the station and/or inspector, in addition to any criminal prosecution.

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

Filed with the Office of the Secretary of State, on July 23, 2001.

TRD-200104238

Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: September 2, 2001
For further information, please call: (512) 424-2135

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SUBCHAPTER H. COMMERCIAL MOTOR VEHICLE COMPULSORY INSPECTION PROGRAM

37 TAC §23.101

The Texas Department of Public Safety proposes amendments to §23.101, relating to Commercial Motor Vehicle Compulsory Inspection Program. The main purpose of the rulemaking is to provide procedures for the collection of inspection surcharge for the Texas Emission Reduction Plan Fund. Under proposed rule amendment each commercial vehicle inspection performed under Transportation Code, §548.504 will require an annual additional surcharge of $10.

Tom Haas, Chief of Finance, has determined for the eight-year period the proposed amendment will be in effect, there will be a significant revenue impact of approximately $4,207,333 per annum for the Texas Emission Reduction Plan Fund. It has been determined that the revenue impact and costs to local government is minimal.

There is an anticipated economic cost to individuals, small businesses, or micro-businesses. These entities owning commercial vehicles will incur an increase of $10 for the annual inspection of each such vehicle.

Mr. Haas has also determined that for the eight-year period the amended section is proposed is in effect, the public benefit anticipated is to provide funding under the plan for the diesel emissions reduction incentive program, the motor vehicle purchase or lease incentive program, the new technology research and development program, and to provide funding for the energy efficiency grant program. The ultimate goal is to provide improved air quality for the public.

Comments on the proposal may be submitted to E. Eugene Summerford, Legal Counsel, Vehicle Inspections and Emissions, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0543, (512) 424-2777.

This amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, Texas Transportation Code, §548.5055 as amended by the provisions of Senate Bill 5 passed by the 77th Legislature and Texas Transportation Code, §548.504.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.5055 and §548.504 are affected by the amendments.

§23.101. Commercial Motor Vehicle Compulsory Inspection Program.

(a) All commercial motor vehicles registered in this state shall be required to pass an annual inspection of all safety equipment required by the Federal Motor Carrier Safety Regulations on or before the expiration of the current state inspection certificate and not later than December 31, 1994.

(b) All commercial motor vehicles required to be inspected under the Federal Motor Carrier Safety Regulations are also subject to the regular state inspection requirements as provided in Texas Transportation Code, Chapter 548.

(c) Effective September 1, 2001, a[~~A~~] fee of $50 plus a $10 Texas Emission Reduction Fee surcharge will be charged for each commercial [~~motor~~] vehicle safety inspection. An inspection station shall charge a total of $60 for each commercial vehicle safety inspection, and shall pay an advance payment, to the department, of $20 for each certificate. The department shall deposit $10 into the General Revenue Fund and $10 into the Texas Emissions Reduction Fund. A unique inspection certificate will be issued by the department to designate that the vehicle has met the Federal Motor Carrier Safety Regulations and state inspection requirements.

(d) The commercial motor vehicle inspection certificate will expire on the last day of the month and year indicated.

(e) Except for any appropriate grace period, a person may not operate a commercial motor vehicle registered in this state unless it is equipped as required by the Federal Motor Carrier Safety Regulations and displays a valid commercial motor vehicle inspection certificate.

(f) For purposes of the Commercial Motor Vehicle Compulsory Inspection Program, the term "commercial motor vehicle" means a self-propelled or towed vehicle used on a public highway to transport passengers or property if:

(1) the vehicle or combination of vehicles has a gross weight, registered weight, or gross weight rating of more than 26,000 pounds;

(2) the vehicle is a farm vehicle with a gross weight, a registered weight, or a gross weight rating of more than 48,000 pounds;

(3) the vehicle is designed to transport more than 15 passengers, including the driver;

(4) the vehicle is used in the transportation of hazardous materials in a quantity requiring placarding as required under the federal Hazardous Materials Transportation Act (49 U.S.C., §§1801-1813);

(5) the vehicle or combination of vehicles has a gross weight rating of more than 10,000 pounds and is operated in interstate commerce and registered in this state;

(6) the vehicle is a school bus that will operate at a speed authorized by Texas Transportation Code, §545.352(b)(A); or

(7) the vehicle is a school activity bus, as defined in Texas Transportation Code, §541.201, that has a gross weight, registered weight, or gross weight rating of more than 26,000 pounds, or is designed to transport more than 15 passengers, including the driver.

(g) Exceptions to the commercial motor vehicle safety inspection program are:

(1) all school bus operations used to transport only children and or school personnel from home to school and school to home, except that contract school buses used for any purpose other than transporting children to and from school only are not exempt;

(2) transportation performed by the federal government, state, or any political subdivision of a state or an agency established under a compact between states that has been approved by the Congress of the United States;

(3) the occasional transportation of personal property by individuals not for compensation or in the furtherance of a commercial enterprise;

(4) the transportation of human corpses or sick or injured persons;

(5) the operation of fire trucks and rescue vehicles while involved in emergency and related operations;

(6) the private transportation of passengers; and

(7) farm vehicles with a gross weight, registered weight, or gross weight rating less than 48,000 pounds (except interstate operation of more than 10,000 pounds

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

Filed with the Office of the Secretary of State, on July 23, 2001.

TRD-200104239
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: September 2, 2001
For further information, please call: (512) 424-2135

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WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register.***

TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

7 TAC §139.21

The State Securities Board has withdrawn from consideration proposed new §139.21 which appeared in the April 6, 2001, issue of the *Texas Register* (26 TexReg 2612).

Filed with the Office of the Secretary of State on July 23, 2001.

TRD-200104249
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: July 23, 2001
For further information, please call: (512) 305-8300

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TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 201. LICENSING AND ENFORCEMENT--PRACTICE AND PROCEDURE

22 TAC §201.2

The Texas Funeral Service Commission has withdrawn from consideration proposed amendment to §201.2 which appeared in the February 16, 2001, issue of the *Texas Register* (26 TexReg 1472).

Filed with the Office of the Secretary of State on July 17, 2001.

TRD-200104120
O.C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Effective date: July 17, 2001
For further information, please call: (512) 936-2474

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22 TAC §201.3

The Texas Funeral Service Commission has withdrawn from consideration proposed amendment to §201.3 which appeared in the February 16, 2001, issue of the *Texas Register* (26 TexReg 1472).

Filed with the Office of the Secretary of State on July 17, 2001.

TRD-200104121
O.C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Effective date: July 17, 2001
For further information, please call: (512) 936-2474

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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 daysafter the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federalstatute or regula tion requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

PART 5. GENERAL SERVICES COMMISSION

CHAPTER 125. SUPPORT SERVICES DIVISION - TRAVEL AND VEHICLE

SUBCHAPTER A. TRAVEL MANAGEMENT SERVICES

1 TAC §125.27

The General Services Commission adopts amendments to Title 1, T.A.C., Chapter 125, Subchapter A, §125.27 concerning the Travel Agents Services Contracts without changes to the proposed text as published in the June 15, 2001, issue of the *Texas Register* (26 TexReg 4354). The amendments are adopted without changes to the proposed text and will not be republished.

The amendments to Title 1, T.A.C., Chapter 125, Subchapter A, §125.27 are adopted to provide reduced travel services by possibly contracting with a greater number of travel agencies.

The adoption of the amendments to Title 1, T.A.C., Chapter 125, Subchapter A, §125.27 amends language to change the number of years from two years to one year that a travel agency must wait to reapply for participation in the State Travel Management Program if the travel agency canceled its contract before the expiration of the contract.

No comments have been received concerning the proposed amendments to Title 1, T.A.C., Chapter 125, Subchapter A, §125.27.

The amendments to §125.27 are adopted under the authority of the Texas Government Code, Title 10, Subtitle D, Chapter 2171, which provides the General Services Commission with the authority to promulgate rules necessary to implement the sections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 20, 2001.

TRD-200104202

Cynthia J. Hill
Acting General Counsel
General Services Commission
Effective date: August 9, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 463-3960

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 3. BOLL WEEVIL ERADICATION PROGRAM

SUBCHAPTER J. ORGANIC COTTON RULES

4 TAC §3.608

The Texas Department of Agriculture (the department) adopts amendments to §3.608 (b) concerning Calculation of Indemnity or Compensation under the department's organic cotton rules, without changes to the proposal published in the June 15, 2001 issue of the *Texas Register* (26 TexReg 4357). The amendment is adopted to create a timetable that will work under the current indemnity and compensation formulas thereby creating a more efficient manner of compensating organic growers who are eligible for payment under the department's organic cotton rules. The current October 31 due date for all payment was established under a process where a payment was only given when a crop was destroyed due to infestation, and the destruction would have occurred prior to the October 31 date. Under current, recently amended rules, an organic grower is allowed to grow out acreage that is treated by the foundation under emergency pest or disease treatment program provisions as provided under Chapter 18 of this title (relating to Organic Standards and Certification). With this scenario, the Texas Boll Weevil Eradication Foundation (the foundation) would not have the data necessary to provide compensation until the crop is harvested and gin receipts are provided to indicate the amount of cotton harvested from treated fields. The amendment is adopted at the request of foundation staff and organic growers, and provides for payment of compensation within 30 days of the foundation's receiving the gin receipts from treated acres. In addition, the indemnification for crop destruction is also changed to be consistent, by requiring payment to be made within 30 days from the date of verification of actual crop destruction.

No comments were received on the proposal.

The amendments to §3.608 are adopted under the Texas Agriculture Code §74.125, which provides the department with the authority to develop rules and procedures for growing of organic cotton in boll weevil eradication zones, including rules that provide indemnification for organic cotton growers for reasonable losses that result from a prohibition of production of organic cotton or from any requirement of destruction of cotton; and the Code, §74.120, which provides the department with the authority to adopt reasonable rules to carry out the purposes of the Code, Chapter 74, Subchapter D.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 17, 2001.

TRD-200104104
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: August 6, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 463-4075

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TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 101. GENERAL ADMINISTRATION

7 TAC §101.6

The State Securities Board adopts new §101.6, concerning the historically underutilized business program, without changes to the proposed text as published in the April 6, 2001, issue of the *Texas Register* (26 TexReg 2589).

The new rule satisfies the requirement in Texas Government Code §2161.003, which requires an agency to adopt historically underutilized business ("HUB") rules of the General Services Commission. Those HUB rules are contained in 1 TAC §§111.11- 111.28.

Vendors dealing with the agency will be aware of the HUB policy and program at the agency applicable to the purchase of goods and services paid for with appropriated funds.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, Article 581-28-1 and Texas Government Code, §2161.003. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 2161.003 requires a state agency to adopt the General Services Commission's HUB rules as the agency's own rules applicable to the agency's construction projects and purchases of goods and services paid for with appropriated money.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 23, 2001.

TRD-200104242
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: August 12, 2001
Proposal publication date: April 6, 2001
For further information, please call: (512) 305-8300

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CHAPTER 107. TERMINOLOGY

7 TAC §107.2

The State Securities Board adopts an amendment to §107.2, concerning definitions, to coordinate with new Chapters 115 and 116, which are being concurrently adopted. The rule was adopted with changes to the proposed text as published in the April 6, 2001, issue of the *Texas Register* (26 TexReg 2590). The amendment to the definition of "rendering services as an investment adviser" was not adopted by the Board. However, due to the bifurcation of the dealer and investment adviser rules in new Chapters 115 and 116 that are being concurrently adopted, the cross-reference in the existing definition is updated to reflect the location of the notice filing provisions in the new Chapter 116, which is being concurrently adopted.

The rule updates terminology and takes into account the definitions that are now contained in Chapters 115 and 116.

Persons seeking guidance about terms used in the Board's rules will find defined terms used consistently throughout.

Comments on the proposal were received from the Investment Company Institute ("ICI") and the Investment Counsel Association of American, Inc. ("ICAA"). The ICI objected to the definition of "rendering services as an investment adviser" as unduly broad. The Board concluded that the definition could be improved and left the definition unchanged except to update a cross-reference and will be proposing, in a future issue of the *Texas Register*, an amendment to this definition. The ICAA requested that the Board incorporate an additional definition for "federal covered advisers." The Board declined to add a definition at this time but will be proposing, in a future issue of the *Texas Register*, a definition for this term that comports with the intent of House Bill 2255, recently enacted by the 77th Texas Legislature and effective September 1, 2001.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

§107.2. Definitions.

The following words and terms, when used in Part VII of this title (relating to the State Securities Board), shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act or Securities Act or Texas Securities Act--The Texas Securities Act, Texas Civil Statutes, Article 581-1 et seq., as amended.

(2) Affiliate--An "affiliate" of, or person "affiliated" with a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

(3) APA or Administrative Procedure Act--The Administrative Procedure Act, Texas Government Code, Title 10, Chapter 2001, as amended.

(4) Applicant--A person who submits an application for registration of securities, documents in connection with the offer and sale of federal covered securities, or for registration as a dealer, investment adviser, or salesman, or who files an application for an order of the Securities Commissioner.

(5) Board or Securities Board--The State Securities Board of the State of Texas.

(6) Business days--For the purpose of filing Form 133.29 pursuant to the requirements of §109.13(l) of this title (relating to Limited Offering Exemptions), means ordinary business days and does not include Saturdays, Sundays, or state holidays.

(7) Certified--In conjunction with the term "financial statement(s)," means financial statement(s) prepared in accordance with generally accepted accounting principles and examined in accordance with generally accepted auditing standards by independent certified public accountants or independent public accountants for the purposes of expressing an opinion thereon. Such opinion shall be one acceptable to the Securities Commissioner.

(8) Code or Internal Revenue Code--The Internal Revenue Code of 1986, as amended.

(9) Commissioner or Securities Commissioner--The State Securities Commissioner for the State of Texas.

(10) Contested case--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the Securities Commissioner, or the Securities Board, after an opportunity for adjudicative hearing before an administrative law judge of the State Office of Administrative Hearings.

(11) Control--The possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or company, whether through the ownership of voting securities, by contract, or otherwise.

(12) Credit union--For definition see the Texas Credit Union Act (Texas Finance Code, Chapter 121, as amended), which regulates such credit unions.

(13) Detailed balance sheet--A balance sheet.

(14) Detailed statement showing all assets and liabilities--A balance sheet.

(15) Domestic corporation--A corporation incorporated under the laws of the State of Texas.

(16) Employer--For purposes of the Texas Securities Act, §5.I(b), includes a general partner of a limited partnership with respect to a security sold or distributed by such limited partnership in a transaction otherwise meeting the requirements of §5.I(b).

(17) Federal covered securities--Any security or securities described as a "covered security" or as "covered securities" in the Securities Act of 1933, §18(b), or rules or regulations promulgated thereunder. However, until October 11, 1999, or such other date Congress may authorize, federal covered securities for which a fee has not been paid and promptly remedied following written notification from the Securities Commissioner to the applicant of the nonpayment or underpayment of such fees required by the Texas Securities Act, shall be excluded from the definition of federal covered securities.

(18) Financial statement(s)--Balance sheet and related statements of income, changes in stockholders' equity, and cash flows, all (consolidated, if applicable) prepared in accordance with generally accepted accounting principles. The information contained in the previously described statements may vary according to presentation and titles as they relate to specific entities, such as individuals, partnerships, and nonprofit organizations.

(19) Investment adviser--Any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities; but does not include:

(A) a bank, or any bank holding company as defined in the federal Bank Holding Company Act of 1956, which is not an investment company;

(B) any lawyer, accountant, engineer, teacher, or geologist, whose performance of such services is solely incidental to the practice of his or her profession;

(C) any broker or dealer whose performance of such services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor;

(D) the publisher of any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation; or

(E) any person whose advice, analyses, or reports relate to no securities other than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest which shall have been designated by the Secretary of Treasury, pursuant to the Securities Exchange Act of 1934, §3(a)(12), as exempted securities for the purposes of that Act.

(20) Investment Advisers Act of 1940--The federal statute of that name, as amended, 15 United States Code §80b-1, et seq.

(21) Investment Company Act of 1940--The federal statute of that name, as amended, 15 United States Code §80a-1, et seq.

(22) License--The whole or part of any registration as a dealer, salesman, or agent, or similar form of permission required by the Texas Securities Act to sell securities or render investment advice.

(23) Licensing--The process respecting the granting, denial, renewal, revocation, suspension, withdrawal, or amendment of a license.

(24) Managing agent or manager--One who is authorized to act generally for an organization within a particular locality.

(25) NASD--The National Association of Securities Dealers, Inc., and NASD Regulation, Inc., a subsidiary of the National Association of Securities Dealers, Inc.

(26) Officer--A president, vice president, secretary, treasurer, or principal financial officer, comptroller, or principal accounting officer, or any other person occupying a similar status or performing similar functions with respect to any organization or entity, whether incorporated or unincorporated.

(27) Operating statement--An income statement.

(28) Parent--A person controlling another person directly or indirectly.

(29) Profit and loss statement--An income statement.

(30) Proposed plan of business--As used in the Texas Securities Act, those aspects and only those aspects of the business set-up (other than that done or proposed in respect to the pricing and selling of its securities) which would materially affect the business relationship between the prospective investor and those in control of the business as such relationship would exist after the sale to the public of the securities sought to be registered.

(31) Regulatory standards--All standards coming within the meaning of "rule" as defined herein.

(32) Rendering services as an investment adviser--Any person coming within the designation cannot conduct such activity without first being registered as an investment adviser/dealer under the provisions of the Act or notice-filed under the provisions of §116.1(b)(2)(A) of this title (relating to General Provisions). Likewise, every person employed or appointed, or authorized by such person to render services which include the giving of investment advice cannot conduct such activities unless registered as a dealer/investment adviser, a salesman, or an agent under the provisions of the Act, or notice-filed as a dealer/investment adviser, a salesman, or an agent under the provisions of §116.1(b)(2)(B) of this title.

(33) Rule--Any statement by the Board or the Securities Commissioner of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the Board or Securities Commissioner.

(34) Savings and loan association--For definition see the Texas Savings and Loan Act (Texas Finance Code, Chapter 61, as amended), which regulates such savings and loan associations.

(35) SEC--The United States Securities and Exchange Commission.

(36) Securities Act of 1933--The federal statute of that name, as amended, 15 United States Code §77a, et seq.

(37) Securities Exchange Act of 1934--The federal statute of that name, as amended, 15 United States Code §78a, et seq.

(38) Security holders or purchasers of securities--As such terms are used in the Texas Securities Act, §5.I, do not include holders of any options granted pursuant to a plan which falls within the exemption for employee plans provided by the Texas Securities Act, §5.I(b).

(39) Staff--Personnel of the Securities Board, excluding the members of the Board, the Securities Commissioner, and the Deputy Commissioner.

(40) State, territory, or insular possession of the United States--As used in the Texas Securities Act, includes a commonwealth.

(41) Statement to reflect the financial condition--A balance sheet.

(42) Telephone or telegram--For purposes of the Texas Securities Act, §7.C(2)(c), includes any means of electronic transmission such as, but not limited to, telephone, telegraph, wireless, graphic scanning, modem, or facsimile; provided, however, that the office of the State Securities Board has the necessary equipment to accept such a transmission.

(43) Within this state--

(A) A person is a "dealer" who engages "within this state" in one or more of the activities set out in the Texas Securities Act, §4.C, if either the person or the person's agent is present in this state or the offeree/purchaser or the offeree/purchaser's agent is present in this state at the time of the particular activity. A person can be a dealer in more than one state at the same time.

(B) Likewise, a person is a "salesman" who engages "within this state" in one or more of the activities set out in the Texas Securities Act, §4.D, whether by direct act or through subagents except as otherwise provided, if either the salesman or the salesman's agent is present in this state or the offeree/purchaser or the offeree/purchaser's agent is present in this state at the time of the particular activity. A person can be a salesman in more than one state at the same time.

(C) Offers and sales can be made by personal contact, mail, telegram, telephone, wireless, electronic communication, or any other form of oral or written communication.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 23, 2001.

TRD-200104243
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: August 12, 2001
Proposal publication date: April 6, 2001
For further information, please call: (512) 305-8300

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CHAPTER 109. TRANSACTIONS EXEMPT FROM REGISTRATION

7 TAC §109.13

The State Securities Board adopts an amendment to §109.13, concerning limited offering exemptions, with changes to the proposed text as published in the April 6, 2001, issue of the *Texas Register* (26 TexReg 2591). The changes consist of the addition of punctuation and the removal of the reference to "salesmen" in paragraph (k)(17).

The amendment relocates a provision from §115.1(f), which is being concurrently repealed.

Issuers utilizing the exemption provided in §109.13(k) will be apprised of the exemption from dealer and agent registration for their officers, directors, and employees who answer questions about a Regulation D Rule 505 or 506 offering.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Articles 581-28-1, 581-5.T, and 581-12.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing

registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 12.B provides that the Board may prescribe dealer/agent registration exemptions by rule.

§109.13. Limited Offering Exemptions.

(a) Public solicitation, well-informed, and sophisticated investor. The offer for sale or sale of the securities of the issuer would not involve the use of public solicitation under the Act, §5.I, if the issuer, after having made a reasonable factual inquiry has reasonable cause to believe, and does believe, that the purchasers of the securities are sophisticated, well-informed investors or well-informed investors who have a relationship with the issuer or its principals, executive officers, or directors evincing trust between the parties (namely close business association, close friendship, or close family ties), and such purchasers acquire the securities as ultimate purchasers and not as underwriters or conduits to other beneficial owners or subsequent purchasers. The use of a registered dealer in a sale otherwise meeting the requirements of §5.I does not necessarily mean that the transaction involves the use of public solicitation. The offer without advertising to a person who did not come within the class of persons described in this subsection does not alone result in public solicitation if the issuer had a reasonable cause to believe and did believe that such person fell within the class of persons described, and that such offer was not made indiscriminately.

(1) The term "well-informed" could be satisfied through the dissemination of printed material to each purchaser prior to his or her purchase, which by a fair and factual presentation discloses the plan of business, the history, and the financial statements of the issuer, including material facts necessary in order that the statements made, in the light of circumstances under which they are made, not be misleading.

(2) In determining who is a sophisticated investor at least the following factors should be considered.

(A) The financial capacity of the investor, to be of such proportion that the total cost of that investor's commitment in the proposed investment would not be material when compared with his total financial capacity. It may be presumed that if the investment does not exceed 20% of the investor's net worth (or joint net worth with the investor's spouse) at the time of sale that the amount invested is not material.

(B) Knowledge of finance, securities, and investments, generally. This criteria may be met by the investor's purchaser representative if such purchaser representative has such knowledge, so long as such purchaser representative:

(i) has no business relationship with the issuer;

(ii) represents only the investor and not the issuer; and

(iii) is compensated only by the investor.

(C) Experience and skill in investments based on actual participation. This criteria may be met by the investor's purchaser representative if such purchaser representative has such experience and skill, so long as such purchaser representative:

(i) has no business relationship with the issuer;

(ii) represents only the investor and not the issuer; and

(iii) is compensated only by the investor.

(b) Advertisements. The term "advertisements" does not include the use of the type of printed material as set out in subsection (a) of this section under the discussion of the term "well-informed." Further, the main concept to be considered in a definitional analysis of the term "advertisements," as it is used in §5.I, is the method of use of the printed material. The following circumstances, though not intended to be exclusive, will be considered in determining whether the method of use of any printed material is within the limits of §5.I:

(1) limited printing of the material;

(2) limited distribution of the material only to persons who the issuer, after having made a reasonable factual inquiry has reasonable cause to believe and does believe are sophisticated investors, or to persons who have a relationship with the issuer as set forth in subsection (a) of this section, or to their purchaser representatives;

(3) control of the printing and distribution of the printed material;

(4) recognition of the necessity of compliance with the requirements set forth in this subsection on the part of the issuer and the investor. Such recognition might consist of a printed prohibition on the front in large type that the circular is for that individual's confidential use only, and may not be reproduced; and, the use of a statement warning that any action contrary to these restrictions may place such individual and the issuer in violation of the Texas Securities Act.

(c) Number of persons or security holders. In computing the number of purchasers or security holders for §5.I, the following criteria shall be used.

(1) There shall be counted as one purchaser or security holder any purchaser or security holder together with:

(A) any relative or spouse of such purchaser or security holder who has the same home as such purchaser or security holder; any relative of such spouse who has the same home as such purchaser or security holder; any relative or spouse or relative of such spouse who is a dependent of such security holder;

(B) any trust or estate in which such purchaser or security holder or any of the persons related to him as specified in subparagraph (A) or (C) of this paragraph collectively have more than 50% of the beneficial interest (excluding contingent interests); and

(C) any corporation or other organization of which such purchaser or security holder or any of the persons related to him as specified in subparagraph (A) or subparagraph (B) of this paragraph collectively are the beneficial owners of more than 50% of the equity securities (excluding directors' qualified shares) or equity interest.

(2) There shall be counted as one purchaser or security holder any corporation, partnership, association, joint stock company, trust, or unincorporated association, organized and existing other than for the purpose of acquiring securities of the issuer for which the exemption is claimed under §5.I.

(3) Any general partner of a limited partnership who is subject to general liability for the obligations of the limited partnership and actively engages in the control and management of the business and affairs of the limited partnership or of the managing general partner of the partnership shall not be counted as a purchaser or security holder for purposes of §5.I.

(4) The exemptions contained in the Act, §5.I(a) and (c), as interpreted in subsections (a)-(j) of this section may not be combined with the exemptions promulgated pursuant to the Act, §5.T, contained in subsections (k) and (l) of this section to exceed sales to 35 unaccredited investors in a 12-month period.

(d) Total number of security holders. The phrase "the total number of security holders of the issuer" in §5.I(a) includes all security holders of the issuer without regard to their places of residence (within or without the State of Texas) and without regard to where they acquired the securities. In determining the number of persons for purposes of §5.I(c), prior sales to persons residing outside the State of Texas and prior sales to Texas residents consummated outside the State of Texas shall be included unless such sales were made in compliance with §139.7 of this title (relating to Sale of Securities to Nonresidents).

(e) Other exemptions. The phrase "exempt under other provisions of this §5" in §5.I(c) means exempt under any provisions of the Act, other than §5.I(a), and subsections (k) and (l) of this section.

(f) Employee plan advertising. No public solicitation or advertisement under §5.I occurs by the distribution to eligible employees, officers, or directors of the employer or its subsidiaries, parents, or subsidiaries of such parents, of a prospectus filed under the Securities Act of 1933 with the Securities and Exchange Commission for the plan or any other material required or permitted to be distributed by the Securities Act of 1933 in connection with such plan when the securities under the plan are sold or distributed in a transaction otherwise meeting the requirements of §5.I(b).

(g) Employee plan sales. Only the employer and its participating subsidiaries, parents, or subsidiaries of such parents, if any, may offer or sell securities in connection with the employee plan without registration as dealers. An employee of the employer or participating subsidiary who aids in offering or selling such securities in connection with the employee plan is not required to be registered as an agent provided the employee meets all of the following conditions:

(1) the employee was not hired for the purpose of offering or selling such securities;

(2) the employee's activity involving the offer and sale of such securities is strictly incidental to his bona fide primary nonsecurities-related work duties; and

(3) the employee's compensation is based solely on the performance of such other duties, i.e., the employee does not receive any compensation for offering for sale, selling, or otherwise aiding the sale of securities.

(h) Employee plans for counting purposes. A noncontributory employees stock ownership plan or employees stock ownership trust which holds securities of the employer company for the benefit of that company's employees shall be counted as one security holder under §5.I. Employee participants in such an employee stock ownership plan or trust will not be deemed security holders of the employer company for purposes of counting security holders under §5.I solely because of their participation in the plan or trust. However, employee participants receiving distributions of securities from the plan or trust will be deemed security holders of the employer on receipt of securities of the employer from the plan or trust.

(i) Notices. There is no notice filing requirement for sales made under the Act, §5.I(a), (b), or (c).

(j) Limitations on disposition. The issuer and any person acting on its behalf shall exercise reasonable care to assure that the purchasers are acquiring the securities as an investment. Such reasonable care should include, but not be limited to, the following:

(1) making reasonable inquiry to determine if the purchaser is acquiring the securities for his or her own account or on behalf of other persons;

(2) placing a legend on the certificate or other document evidencing the securities to the effect that the securities have not been registered under any securities law and setting forth or referring to the restrictions on transferability and sale of the securities;

(3) issuing stop transfer instructions to the issuer's transfer agent, if any, with respect to the securities, or, if the issuer transfers its own securities, making a notation in the appropriate records of the issuer;

(4) obtaining from the purchaser a signed written agreement to the effect that the securities will not be sold without registration under applicable securities laws or exemptions therefrom; and

(5) prior to sale, written disclosure to each purchaser, to the effect that a purchaser of the securities must bear the economic risk of the investment for an indefinite period of time because the securities have not been registered under applicable securities laws and therefore cannot be sold unless they are subsequently registered under such securities laws or an exemption from such registration is available; and that the securities are subject to the limitations set forth in paragraphs (2)-(4) of this subsection.

(k) Uniform limited offering exemption. In addition to sales made under the Texas Securities Act, §5.I, the State Securities Board, pursuant to the Act, §5.T, exempts from the registration requirements of the Act, §7, any offer or sale of securities offered or sold in compliance with the Securities Act of 1933, Regulation D, Rules 230.505 and/or 230.506, including any offer or sale made exempt by application of Rule 508(a), as made effective in United States Securities and Exchange Commission Release Number 33-6389 and as amended in Release Numbers 33-6437, 33-6663, 33-6758, and 33-6825, and which satisfies the following further conditions and limitations.

(1) No commission, fee, or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state unless such person is appropriately registered in this state. It is a defense to a violation of this subsection if the issuer sustains the burden of proof to establish that he or she did not know and in the exercise of reasonable care could not have known that the person who received a commission, fee, or other remuneration was not appropriately registered in this state.

(2) No exemption under this subsection shall be available for the securities of any issuer if any of the parties described in the Securities Act of 1933, Regulation A, Rule 230.262, as made effective in United States Securities and Exchange Commission Release Number 33-6949:

(A) has filed a registration statement which is subject of a currently effective registration stop order entered pursuant to any state's securities law within five years prior to the filing of the notice required under this exemption;

(B) has been convicted within five years prior to the filing of the notice required under this exemption of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(C) is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five years prior to the filing of the notice required under this exemption or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to the filing of the notice required under this exemption;

(D) is subject to any state's administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities;

(E) is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminary restraining or enjoining, or is subject to any order, judgment, or decree of any court of competent jurisdiction, permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five years prior to the filing of the notice required under this exemption.

(3) The prohibitions of paragraph (2)(A)-(C) and (E) of this subsection shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against such person or if the broker/dealer employing such party is licensed or registered in this state and the Form BD filed with this state discloses the order, conviction, judgment, or decree relating to such person. No person disqualified under this subsection may act in a capacity other than that for which the person is licensed or registered.

(4) Any disqualification caused by this subsection is automatically waived if the state securities administrator or Agency of the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied. It is a defense to a violation of this subsection if the issuer sustains the burden of proof to establish that he or she did not know and in the exercise of reasonable care could not have known that a disqualification under this subsection existed.

(5) The issuer shall file with the Securities Commissioner a notice on Form D as made effective in United States Securities and Exchange Commission Release Number 33-6663 (17 Code of Federal Regulations §239.500).

(A) The notice shall be filed no later than 15 days after the receipt of consideration or the delivery of a subscription agreement by an investor in this state which results from an offer being made in reliance upon this exemption and at such other times and in the form required under Regulation D, Rule 230.503 to be filed with the Securities and Exchange Commission.

(B) The notice shall contain an undertaking by the issuer to furnish to the Securities Commissioner, upon written request, the information furnished by the issuer to offerees.

(C) Unless otherwise available, included with or in the initial notice shall be a consent to service of process.

(D) Every person filing the initial notice on Form D shall pay a filing fee of 1/10 of 1.0% of the aggregate amount of securities described as being offered for sale, but in no case more than $500.

(6) In all sales to nonaccredited investors in this state, one of the following conditions must be satisfied or the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that one of the following conditions is satisfied.

(A) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial situation, and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed 10% of the investor's net worth, it is suitable.

(B) The purchaser either alone or with his/her purchaser representative(s) has such knowledge and experience in financial and business matters that he/she is or they are capable of evaluating the merits and risks of the prospective investment.

(7) A failure to comply with a term, condition, or requirement of paragraphs (1) and (6) of this subsection will not result in loss of the exemption from the requirements of the Act, §7, for any offer or sale to a particular individual or entity if the person relying on the exemption shows:

(A) the failure to comply did not pertain to a term, condition, or requirement directly intended to protect that particular individual or entity; and

(B) the failure to comply was insignificant with respect to the offering as a whole; and

(C) a good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of paragraphs (1) and (6) of this subsection.

(8) Sales made pursuant to this subsection to nonaccredited investors must comply with the disclosure requirements of subsection (a)(1) of this section.

(9) Transactions which are exempt under this subsection may not be combined with offers and sales exempt under any other rule or section of the Act; however, nothing in this limitation shall act as an election. Should for any reason, the offer and sale fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.

(10) The Securities Commissioner may, by rule or order, increase the number of purchasers or waive other conditions of this exemption.

(11) This limited offering transactional exemption is designed to further the objectives of compatibility with federal exemptions and uniformity among the states.

(12) Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the anti-fraud provisions of the Texas Securities Act.

(13) In view of the objective of this subsection and the purposes and policies underlying the Texas Securities Act, the exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this subsection, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this subsection.

(14) Nothing in this subsection is intended to relieve registered dealers, salesmen, or agents from the due diligence, suitability, or know your customer standards or any other requirements of law otherwise applicable to such registered persons.

(15) Review of Form D.

(A) The staff of the State Securities Board will review all notice filings made under this subsection for completeness of the information required to be filed under this section. If the staff determines that a filing is incomplete in any material respect, the staff will within five days of receipt of the form issue a letter notifying the user of the form of the deficiency.

(B) A user of this section who receives notice from the staff of a deficiency in a form filed under this section may correct the deficiency within 30 days of the date that the deficiency letter is issued by the staff. If a timely correction is made, the filing shall be deemed

to be complete and in compliance with the filing requirements as of the date the original filing was received.

(C) In order to assist voluntary compliance within this subsection and to aid users in filing notices required under paragraph (5) of this subsection, the staff of the State Securities Board is available to answer questions about this regulation. Inquiries should be addressed to the Director of Securities Registration.

(16) If the securities comply with this subsection (except for paragraphs (1)-(6), (8), and (10) of this subsection) and are federal covered securities, as that term is defined in §107.2 of this title (relating to Definitions), the issuer should refer to Chapter 114 of this title (relating to Federal Covered Securities) for the applicable filing and fee requirements. (Issuers are advised of their obligation to comply with the dealer and agent registration requirements of the Texas Securities Act and Board rules. See §114.4(g) of this title (relating to Filings and Fees).)

(17) Issuers in Regulation D offerings. When an offering is made in compliance with Regulation D of the SEC and the offering will be made by or through a registered securities dealer, the issuer and its directors, officers, agents, and employees may make themselves available to answer questions from offerees, as required by Rule 502(b)(2)(v) of Regulation D, without being required to register as securities dealers or agents under the Act, §12.

(l) Intrastate limited offering exemption. In addition to sales made under the Securities Act, §5.I, the State Securities Board, pursuant to the Securities Act, §5.T, exempts from the registration requirements of the Securities Act, §7, any offer or sale of any securities by the issuer itself, or by a registered dealer acting as agent for the issuer provided all offers and sales are made pursuant to an offering made and completed solely within this state and all the conditions in paragraphs (1)-(11) of this subsection are satisfied.

(1) The sale is made, without the use of any public solicitation or advertisements, as set forth in subsection (a) and subsection (b) of this section to:

(A) not more than 35 new security holders of the issuer who meet the criteria stated in subsection (a) of this section and who became security holders during the period of 12 months ending with the date of the sale in question (subject to paragraph (7) of this subsection); and

(B) other well-informed investors who are "accredited investors" as defined in paragraph (11) of this subsection. (For purposes of this subsection, the term "well informed" shall have the same meaning as set out in subsection (a)(1) of this section, and the term "5.I" in such subsection shall include sales made pursuant to this subsection.)

(2) Neither the issuer nor the registered dealer (as such terms are defined in paragraph (4) of this subsection):

(A) is currently subject to any administrative order issued by state or federal authorities within five years of the expected offer and sale of securities in reliance upon this exemption, which order:

(i) is based upon a finding that such person has engaged in fraudulent conduct; or

(ii) has the effect of enjoining such person from activities subject to federal or state statutes designed to protect investors or consumers against unlawful or deceptive practices involving securities, insurance, commodities or commodity futures, real estate, franchises, business opportunities, consumer goods, or other goods and services;

(B) has been convicted within five years prior to commencement of the offering of any felony or misdemeanor of which fraud is an essential element, or which is a violation of the securities laws or regulations of this state, or of any other state of the United States, or of the United States, or any foreign jurisdiction; or which is a crime involving moral turpitude; or which is a criminal violation of statutes designed to protect consumers against unlawful practices involving insurance, securities, commodities or commodity futures, real estate, franchises, business opportunities, consumer goods, or other goods and services;

(C) is subject to any order, judgment, or decree entered within five years prior to commencement of the offering by any court of competent jurisdiction which temporarily or permanently restrains or enjoins such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving any false filing with any state; or which restrains or enjoins such person from activities subject to federal or state statutes designed to protect consumers against unlawful or deceptive practices involving insurance, commodities or commodity futures, real estate, franchises, business opportunities, consumer goods, or other goods and services.

(3) The prohibitions of subparagraphs (A)-(C) of paragraph (2) shall not apply if the party subject to the disqualifying order is duly licensed to conduct securities-related business in the state in which the administrative order or judgment was entered against such party or, if the order or judgment was entered by federal authorities, the prohibitions of subparagraphs (A)-(C) of paragraph (2) shall not apply if the party subject to the disqualifying order is duly licensed to conduct securities-related business by the Securities and Exchange Commission. Any disqualification caused by paragraph (2) is automatically waived if the state or federal authorities which created the basis for disqualification determine upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

(4) For purposes of paragraphs (2) and (3) only, "issuer" includes any directors, executive officers, general partners, or beneficial owners of 10% or more of any class of its equity securities (beneficial ownership meaning the power to vote or direct the vote and/or the power to dispose or direct the disposition of such securities), and "registered dealer" shall include any partners, directors, executive officers, or beneficial owner of 10% or more of any class of the equity securities of the registered dealer (beneficial ownership meaning the power to vote or direct the vote and/or the power to dispose or direct the disposition of such securities).

(5) Upon application, and for good cause shown, the Commissioner may waive a disqualification contained in paragraph (2).

(6) The offering complies with subsections (a)-(d) and (j) of this section. However, persons who are "accredited investors" as defined in paragraph (11) of this subsection are deemed to be "sophisticated" as defined in subsection (a)(2) of this section.

(7) This subsection may not be combined with the Securities Act, §5.I(a) or §5.I(c), or subsection (k) of this section to make sales to more than 35 unaccredited security holders during a 12-month period. Except for accredited investors who became security holders pursuant to this subsection, security holders who purchase in sales made in compliance with this subsection are included in the count of security holders under §5.I(a) or purchasers under §5.I(c), but this subsection may be used to exceed the numbers of security holders or purchasers allowed by such sections over an extended period of time.

(8) Issuers who offer and sell securities under this subsection only through a securities dealer registered in Texas may do so without filing any notice with the State Securities Board.

(9) Notice filing requirements.

(A) For sales under subparagraph (1)(B) of this subsection, in whole or in part to accredited investors listed in paragraph (11)(E)-(H) of this subsection of such definition of accredited investor issuers who are not registered securities dealers and who do not sell securities by or through registered securities dealers shall file a sworn notice on Form 133.29 or a reproduction thereof not less than 10 business days before any sale claimed to be exempt under this subsection may be consummated. However, no notice is required for sales made under paragraph (1)(A) of this subsection or under paragraph (1)(B) of this subsection where the sales are made exclusively to accredited investors as defined in paragraph (11)(A)-(D) of this subsection or to entities in which all of the equity owners are accredited investors listed in paragraph (11)(A)-(D) of this subsection of such definition. The issuer may be required by the Securities Commissioner to give details concerning any information requested in Form 133.29 and may be required to furnish any additional information deemed necessary by the Securities Commissioner to determine the issuer's business repute and qualifications.

(B) Every issuer filing a notice on Form 133.29 shall pay a filing fee of 1/10 of 1.0% of the aggregate amount of securities described as being offered for sale, but in no case more than $500.

(10) Accredited investor security holders who purchase in sales made under this exemption are not counted as security holders under §5.I(a) or purchasers under §5.I(c) in determining whether any other sales to other security holders or purchasers are exempt under §5.I. That is to say, this exemption for sales to accredited investors is cumulative with and in addition to the exemptions contained in §5.I, and sales made under paragraph (1)(B) of this subsection are not considered in determining whether sales made in reliance on the exemptions contained in §5.I would be within the numerical limits on the number of security holders or purchasers contained in §5.I.

(11) For purposes of this subsection, accredited investor shall mean any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:

(A) any bank as defined in the Securities Act of 1933, §3(a)(2), whether acting in its individual or fiduciary capacity; insurance company as defined in the Securities Act of 1933, §2(13); investment company registered under the Investment Company Act of 1940 or a business development company as defined in that Act, §2(a)(48); small business investment company licensed by the U.S. Small Business Administration under the Small Business Investment Act of 1958, §301(c) or (d); employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, Title I, if the investment decision is made by a plan fiduciary, as defined in such Act, §3(21), which is either a bank, insurance company, or investment adviser registered under the Investment Advisers Act of 1940, or if the employee benefit plan has total assets in excess of $5 million;

(B) any private business development company as defined in the Investment Advisers Act of 1940, §202(a)(22);

(C) any organization described in the Internal Revenue Code, §501(c)(3), with total assets in excess of $5 million;

(D) any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;

(E) any person who purchases at least $150,000 of the securities being offered, where the purchaser's total purchase price does not exceed 20% of the purchaser's net worth at the time of sale, or joint net worth with that person's spouse, for one or any combination of the following:

(i) cash;

(ii) securities for which market quotations are readily available;

(iii) any unconditional obligation to pay cash or securities for which market quotations are readily available which obligation is to be discharged within five years of the sale of securities to the purchaser; or

(iv) the cancellation of any indebtedness owed by the issuer to the purchaser;

(F) any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds $1 million;

(G) any natural person who had an individual income or joint income with that person's spouse in excess of $200,000 in each of the two most recent years and who reasonably expects an income in excess of $200,000 in the current year; and

(H) any entity in which all of the equity owners are accredited investors under subparagraphs (A)-(D), (F), or (G) of this paragraph.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 23, 2001.

TRD-200104244
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: August 12, 2001
Proposal publication date: April 6, 2001
For further information, please call: (512) 305-8300

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CHAPTER 115. DEALERS AND SALESMEN

7 TAC §§115.1 - 115.7

The State Securities Board adopts the repeal of Chapter 115, consisting of §§115.1 - 115.7, concerning Dealers and Salesmen, without changes to the proposed text as published in the April 6, 2001, issue of the *Texas Register* (26 TexReg 2592).

The repeal allows for the concurrent adoption of a new Chapter 115, concerning dealers and agents, and a new Chapter 116, concerning investment advisers and investment adviser representatives.

The chapter is being replaced with better organized and more easily understandable provisions.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Articles 581-28-1 and 581-12.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 12.B provides

the Board with the authority to prescribe new dealer/agent registration exemptions by rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 23, 2001.

TRD-200104245
Denise Voigt Crawford
Securities Commissioner
State Securities Board
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For further information, please call: (512) 305-8300

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CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §§115.1 - 115.10

The State Securities Board adopts new chapter 115, consisting of §§115.1 - 115.10, concerning securities dealers and agents. Section 115.3 and §115.5 were adopted with changes to the proposed text as published in the April 6, 2001, issue of the *Texas Register* (26 TexReg 2592). Sections 115.1, 115.2, 115.4, and 115.6 - 115.10 were adopted without changes and will not be republished.

The change to §115.3 consisted of adding two commas in subsection (b)(3)(G). In §115.5 the text in subsection (b)(5), and in subsections (b)(11)(H) and (d)(3)(H), was made gender neutral and an unnecessary word was eliminated in subsection (e)(3)(F).

The new chapter replaces the existing Chapter 115, concerning dealers and salesmen, that is being concurrently repealed, with better organized and more understandable provisions that related specifically to securities dealers and their agents.

The new chapter will apprise dealers and their agents of their obligations under the Texas Securities Act ("TSA") and Board rules.

Comments on the new Chapter were received from the Investment Counsel Association of America, Inc. ("ICAA"), the Securities Industry Association ("SIA"), and Wilkie Farr & Gallagher ("WFG"). The ICAA generally supported the separation of the provisions relating to investment advisers, in new Chapter 116, from those relating to dealers, contained in new Chapter 115. The Board agreed and has adopted Chapter 115 substantially as published.

The SIA objected to the definition of "branch office" in §115.1 as being too broad in light of pending Securities and Exchange Commission ("SEC") changes in this area. The staff noted that making changes prior to the adoption of final SEC revisions would be premature. The Board adopted the definition without changes to the published proposal.

Regarding §115.2, the SIA urged the Board to consider eliminating some of the items that must be filed in connection with an application and renewal and to keep applications active for more than six months if the applicant continues to respond to staff requests for additional information. The Staff noted that certain items currently required could be eliminated once the provisions of House Bill 2255, recently enacted by the 77th Texas Legislature, become effective on September 1, 2001. The Board declined to eliminate items from the listing at this time but will be proposing, in a future issue of the *Texas Register*, the elimination of items that are no longer required due to changes made by H.B. 2255 and to add clarifications to keep applications active so long as the applicant continues to be responsive to information requests from staff.

The SIA commented generally in favor of certain examination waiver requirements in §115.3. The Board agreed and has adopted the section substantially as published.

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and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 12.B provides the Board with the authority to prescribe new dealer/agent registration exemptions by rule.

§115.3. Examination.

(a) Requirement. To determine the applicant's qualifications and competency to engage in the business of dealing in and selling securities, the State Securities Board requires a written examination on general securities principles and on state securities law. The passing score for all applicants on each examination is 70%.

(b) Examinations accepted.

(1) Each applicant must pass an examination on general securities principles. This requirement may be satisfied by passing an examination on general securities principles administered by the NASD. As set forth in paragraph (3) of this subsection, applicants for restricted registrations may substitute an examination dealing with a particular type of security for an examination on general securities principles.

(2) For purposes of this subsection, the Securities Commissioner recognizes the following general examinations administered by the NASD:

(A) Series 1 - General Securities Examination;

(B) Series 2 - NASD Non-Member General Securities Examination; and

(C) Series 7 - General Securities Representative Examination.

(3) In lieu of an examination on general securities principles, the Securities Commissioner recognizes the following limited examinations, administered by the NASD, for the corresponding restricted registrations:

(A) for persons seeking a restricted registration to deal exclusively in securities issued by open-end investment companies registered under the Texas Securities Act or the Investment Company Act of 1940, the Series 6 -- Investment Company Products/Variable Contracts Representative Examination;

(B) for persons seeking a restricted registration to accept orders unsolicited by such person from existing customers of the dealer, the Series 11 -- Assistant Representative/Order Processing Examination;

(C) for persons seeking a restricted registration to deal exclusively in direct participation program securities, the Series 22 -- Direct Participation Programs Representative Examination;

(D) for persons seeking a restricted registration to deal exclusively in municipal securities, the Series 52 -- Municipal Securities Representative Examination;

(E) for persons seeking a restricted registration to deal exclusively in corporate securities, the Series 62 -- Corporate Securities Representative Examination;

(F) for persons seeking a restricted registration to deal in all general securities except municipal securities, either the Series 17 -- General Securities Representative Examination, the Series 37 -- General Securities Representative Examination, the Series 38 -- General Securities Representative Examination, or the Series 47 -- General Securities Representative Examination; and

(G) for persons seeking a restricted registration to deal exclusively in government securities, the Series 72 -- Government Securities Representative Examination. A person registered on or before September 1, 1998, for the purpose of dealing exclusively in government securities, is not required to pass the Series 72 examination.

(4) Each applicant must pass an examination on state securities law. This requirement may be satisfied by passing an examination on the Texas Securities Act administered by this Agency or by passing the Uniform Securities Agent State Law Examination (Series 63) or the Uniform Combined State Law Examination (Series 66).

(c) Waivers of examination requirements.

(1) All persons who were registered in Texas on August 23, 1963, are not required to take any examinations.

(2) A full waiver of the examination requirements of the Texas Securities Act, §13.D, is granted by the Board to the following classes of persons:

(A) issuers offering securities in rights offerings to their own securities holders;

(B) issuers offering their own securities in exchange for outstanding securities of another corporation, provided consummation of the offer is dependent upon tender of at least 80% of such outstanding securities;

(C) issuers restricting distribution of securities to security holders of an affiliate company, a subsidiary, or a parent of the issuer, provided the registration certificate is issued on a temporary basis and terminated immediately after the offering;

(D) officers and employees whose firms restrict their officers' and employees' securities activities to acting as brokers between and among principals for the sale of a majority of the stock or equity securities of a privately held business pursuant to a privately negotiated purchase agreement, where the managerial control of the business will devolve upon the purchaser(s) and where compensation received by the firm will be payable for the brokerage activities only; and

(E) a person who completed the examinations required under this subsection, but whose registration has lapsed for more than two years and who has been continually employed in a securities- related position with an entity which was not required to be registered.

(3) A partial waiver of the examination requirements of the Texas Securities Act, §13.D, is granted by the Board to the following classes of persons:

(A) applicants who have been continuously registered with the Securities and Exchange Commission, National Association of Securities Dealers, New York Stock Exchange, or any other exchange listed in §6.F of the Texas Securities Act or recognized by the Board pursuant to §111.2 of the rules for 10 years immediately preceding the application for registration in Texas. These applicants are required to pass an examination on state securities law as required by subsection (b)(4) of this section;

(B) applicants who passed the "state securities examination" promulgated and formerly administered by the Psychological Corporation, New York, New York, now the Psychological Corporation, San Antonio, Texas, which was an examination on general securities principles. These applicants are required to pass an examination on state securities law as required by subsection (b)(4) of this section;

(C) applicants seeking registration for the purpose of dealing exclusively in real estate syndication interests or condominium

securities, provided such persons are licensed, at the time of application, under the Real Estate License Act (Texas Civil Statutes, Article 6573a et seq.). Such persons are not required to take a general securities examination, but are required to pass an examination on state securities law as required by subsection (b)(4) of this section;

(D) applicants seeking registration for the purpose of dealing exclusively in oil and gas interests (other than interests in limited partnerships). Such persons are not required to take the general securities examination, but are required to pass an examination on state securities law as required by subsection (b)(4) of this section. Provided, however, any persons registered prior to January 1, 1976, for the purpose of dealing exclusively in oil and gas interests, are not required to pass an examination; and

(E) applicants who are officers, partners, or employees of an issuer (other than an open-end investment company) if the issuer's securities will be registered for sale in Texas. Such officers, partners, and employees are not required to take the general securities examination, but are required to pass an examination on state securities law as required by subsection (b)(4) of this section. Evidences of registration granted pursuant to this subparagraph are restricted to sales of the currently registered securities of the issuer. Such evidences of registration must be surrendered to the State Securities Board for cancellation immediately upon completion of the distribution of securities for which the securities and dealer registrations have been obtained.

(4) The Securities Commissioner in his or her discretion is authorized by the Board to grant full or partial waivers of the examination requirements of the Texas Securities Act, §13.D.

(d) Texas securities law examination.

(1) The fee for each filing of a request to take the Texas securities law examination is $35. An admission letter issued by the Board is required for all entrants. The examination is given at 9:00 a.m. on each Tuesday at the office of the State Securities Board in Austin. The examination may be taken at other locations near principal population centers across the state. Testing centers require reservations and may charge an additional (monitor) fee for administering the examination. A list of examination centers with additional details may be obtained from the State Securities Board.

(2) While taking the examination on the Texas Securities Act, each applicant may use an unmarked copy of the Texas Securities Act as it is printed and distributed by the State Securities Board. No other reference materials are allowed to be used by applicants during the examination.

(3) Reexamination. An applicant who fails the examination on the Texas Securities Act may request reexamination. The applicant must bring his or her application up to date before retaking an examination.

§115.5. Minimum Records.

(a) Dealer records. Compliance with the record-keeping requirements of the United States Securities and Exchange Commission, found in 17 Code of Federal Regulations §240.17a-3 and §240.17a-4, will satisfy the requirements of this section.

(b) Records to be made by certain dealers. A person or company registered in Texas as a general securities dealer or a dealer in municipal securities shall make and keep current the following minimum records or the equivalent thereof.

(1) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash, and other debits and credits. Such records shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.

(2) Ledgers (or other records) that reflect all assets and liabilities, income and expense, and capital accounts.

(3) Ledger accounts (or other records) itemizing separately as to each cash and margin account of every customer and of such dealer and its partners, all purchases, sales, receipts, and deliveries of securities and commodities for such account and all other debits and credits to such account.

(4) Ledgers (or other records) that reflect the following:

(A) securities in transfer;

(B) dividends and interest received;

(C) securities borrowed and securities loaned;

(D) monies borrowed and monies loaned (together with a record of the collateral therefor and any substitutions in such collateral); and

(E) securities failed to receive and failed to deliver.

(5) A securities record or ledger that reflects separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping) carried by such dealer for his or her account or for the account of his or her customers or partners and showing the location of all securities long and the offsetting position of all securities short, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried.

(6) A memorandum of each brokerage order and of any other instruction given or received for the purchase or sale of securities, whether executed or unexecuted. Such memorandum shall show the terms and conditions of the order or instructions and of any modifications or cancellation thereof, the account for which entered, the time of entry, the price at which executed, and, to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of discretionary power by such dealer or any of its employees shall be so designated. The term "instruction" shall be deemed to include instructions between partners and employees of a dealer. The term "time of entry" shall be deemed to mean the time when such dealer transmits the order or instruction for execution or, if it is not so transmitted, the time when it is received.

(7) A memorandum of each purchase and sale for the account of such dealer showing the price, and, to the extent feasible, the time of execution; and, in addition, where such purchase or sale is with a customer other than a broker or dealer, a memorandum of each order received, showing the time of receipt, the terms and conditions of the order, and the account in which it was entered.

(8) Copies of confirmations of all purchases and sales of securities and copies of notices of all other debits and credits for securities, cash, and other items for the account of customers and partners of such dealer.

(9) A record in respect of each cash and margin account with such dealer containing the name and address of the beneficial owner of such account and, in the case of a margin account, the signature of such owner; provided that, in the case of a joint account or an account of a corporation, such records are required only in respect of the person or persons authorized to transact business for such account.

(10) A record of all puts, calls, spreads, straddles, standby commitments, and other options in which such dealer has any direct or indirect interest or which such dealer has granted or guaranteed, containing at least an identification of the security and the number of units involved.

(11) A questionnaire or application for employment executed by each partner, officer, director, agent, trader, manager, and each employee who handles funds or securities or who solicits transactions or accounts for such dealer, which questionnaire or application shall be approved in writing by an authorized representative of such dealer and shall contain at least the following information with respect to such person (in the case of persons registered with the State Securities Board, a copy of their application for registration as an agent, officer, or partner will satisfy this requirement):

(A) name, address, social security number, and the starting date of employment or other association with the dealer;

(B) date of birth;

(C) the educational institutions attended and whether he or she graduated therefrom;

(D) a complete, consecutive statement of all business connections for at least the preceding 10 years, including the reason for leaving each prior employment, and whether the employment was part-time or full-time;

(E) a record of any denial, suspension, expulsion, or revocation of membership or registration of any dealer he or she was associated with in any capacity when such action was taken;

(F) a record of any denial of membership or registration, and of any disciplinary action taken, or sanction imposed, on the person by any federal or state agency, or by any national securities exchange or national securities association, including any finding that he or she was a cause of any disciplinary action or had violated any law;

(G) a record of any permanent or temporary injunction entered against the person or any dealer he or she was associated with in any capacity at the time such injunction was entered;

(H) a record of any arrest or indictment for any felony or misdemeanor, and the disposition of any such arrest or indictment or further explanation thereof, and a record of any conviction for any felony or any misdemeanor, except minor traffic offenses, of which he or she has been the subject; and

(I) a record of any other name or names he or she has been known by or has used.

(c) Exemptions from the requirements of subsection (b) of this section:

(1) A dealer is not required to make or keep such records of transactions cleared for such dealer by a member of the National Association of Securities Dealers, Inc., the American Stock Exchange, the Boston Stock Exchange, the Chicago Stock Exchange, the New York Stock Exchange, the Pacific Stock Exchange, the Chicago Board Options Exchange, or any other recognized and responsible stock exchange approved by the Securities Commissioner pursuant to the Texas Securities Act, §6.F, where such records are customarily made and kept by the clearing member.

(2) A dealer is not required to make or keep such records that reflect the sale of United States Tax Savings Notes, United States Defense Savings Stamps, or United States Defense Savings Bonds, Series E, F, and G.

(3) A dealer is not required to make or keep such records with respect to any cash transaction of $100 or less involving only subscription rights or warrants which by their terms expire within 90 days after the issuance thereof.

(4) For purposes of transactions in municipal securities by municipal securities dealers, compliance with Rule G-8 of the Municipal Securities Rulemaking Board will be deemed to be in compliance with subsection (b) of this section.

(d) Restricted dealers. Dealers registered in restricted categories, other than municipal securities dealers, such as oil and gas dealers and real estate dealers, etc., shall keep and maintain records adequate to accurately reflect customer transactions, and the dealer's financial condition. Compliance with the record-keeping requirements of the United States Securities and Exchange Commission, found in 17 Code of Federal Regulations §240.17a-3 and §240.17a-4, will satisfy the requirements of this section; provided such dealers shall maintain at least the following information:

(1) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash, and other debits and credits. Such records shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered;

(2) Ledgers (or other records) that reflect all assets and liabilities, income and expense, and capital accounts; and

(3) A questionnaire or application for employment executed by each partner, officer, director, agent, trader, manager, and each employee who handles funds or securities or who solicits transactions or accounts for such dealer, which questionnaire or application shall be approved in writing by an authorized representative of such dealer and shall contain at least the following information with respect to such person (in the case of persons registered with the State Securities Board, a copy of their application for registration as an agent, officer, or partner will satisfy this requirement):

(A) name, address, social security number, and the starting date of employment or other association with the dealer;

(B) date of birth;

(C) the educational institutions attended and whether he or she graduated therefrom;

(D) a complete, consecutive statement of all business connections for at least the preceding 10 years, including the reason for leaving each prior employment, and whether the employment was part-time or full-time;

(E) a record of any denial, suspension, expulsion, or revocation of membership or registration of any dealer he or she was associated with in any capacity when such action was taken;

(F) a record of any denial of membership or registration, and of any disciplinary action taken, or sanction imposed, on the person by any federal or state agency, or by any national securities exchange or national securities association, including any finding that he or she was a cause of any disciplinary action or had violated any law;

(G) a record of any permanent or temporary injunction entered against the person or any dealer he or she was associated with in any capacity at the time such injunction was entered;

(H) a record of any arrest or indictment for any felony or misdemeanor, and the disposition of any such arrest or indictment or further explanation thereof, and a record of any conviction for any felony or any misdemeanor, except minor traffic offenses, of which he or she has been the subject; and

(I) a record of any other name or names he or she has been known by or has used.

(e) Records to be preserved by dealers.

(1) Persons subject to subsection (b) of this section shall preserve:

(A) all records required to be made pursuant to paragraphs (1), (2), (3), and (5) of subsection (b) of this section for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an easily accessible place;

(B) all records required to be made pursuant to paragraphs (4) and (6) - (10) of subsection (b) of this section for a period of not less than three years from the end of the fiscal year during which the last entry was made on such record, the first two years in an easily accessible place; and

(C) all records required to be made pursuant to paragraph (11) of subsection (b) of this section until at least three years following termination of the employment or other relationship between the dealer and the person to whom the records relate.

(2) Persons subject to subsection (d) of this section shall preserve all records required to be made pursuant to subsection (d) of this section for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an easily accessible place.

(3) Persons registered as dealers in Texas, including restricted dealers, shall preserve for a period of not less than three years from the end of the fiscal year during which the last entry was made on such record, the first two years in an easily accessible place:

(A) all checkbooks, bank statements, cancelled checks, and cash reconciliations;

(B) all bills receivable or payable (or copies thereof), paid or unpaid, relating to the business of the dealer, as such;

(C) originals of all communications received and copies of all communications sent by the dealer (including interoffice memoranda and communications) relating to the business of the dealer;

(D) all trial balances, financial statements, branch office reconciliations, and internal audit working papers relating to the business of the dealer;

(E) all guarantees of accounts and all powers of attorneys and other evidence of the granting of any discretionary authority given in respect of any account, and copies of resolutions empowering an agent to act on behalf of a corporation;

(F) all written agreements (or copies thereof) entered into by the dealer relating to the business of the dealer, including agreements with respect to any account;

(G) all customer complaints received by the dealer relating to the business of the dealer, and all documents relating to such complaints; and

(H) all information including but not limited to offering materials and subscription agreements on any private placements offered by the dealer.

(4) Persons registered as dealers in Texas shall preserve for a period of not less than five years from the end of the fiscal year during which a customer's account was closed, any account cards or records which relate to the terms and conditions with respect to the opening and maintenance of such account.

(5) Persons registered as dealers in Texas shall preserve for at least three years after the termination of the enterprise partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the dealer and of any predecessor.

(6) The records required to be maintained and preserved pursuant to this section may be immediately produced or reproduced on microfilm or other photograph and may be maintained and preserved for the required time in that form provided that such microfilms or other photographs are arranged and indexed in such a manner as to permit the immediate location of any particular document, and that such microfilms or other photographs are at all times available for inspection by representatives of the Securities Commissioner together with facilities for immediate, easily readable projection of the microfilm or other photograph and for the production of easily readable facsimile enlargements.

(7) If a person ceases to be registered as a dealer in Texas, such person shall for the remainder of the periods of time specified in this section continue to preserve the records required herein.

(8) For purposes of transactions in municipal securities by municipal securities dealers, compliance with Rule G-9 of the Municipal Securities Rulemaking Board will be deemed to be compliance with this subsection.

(9) The records required to be maintained pursuant to this section may be maintained by any electronic storage media available so long as such records are available for immediate free access by representatives of the Securities Commissioner. Any electronic storage media must preserve the records exclusively in a non-rewriteable, non-erasable format; verify automatically the quality and accuracy of the storage media recording process; serialize the original and, if applicable, duplicate units of storage media, and time-date for the required period of retention the information placed on such electronic storage media; and have the capacity to download indexes and records preserved on electronic storage media to an acceptable medium. In the event that a records retention system commingles records required to be kept under this section with records not required to be kept, representatives of the Securities Commissioner may review all commingled records.

(f) The Securities Commissioner has a right to review all records maintained by registered dealers regardless of whether such records are required to be maintained under any specific applicable rule provision.

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-200104246
Denise Voigt Crawford
Securities Commissioner
State Securities Board
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For further information, please call: (512) 305-8300

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CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

7 TAC §§116.1 - 116.15

The State Securities Board adopts new chapter 116, consisting of §§116.1 - 116.15, concerning investment advisers and investment adviser representatives. Sections 116.1 - 116.3, 116.5, 116.13, and 116.14 were adopted with changes to the proposed text as published in the April 6, 2001, issue of the *Texas Register* (26 TexReg 2602). Sections 116.4, 116.6 - 116.12, and 116.15 were adopted without changes and will not be republished.

Changes made in §116.1 include the use of consistent terminology in subsection (a)(5); subsection (a)(6)(C) was made gender neutral; in subsection (a)(7) an unnecessary phrase was removed; in subsection (a)(8) the definition of "rendering services as an investment adviser" was conformed to the definition §107.2(32), which was concurrently adopted; and in subsection (b)(2)(D) the reference to dealer was removed and punctuation and grammar were adjusted.

Changes made in §116.2 include correcting typographical errors in subsection (c) and adding punctuation in subsection (e)(1). Changes in §116.3 include renumbering the subdivisions under subsection (b); correcting a cross-reference in subsection (b)(1)(B)(i); and removing a reference to an examination not required of solicitor applicants in subsection (c)(4).

Changes in §116.5 consist of adding punctuation in subsection (b) and subsection (b)(5); and correcting typographical errors in subsections (b)(1) and (c)(2). Typographical errors were also corrected in §116.13, subsection (b) and subsection (b)(2)(B) and (3)(B), and in §116.14.

The new chapter replaces the existing Chapter 115, concerning dealers and salesmen, that is being concurrently repealed, with better organized and more understandable provisions that relate specifically to investment advisers and their representatives.

The new chapter will apprise investment advisers and their representatives of their obligations under the Texas Securities Act ("TSA") and Board rules.

Comments on the new chapter were received from the Investment Company Institute ("ICI"), the Investment Counsel Association of America, Inc. ("ICAA"), the Securities Industry Association ("SIA"), the Financial Planning Association ("FPA"), and Wilkie Farr & Gallagher ("WFG"). In the ICAA comment letter, the ICAA noted its support for the comments contained in the ICI's comment letter; however, in the discussion that follows, the ICAA is not listed separately as a commenter, in addition to the ICI, unless the ICAA commented specifically on a particular point in its own comment letter.

Both the ICAA and FPA generally supported the separation of the provisions relating to investment advisers, in new Chapter 116, from those relating to dealers, contained in new Chapter 115. The Board agreed and has adopted Chapter 116 substantially as published.

The ICI, ICAA, SIA, and FPA commented that various provisions in the new Chapter 116, many of which also appear in the existing Chapter 115, are inconsistent with or impermissible under federal law. The Board and the staff noted that various of the commenters had proffered this interpretation previously before the Board in connection with the existing Chapter 115, and it had been examined again recently by the Sunset Advisory Commission and the 77th Texas Legislature. In each of these forums the matter was reviewed and the position of the commenters was rejected. Accordingly, the Board disagreed with the commenters and adopted Chapter 116 substantially as published.

Both the ICAA and the FPA recommended a definition for "federal covered adviser" be incorporated in §116.1. The Board declined to add a definition at this time but will be proposing, in a future issue of the *Texas Register*, a definition for "federal covered investment adviser" and "registered investment adviser" that comports with the intent of House Bill 2255, recently enacted by the 77th Texas Legislature and effective September 1, 2001. The addition of these definitions will be helpful in making a number of clarifications described below, where commenters suggested that a better distinction needs to be made between investment advisers who register in Texas and those who only file notices. The ICI objected to the definition of "rendering services as an investment adviser" as unduly broad. The Board concluded that the definition could be improved, left the definition unchanged except to update a cross-reference, and will be proposing, in a future issue of the *Texas Register*, a different definition for this term. The ICI recommended changing the definition of "investment adviser representative" in §116.1 to distinguish between representatives of state-registered and federally-registered (notice-filed) investment advisers. The ICAA also requested this definition be changed to incorporate the federal definition. The Board disagreed and adopted the definition as proposed.

The ICI requested clarification that branch office registration, referenced in §116.1(b)(1)(B), apply only to branch offices of registered investment advisers and, along with the FPA, requested that some of the paper documents required for a notice filing by a federal covered investment adviser be eliminated. The Board adopted the provision substantially as published but will be proposing, in a future issue of the *Texas Register*, an amendment to make this clarification and to amend the document listing to reflect electronic filings made through the Investment Adviser Registration Depository ("IARD"). The FPA recommended the use of "licensing" rather than "registration" throughout the section when referring to investment adviser representatives. The staff noted that H.B. 2255, consistently uses the term "registration" rather than "licensing." The Board adopted the provision substantially as published.

WFG suggested that §116.1 be modified to reference investment adviser exemptions located elsewhere in the Board's rules. The staff noted that there are numerous places where exemptions from registration are located in the Act and the Board rules and it would create confusion, rather than alleviate it, to include references to some but not others. It would also be an unnecessary duplication. The Board agreed with staff and adopted the section substantially as published and noted by way of clarification that §109.3(e) provides an additional exemption for investment advisers and their representatives when providing services to certain institutional and accredited investors.

Regarding §116.2, the SIA and FPA support the provisions mandating the use of the IARD system for electronic filings by investment advisers. The FPA also noted its support for the provisions eliminating the filing fee for amendments to Form ADV. The Board agreed and adopted the section substantially as proposed.

The ICI and SIA urged the Board to consider eliminating some of the items to be filed in connection with an application and renewal from the list in §116.2. Additionally, the SIA asked that the Board keep applications active for more than six months if the applicant continues to respond to staff requests for additional information. The ICAA and ICI suggested that the requirements for applications of an investment adviser and an investment adviser representative be separated to avoid confusion. The Board determined that separation is unnecessary. The Staff noted that certain items currently required to be included with applications and renewals could be eliminated once the provisions of House Bill 2255 become effective on September 1, 2001. The Board declined to eliminate items from the listing at this time but will be proposing, in a future issue of the *Texas Register*, the elimination of items that are no longer required due to changes made by H.B. 2255 and to add clarifications to keep applications active so long as the applicant continues to be responsive to information requests from staff.

The ICI and ICAA noted that some cross-references in §116.3(b) were erroneous. The Board agreed and corrected them in the adopted rule.

WFG suggested that §116.4 be expanded to accommodate successions by amendment. The staff noted that the TSA, §13, requires organizational documents be submitted by applicants so documentation of structural changes are required by statute. Staff also noted that the rule as drafted provides additional time to applicants when necessary to complete a conversion. ICI and SIA expressed concern that the section would be applicable to notice-filers. The staff noted that the section refers specifically to "registration," so by its terms it does not apply to notice-filers, and that notice filing requirements are covered in §116.1(b)(2)(C). The Board agreed with the staff and adopted the section as published.

The ICI expressed concern that §116.5 would impose greater record-keeping requirements on an out-of-state investment adviser than those required by the adviser's home state and impose record retention requirements on persons not registered as investment advisers in Texas. The staff noted that the express language of subsection (b) makes the home state record-keeping requirements sufficient for investment advisers with no place of business in Texas. Similarly, the express language of subsection (c) directs the preservation requirements to persons registered as investment advisers in Texas. The SIA was concerned that the section should apply only to investment advisers registered in Texas. Staff noted that subsection (a) applies to all investment advisers, whether registered or notice-filed, and does not exceed SEC requirements. The detailed listing of records in subsection (b) provides an alternative record-keeping structure and is, by its terms, applicable only to investment advisers registered in Texas. The Board disagreed with the commenters and adopted the section substantially as proposed.

Both the ICI and SIA questioned the meaning of the terminology used in §116.5 to describe staff access to records. The staff noted that H.B. 2255, effective September 1, 2001, provides statutory clarification to address the concerns of the commenters. The Board adopted the provision substantially as published but will be proposing, in a future issue of the *Texas Register*, amending the section to conform to the language in H.B. 2255.

The ICI expressed confusion over whether §116.7 applied to federal covered investment advisers as well as Texas registered investment advisers. The staff noted that, by its specific terms, it applies to registered investment advisers. The SIA questioned the meaning of the terminology used in §116.7 to describe staff access to records. The staff noted that H.B. 2255, effective September 1, 2001, provides statutory clarification to address the concerns of the commenters. The Board adopted the provision as published but will be proposing, in a future issue of the *Texas Register*, amending the section to conform to H.B. 2255.

The SIA supported the discounted fee for small businesses in §116.8 and urged the Board to extend the discounted fee to all firms, large and small. The staff noted that H.B. 2255 restricts the ability of the Board to adopt reduced fees to small businesses only. The ICI objected to the reduced fee request to the Commissioner as inconsistent with the provisions of the TSA, §42.C, and suggested a provision be added to address future amendments to the TSA affecting fees. The staff noted that the ICI appeared to be confusing the procedures provided for in the TSA, §§42.A and 42.B, with those added by H.B. 2255 as §42.C. The Board disagreed with the commenters and adopted the provision as published but will be proposing, in a future issue of the *Texas Register*, amending the section to add a provision to correspond with new §42.C, added by H.B. 2255.

The ICI and SIA expressed concern that §116.9 would apply to notice-filed investment advisers as well as those registered in Texas. The staff noted that the title of the section specifically addresses "post-registration" reporting requirements and that inherently means that the section applies to entities that are "registered" in Texas. The Board disagree with the commenters and adopted the section as published.

The ICI, SIA, and FPA expressed concern that §116.10 applies to notice-filed investment advisers as well as Texas- registered ones. The staff clarified that the section applies only to investment advisers registered in Texas and noted that H.B. 2255, effective September 1, 2001, provides statutory clarification to address the concerns of the commenters. The Board adopted the provision as published but will be proposing, in a future issue of the *Texas Register*, amending the section to make this clarification and to conform to the language in H.B. 2255.

The SIA expressed concern that §116.11 applies to notice- filed investment advisers as well as Texas-registered ones. The staff noted that, by its specific terms, it applies to registered investment advisers and that H.B. 2255, effective September 1, 2001, provides statutory clarification to address the commenter's concern. The Board adopted the provision as published but will be proposing, in a future issue of the *Texas Register*, the addition of a definition of "registered investment adviser" to conform to H.B. 2255.

The ICI, SIA, and FPA expressed concern that §116.12 applies to notice-filed investment advisers as well as Texas- registered ones. The staff clarified that the section applies only to investment advisers registered in Texas, noting that §116.12 is derived from §116.2(a)(9), which concerns Texas- registered advisers. The Board disagreed with the commenters and adopted the provision as published.

The ICI, ICAA, SIA, and FPA expressed concern that §116.13 applies to notice-filed investment advisers as well as Texas- registered ones. The staff clarified that the section applies only to investment advisers registered in Texas. The Board adopted the provision as published but will be proposing, in a future issue of the *Texas Register*, amending the section to make this clarification.

The ICI expressed concern that §116.14 imposes an impermissible record-keeping requirement on out-of-state investment advisers. The staff responded that this is an anti- fraud provision and does apply to all registered investment advisers, whether in- or out-of-state but, as it does not constitute a "record," such a "procedural" requirement is permitted. The Board disagreed with the commenter and adopted the section substantially as proposed.

The ICI, ICAA, and FPA expressed concern that §116.15 applies to notice-filed investment advisers as well as Texas- registered ones. The staff clarified that the specific provisions apply only to investment advisers registered in Texas, but noted that the general provision, being in the nature of a anti-fraud caution, applies equally to all investment advisers, whether notice-filed, Texas-registered, or exempt from registration. The Board adopted the provision as published but will be proposing, in a future issue of the *Texas Register*, amending the section to make the clarification.

The new chapter is adopted under Texas Civil Statutes, Articles 581-28-1 and 581-12.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 12.B provides the Board with the authority to prescribe new dealer/agent registration exemptions by rule.

§116.1. General Provisions.

(a) Definitions. Words and terms used in this chapter are also defined in §107.2 of this title (relating to Definitions). The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Applicant--A person who submits an application for registration as an investment adviser or an investment adviser representative.

(2) Branch office--Each office in Texas in which either records are maintained or control over and review of the activities of registered persons exists.

(3) Branch office manager--The person named by the investment adviser to supervise the activities of a branch office.

(4) Control--The possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or company, whether through the ownership of voting securities, by contract, or otherwise.

(5) In this state--As used in the Texas Securities Act, §12, has the same meaning as the term "within this state" as defined in §107.2 of this title (relating to Definitions) and paragraph (10) of this subsection.

(6) Investment adviser--Any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities; but does not include:

(A) a bank, or any bank holding company as defined in the federal Bank Holding Company Act of 1956, which is not an investment company;

(B) any lawyer, accountant, engineer, teacher, or geologist, whose performance of such services is solely incidental to the practice of his or her profession;

(C) any broker or dealer whose performance of such services is solely incidental to the conduct of his or her business as a broker or dealer and who receives no special compensation therefor;

(D) the publisher of any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation; or

(E) any person whose advice, analyses, or reports relate to no securities other than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest which shall have been designated by the Secretary of Treasury, pursuant to the Securities Exchange Act of 1934, §3(a)(12), as exempted securities for the purposes of that Act.

(7) Investment adviser representative--Any person or company employed or appointed or authorized by an investment adviser who, for compensation, solicits clients for the investment adviser or provides investment advice on behalf of the investment adviser to clients of the investment adviser, whether by direct act or through subagents; provided that the officers of a corporation or other entity, or partners of a partnership, shall not be deemed investment adviser representatives solely because of their status as officers or partners, where such corporation, entity, or partnership is registered as an investment adviser hereunder.

(8) Rendering services as an investment adviser--Any person coming within the designation cannot conduct such activity without first being registered as an investment adviser/dealer under the provisions of the Act or notice-filed under the provisions of subsection (b)(2)(A) of this section. Likewise, every person employed or appointed, or authorized by such person to render services which include the giving of investment advice cannot conduct such activities unless registered as a dealer/investment adviser, a salesman, or an agent under the provisions of the Act, or notice-filed as a dealer/investment adviser, a salesman, or an agent under the provisions of subsection (b)(2)(B) of this section.

(9) Solicitor--Any investment adviser representative who limits their activities to referring potential clients to an investment adviser for compensation.

(10) Within this state--

(A) A person is an "investment adviser" who engages "within this state" in rendering services as an investment adviser as set out in the Texas Securities Act, §4.C, if either the person or the person's agent is present in this state or the client/customer or the client/customer's agent is present in this state at the time of the particular activity. A person can be an investment adviser in more than one state at the same time.

(B) Likewise, a person is an "investment adviser representative" who engages "within this state" in rendering services as an investment adviser as set out in the Texas Securities Act, §4.C, whether by direct act or through subagents except as otherwise provided, if either the person or the person's agent is present in this state or the client/customer or the client/customer's agent is present in this state at the time of the particular activity. A person can be an investment adviser representative in more than one state at the same time.

(b) Registration of investment advisers, investment adviser representatives, and branch offices.

(1) Requirements of registration.

(A) Any person who renders services as an investment adviser, including acting as a solicitor, may not engage in such activity for compensation without first being registered as an investment adviser under the provisions of the Texas Securities Act or notice-filed under the provisions of paragraph (2) of this subsection. Likewise, every person employed or appointed, or authorized by such person to render services, which include the giving of investment advice or acting as a solicitor, cannot conduct such activities unless registered as an investment adviser or an investment adviser representative under the provisions of the Act, or notice-filed as an investment adviser or an investment adviser representative under the provisions of paragraph (2) of this subsection.

(B) Each branch office in Texas must be registered. A registered officer, partner, or investment adviser representative must be named as branch office manager.

(2) Exemption from the registration requirements. The Board pursuant to the Texas Securities Act, §§12.B and 5.T, exempts from the registration provisions of the Act, §12, persons not required to register as an investment adviser or an investment adviser representative on or after July 8, 1997, by act of Congress in Public Law Number 104-290, Title III.

(A) Registration as an investment adviser is not required for the following:

(i) an investment adviser registered under the Investment Advisers Act of 1940, §203;

(ii) an investment adviser registered with the Securities and Exchange Commission pursuant to a rule or order adopted under the Investment Advisers Act of 1940, §203A(c);

(iii) a person not registered under the Investment Advisers Act of 1940, §203, because such person is excepted from the definition of an investment adviser under the Investment Advisers Act of 1940, §202(a)(11); or

(iv) an investment adviser who does not have a place of business located within this state and, during the preceding 12-month period, has had fewer than six clients who are Texas residents.

(B) Registration as an investment adviser representative of an investment adviser described in subparagraph (A) of this paragraph is not required for an investment adviser representative who does not have a place of business located in Texas but who otherwise engages in the rendering of investment advice in this state.

(C) Notice filing requirements and fees for investment advisers and investment adviser representatives exempted from registration pursuant to this subsection only.

(i) Initially, the provisions of subparagraphs (A) and (B) of this paragraph are available provided that the investment adviser files:

(I) a copy of its current Form ADV as filed with the SEC, if a Form ADV is required to be filed by the investment adviser with the SEC;

(II) a consent to service of process; and

(III) an initial fee equal to the amount that would have been paid had the investment adviser and each investment adviser representative filed for registration in Texas.

(ii) Upon amendment to its Form ADV, the investment adviser files a copy of its amended Form ADV as filed with the SEC, if a Form ADV is required to be filed by the investment adviser with the SEC.

(iii) Annually, the investment adviser files:

(I) a copy of its Form ADV as filed with the SEC, if a Form ADV is required to be filed by the investment adviser with the SEC; and

(II) renewal fees which would have been paid had the investment adviser and each investment adviser representative been registered in Texas.

(D) Persons not required to register with the Securities Commissioner pursuant to subparagraphs (A) and (B) of this paragraph, are reminded that the Texas Securities Act prohibits fraud or fraudulent practices in dealing in any manner in any securities whether or not the person engaging in fraud or fraudulent practices is required to be registered. The Agency has jurisdiction to investigate and bring enforcement actions to the full extent authorized in the Texas Securities Act with respect to fraud or deceit, or unlawful conduct by an investment adviser or investment adviser representative in connection with transactions involving securities in Texas.

(c) Types of registrations.

(1) General registration. A general registration is a registration to render advisory services regarding all categories of securities, without limitation.

(2) Restricted registration. A restricted registration as an investment adviser or as an investment adviser representative may be issued based upon the qualifying examination(s) passed by the investment adviser or investment adviser representative.

(3) In restricted registration, the evidence of registration shall indicate that the holder thereof is entitled to act as an investment adviser, investment adviser representative, or solicitor only in the restricted capacity.

§116.2. Application Requirements.

(a) Investment adviser and investment adviser representative application requirements. A complete application consists of the following and must be filed in paper form with the Securities Commissioner, except in such time as the Investment Adviser Registration Depository System (IARD) becomes available:

(1) Form ADV;

(2) Form U-4 for the designated officer and a Form U-4 for each investment adviser representative or solicitor to be registered;

(3) Form 133.16, an agreement for maintenance and inspection of records;

(4) a copy of articles of incorporation, partnership agreement, articles of association, trust agreement, or other documents which indicate the form of organization, certified by the jurisdiction or by an officer or partner of the applicant;

(5) all foreign corporations and other nonresident applicants must also file an irrevocable written consent to service of process utilizing Forms U-2 and U-2A, or Form 133.8;

(6) assumed name certificate, if applicable. The improper use by an applicant of an assumed name containing "incorporated," "corporation," "limited," or an abbreviation of one of those words, may be grounds for denying registration of the applicant if such designation is thereby misleading;

(7) a balance sheet prepared in accordance with generally accepted accounting practices reflecting the financial condition of the investment adviser as of a date not more than 90 days prior to the date of such filing. The balance sheet should be prepared by independent certified public accountants or independent public accountants, or must

instead be attested by the sworn notarized statement of the applicant's principal financial officer. If attested by the principal financial officer of the applicant, such officer shall certify as follows: I am the principal financial officer of (name of investment adviser). The accompanying balance sheet has been prepared under my direction and control and presents fairly its financial position on the dates indicated to the best of my knowledge, belief, and ability. (Signature and Title).

(8) Form 133.23, a franchise tax certification form;

(9) disclosure document or Part II of Form ADV;

(10) a copy of the investment adviser's standard advisory contract;

(11) fee schedule;

(12) any other information deemed necessary by the Securities Commissioner to determine an investment adviser's financial responsibility or an investment adviser's or investment adviser representative's business repute or qualification; and

(13) the appropriate registration fee(s).

(b) Designated officer registration. Investment advisers, other than an individual filing as a sole proprietor, must file a Form U-4 application to register an officer or partner in connection with the registration of the investment adviser. The officer or partner must be a control person of the investment adviser. The officer or partner must complete the necessary registration and examination requirements. If the officer or partner resigns or is otherwise removed from his or her position, the firm shall make an application to register another officer or partner within 30 days.

(c) Branch office registration and inspection. A request for registration of a branch office of an investment adviser may be made upon initial application of the investment adviser or by amendment to a current registration. No investment advisory activity may occur in any branch office location until such time as the investment adviser receives notification from the Securities Commissioner that such location has been approved as a branch office. The request for registration of a branch office may be made in letter form or by the submission of such information on the Form ADV. The fee for registration of each branch office is $25. Simultaneous with the request for registration of a branch office, a branch office manager must be named. The manager must satisfy the examination qualifications required of the investment adviser before the branch office may be registered. A branch office manager is responsible for supervision of the activities of the branch office. Within 10 business days from when a branch office manager ceases to be employed or registered in such capacity by the investment adviser, a new branch office manager, qualified by passage of the appropriate examinations, must be named. Absent the designation of a new branch manager to the Commissioner within the 10 business day period, the registration of a branch office whose manager ceases to be employed as such by an investment adviser shall be automatically terminated. The branch office registration may be reinstated upon the designation of a qualified branch office manager and payment of the branch office registration fee. Each branch office registered with the Commissioner is subject to unannounced inspections at any time during normal business hours.

(d) Withdrawal and abandonment of an investment adviser or investment adviser representative initial application for registration.

(1) Any initial application for investment adviser or investment adviser representative registration that fails to meet registration requirements within six months of the filing date of the application will be considered withdrawn without prejudice. A copy of this subsection will be mailed to the applicant at least 30 days prior to the withdrawal of the application pursuant to this subsection.

(2) If an applicant for registration with the Securities Commissioner as an investment adviser or investment adviser representative fails to make any type of response to the most recent written request for information relating to an application that has been pending for six months, the application will be considered withdrawn. This withdrawal will occur automatically if the applicant fails to respond to the most recent written request for information sent by certified mail to the applicant's address as set forth in the application. This certified written request shall inform the applicant that the application will be considered withdrawn if a response to the request for information is not received within 30 days from the date of the certified letter. A copy of this subsection and the most recent written request for information will be included with the certified letter.

(e) Investment Adviser Registration Depository (IARD).

(1) Whenever the Texas Securities Act or Board rules require the filing of an application with the Securities Commissioner for investment adviser or investment adviser representative registration, such application must be filed electronically via the IARD, which is jointly operated by the NASD, the North American Securities Administrators Association, Inc. (NASAA), and the Securities and Exchange Commission (SEC). Applicants shall use the applicable uniform forms for the submission of the filing in question and shall supplement their electronic filing by filing, in paper form, the items listed in paragraphs (3)-(12) of subsection (a) of this section, directly with the Commissioner.

(2) Uniform forms submitted through the IARD that designate Texas as a jurisdiction in which the filing is to be made are deemed to be filed with the Securities Commissioner and constitute official records of the Board.

(f) Implementation of IARD.

(1) All investment advisers registered with the Securities Commissioner as of July 31, 2001, must make a transitional filing with the IARD no later than August 1, 2001.

(2) All investment advisers seeking registration with the Securities Commissioner after August 1, 2001, must file Part I of Form ADV and the filing fee via the IARD.

(3) All persons seeking registration as an investment adviser representative must file the Form U-4 and the appropriate fee via IARD upon the ability of the system to accept such filings.

§116.3. Examination.

(a) Requirement. To determine the applicant's qualifications and competency to engage in the business of rendering investment advice, the State Securities Board requires written examinations. Applicants must make a passing score on any required examination.

(b) Examinations accepted.

(1) Each applicant for registration as an investment adviser or investment adviser representative must pass:

(A) the Uniform Investment Adviser Law Examination (the new entry level competency examination, Series 65, administered after December 31, 1999); or

(B) the following combination of examinations:

(i) a general securities representative examination as described in §115.3(b)(2) of this title (relating to Examination) or a limited examination as described in §115.3(b)(3) of this title; and

(ii) the Uniform Combined State Law Examination (Series 66), the Uniform Investment Advisers State Law Examination (Series 65, as it existed and was administered on or before December 31, 1999), or an examination on the Texas Securities Act administered by this Agency.

(2) Each of these examinations (except the Texas Securities Act examination) is administered by the NASD and can be scheduled by submitting a Form U-10 to the NASD.

(c) Waivers of examination requirements.

(1) All persons who were registered in Texas on August 23, 1963, are not required to take any examinations.

(2) A full waiver of the examination requirements of the Texas Securities Act, §13.D, is granted by the Board to the following classes of persons:

(A) a person who was registered as an investment adviser or investment adviser representative on or before December 31, 1999, provided the person has maintained a registration as an investment adviser or investment adviser representative with any state securities administrator that has not lapsed for more than two years from the date of the last registration;

(B) applicants who are certified by the Association for Investment Management and Research, or its predecessors, the Federation of Chartered Financial Analysts or by the Institute of Chartered Financial Analysts, to be chartered financial analysts (CFA);

(C) applicants who are certified by the Certified Financial Planner Board of Standards, Inc., to use the mark "CERTIFIED FINANCIAL PLANNER" (CFP);

(D) applicants who are designated by the American Institute of Certified Public Accountants as accredited personal financial specialists (PFS);

(E) applicants who are designated by the Investment Counsel Association of America, Inc., as Chartered Investment Counsel (CIC);

(F) applicants who are designated by the American College, Bryn Mawr, Pennsylvania, as chartered financial consultants (ChFC); or

(G) a person who completed the examinations required under subsection (b) of this section, but whose registration has lapsed for more than two years and who has been continually employed in a securities-related position with an entity which was not required to be registered.

(3) The Association for Investment Management and Research, the Certified Financial Planner Board of Standards, Inc., the American Institute of Certified Public Accountants, the American College, and the Investment Counsel Association of America, Inc., are required to submit to the Securities Commissioner any changes to their certification programs as such changes occur.

(4) A partial waiver of the examination requirements of the Texas Securities Act, §13.D, is granted by the Board to solicitor applicants. Such persons are required to pass only an examination on state securities law.

(5) The Securities Commissioner in his or her discretion is authorized by the Board to grant full or partial waivers of the examination requirements of the Texas Securities Act, §13.D.

(d) Texas securities law examination.

(1) The fee for each filing of a request to take the Texas securities law examination is $35. An admission letter issued by the Board is required for all entrants. The examination is given at 9:00 a.m. on each Tuesday at the office of the State Securities Board in Austin. The examination may be taken at other locations near principal population centers across the state. Testing centers require reservations and may charge an additional (monitor) fee for administering the examination. A list of examination centers with additional details may be obtained from the State Securities Board.

(2) While taking the examination on the Texas Securities Act, each applicant may use an unmarked copy of the Texas Securities Act as it is printed and distributed by the State Securities Board. No other reference materials are allowed to be used by applicants during the examination.

(3) The passing score for all applicants on the examination on the Texas Securities Act is 70%. An applicant who fails the examination on the Texas Securities Act may request reexamination. The applicant must bring his or her application up to date before retaking an examination.

§116.5. Minimum Records.

(a) Investment adviser records. Compliance with the record-keeping requirements of the United States Securities and Exchange Commission, found in 17 Code of Federal Regulations §275.204-2, will satisfy the requirements of this section.

(b) Records to be made by investment advisers. Persons registered as investment advisers whose principal place of business is located in another state shall maintain records at least in accordance with the minimum record-keeping requirements of that state. Persons registered as investment advisers whose principal place of business is located in Texas shall make and keep current the following minimum records or the equivalent thereof:

(1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(2) General and auxiliary ledgers, (or other comparable records) reflecting asset, liability, reserve capital, income and expense accounts.

(3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank, broker, or dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

(4) A list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to funds, securities, or transactions of any client.

(5) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication recommending the purchase or sale of a specific security, which the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons (other than investment supervisory clients or persons connected with such investment adviser), and if such notice, circular, advertisement, newspaper article, investment letter, bulletin, or other

communication does not state the reasons for such recommendation, a memorandum of the investment adviser indicating the reasons therefor.

(6) In the case of any client receiving investment supervisory or management service, to the extent that the information is reasonably available to or obtainable by the investment adviser, records showing separately for that client:

(A) the client's current position in any security; and

(B) all securities purchased and sold and the date, amount, and price of each purchase and sale.

(7) In the case of an investment adviser who has custody or possession of the funds or securities of any client:

(A) a journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and other debits and credits to such accounts;

(B) a separate ledger account for each such client showing all purchases, sales, receipts, and deliveries of securities, the date and price of each such purchase and sale, and all debits and credits;

(C) copies of confirmations of all transactions effected by or for the account of any such client; and

(D) a record for each security in which any client has a position, which record shall show the name of each such client having any interest in each security, the amount or interest of each such client, and the location of each such security.

(8) A record of every transaction in a security in which the investment adviser or any investment adviser representative has, or by reason of such transaction acquires any direct or indirect beneficial ownership, except:

(A) transactions effected in any account over which neither the investment adviser nor any investment adviser representative has any direct or indirect influence or control; and

(B) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer, or bank with or through whom the transaction was effected. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(c) Records to be preserved by investment advisers.

(1) Persons registered as investment advisers in Texas shall preserve all records required pursuant to subsection (b) of this section for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an easily accessible place.

(2) Persons registered as investment advisers in Texas shall preserve for a period of not less than three years from the end of the fiscal year during which the last entry was made on such record, the first two years in an easily accessible place:

(A) all checkbooks, bank statements, cancelled checks, and cash reconciliations of the investment adviser;

(B) all bills or statements (or copies thereof) paid or unpaid, relating to the business of the investment adviser as such;

(C) all trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser;

(D) originals of all written communications received and copies of all written communications sent by such investment adviser relating to:

(i) any recommendation made or proposed to be made and any advice given or proposed to be given;

(ii) any receipt, disbursement, or delivery of funds or securities; or

(iii) the placing or execution of any order to purchase or sell any security. Provided, however, that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and that if the investment adviser sends any notice, circular, or other advertisement offering any report, analysis, publication, or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular, or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular, or advertisement a memorandum describing the list and the source thereof;

(E) all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser or copies thereof;

(F) all written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such; and

(G) all complaints received from investment clients, and all documents relating to such complaints.

(3) Persons registered as investment advisers in Texas shall preserve for at least three years after the termination of the enterprise partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor.

(4) If a person ceases to be registered as an investment adviser in Texas, such person shall, for the remainder of the time period specified in this section, continue to preserve the records required in this section.

(5) The records required to be maintained and preserved pursuant to this section may be immediately produced or reproduced on microfilm or other photograph and may be maintained and preserved for the required time in that form, provided that such microfilms or other photographs are arranged and indexed in such a manner as to permit the immediate location of any particular document, and that such microfilms or other photographs are at all times available for examination by representatives of the Securities Commissioner together with facilities for immediate, easily readable projection of the microfilm or other photograph and for the production of easily readable facsimile enlargements.

(d) The records required to be maintained pursuant to this section may be maintained by any electronic storage media available so long as such records are available for immediate free access by representatives of the Securities Commissioner. Any electronic storage media must preserve the records exclusively in a non-rewriteable, non-erasable format; verify automatically the quality and accuracy of the storage media recording process; serialize the original and, if applicable, duplicate units of storage media, and time-date for the required period of retention the information placed on such electronic storage media; and have the capacity to download indexes and records preserved on electronic storage media to an acceptable medium. In the

event that a records retention system commingles records required to be kept under this section with records not required to be kept, representatives of the Securities Commissioner may review all commingled records.

(e) The Securities Commissioner has a right to review all records maintained by registered investment advisers regardless of whether such records are required to be maintained under any specific applicable rule provision.

§116.13. Advisory Fee Requirements.

(a) Any investment adviser who wishes to charge 3.0% or greater of the assets under management must disclose that such fee is in excess of the industry norm and that similar advisory services can be obtained for less.

(b) Any investment adviser who wishes to charge a fee based on a share of the capital gains or the capital appreciation of the funds or any portion of the funds of a client must comply with SEC Rule 205-3 (17 Code of Federal Regulations §275.205-3), which prohibits the use of such fee unless the client is a "qualified client." In general, a qualified client may include:

(1) a natural person or company who at the time of entering into such agreement has at least $750,000 under the management of the investment adviser;

(2) a natural person or company who the adviser reasonably believes at the time of entering into the contract:

(A) has a net worth of jointly with his or her spouse of more than $1,500,000; or

(B) is a qualified purchaser as defined in the Investment Company Act of 1940, §2(a)(51)(A) (15 U.S.C. 80a-2(51)(A)); or

(3) a natural person who at the time of entering into the contract is:

(A) An executive officer, director, trustee, general partner, or person serving in similar capacity of the investment adviser; or

(B) An employee of the investment adviser (other than an employee performing solely clerical, secretarial, or administrative functions with regard to the investment adviser), who, in connection with his or her regular functions or duties, participates in the investment activities of such investment adviser, provided that such employee has been performing such functions and duties for or on behalf of the investment adviser, or substantially similar function or duties for or on behalf of another company for at least 12 months.

§116.14. Prevention of Misuse of Nonpublic Information.

All investment advisers registered under the Texas Securities Act are required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 23, 2001.

TRD-200104247
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: August 12, 2001
Proposal publication date: April 6, 2001
For further information, please call: (512) 305-8300

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CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

7 TAC §139.20

The State Securities Board adopts an amendment to §139.20, concerning third party brokerage arrangements on financial entity premises, without changes to the proposed text as published in the April 6, 2001, issue of the *Texas Register* (26 TexReg 2611).

The amendment addresses compensation between the financial entity and the registered dealer, defines "premises," and clarifies the record keeping requirements.

The amendment clarifies the conditions on availability of the exemption.

One comment letter, from the Independent Bankers Association of Texas, was received regarding adoption of the amendment. The commenter supported the changes, noting that they respond effectively to comments from the financial industry and will greatly facilitate activities by Texas institutions. The Board agreed and adopted the proposal without changes.

The amendment is adopted under Texas Civil Statutes, Articles 581-28-1 and 581-12.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 12.B provides the Board with the authority to prescribe new dealer/agent registration exemptions by rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: August 12, 2001
Proposal publication date: April 6, 2001
For further information, please call: (512) 305-8300

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER FF. COMMISSIONER'S RULES CONCERNING HIGH SCHOOL DIPLOMAS FOR CERTAIN VETERANS

19 TAC §61.1061

The Texas Education Agency (TEA) adopts new §61.1061, concerning high school diplomas for certain veterans, with changes

to the proposed text as published in the June 22, 2001, issue of the *Texas Register* (26 TexReg 4580). The new section implements the requirements that the commissioner by rule adopt a form for a diploma application to be used by a veteran or a person acting on behalf of a deceased veteran and specify acceptable evidence of eligibility for a diploma, as authorized by Texas Education Code (TEC), §28.0251, as added by Senate Bill 387, 77th Texas Legislature, 2001. The section includes the application form prescribed by the commissioner.

The adopted new section provides for a school district to issue a high school diploma to a person who: (1) is an honorably discharged member of the armed forces of the United States; (2) was scheduled to graduate from high school after 1940 and before 1951; and (3) left high school before graduation to serve in World War II. A school district may issue a diploma to an eligible veteran notwithstanding the fact that the person holds a high school equivalency certificate or is deceased. The section includes the application form, describes the acceptable evidence of eligibility as a completed application and a copy of discharge notification, and establishes the process for submission of the acceptable evidence. One change was made to the application form provided in 19 TAC §61.1061(c) that adds a TEA contact phone number for individuals with questions about the application.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Education Code (TEC), §28.0251(c), as added by Senate Bill 387, 77th Texas Legislature, 2001, which authorizes the commissioner of education to by rule adopt a form for a diploma application to be used by a veteran or a person acting on behalf of a deceased veteran and specify acceptable evidence of eligibility of a diploma.

§61.1061. Application Form for Diploma and Evidence of Eligibility.

(a) In accordance with Texas Education Code (TEC), §28.0251, a school district may issue a high school diploma to a person who:

(1) is an honorably discharged member of the armed forces of the United States;

(2) was scheduled to graduate from high school after 1940 and before 1951; and

(3) left high school before graduation to serve in World War II.

(b) A school district may issue a diploma to an eligible veteran notwithstanding the fact that the person holds a high school equivalency certificate or is deceased.

(c) The Texas Education Agency will develop and make available an application form to be used by a veteran or a person acting on behalf of a deceased veteran. The application form is provided in this subsection entitled "Application for a High School Diploma for Certain Veterans."
Figure: 19 TAC §61.1061(c)

(d) Acceptable evidence of eligibility for a diploma under TEC, §28.0251, is:

(1) a completed, signed, and dated application form; and

(2) a copy of the discharge notification (DD form 214, enlisted record and report of separation, or discharge certificate) from the appropriate branch of the United States armed forces indicating dates of military service during World War II.

(e) The acceptable evidence of eligibility described in subsection (d) of this section must be submitted to the school district where the veteran was enrolled in high school. If the veteran's school district no longer exists (e.g., the district was consolidated into another district), the acceptable evidence must be submitted to the consolidated district, which will be responsible for issuing the high school diploma. In the case of high schools that have experienced consolidation or for some other reason no longer exist, the local school district that assumed the records of the previously existing school will make the determination as to which existing high school will issue the veteran's diploma.

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-200104233
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Effective date: August 12, 2001
Proposal publication date: June 22, 2001
For further information, please call: (512) 463-9701

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CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

SUBCHAPTER B. STATE ADOPTION OF INSTRUCTIONAL MATERIALS

19 TAC §66.51

The Texas Education Agency (TEA) adopts an amendment to 19 TAC §66.51, concerning instructional materials purchased by the state, without changes to the proposed text as published in the April 20, 2001, issue of the *Texas Register* (26 TexReg 2920) and will not be republished. The section establishes requirements that must be met by publishers that offer instructional materials for adoption by the State Board of Education. The section also specifies requirements for publishers of non- adopted instructional materials selected and purchased by school districts.

The adopted amendment to §66.51 requires publishers to certify that persons listed as contributors to a published work did, in fact, contribute to the work. The adopted amendment also deletes the "per-student" terminology when referencing the state maximum cost reflected in proclamations.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §31.003, which authorizes the State Board of Education to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 23, 2001.

TRD-200104234

Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Effective date: September 1, 2001
Proposal publication date: April 20, 2001
For further information, please call: (512) 463-9701

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

19 TAC §117.54, §117.55

The Texas Education Agency (TEA) adopts amendments to §117.54 and §117.55, concerning fine arts, without changes to the proposed text as published in the June 1, 2001, issue of the *Texas Register* (26 TexReg 3900) and will not be republished. The sections establish the essential knowledge and skills for high school art courses that students may use to fulfill fine arts and elective requirements for graduation, including certain Advanced Placement (AP) and International Baccalaureate (IB) courses.

The adopted amendments to 19 TAC §117.54 and §117.55 retire the AP General Art Portfolio course and add the new AP Two-Dimensional Design Portfolio and AP Three-Dimensional Design Portfolio courses to the list of AP courses that school districts may offer for state graduation credit in Art, Levels III and IV.

No comments were received regarding adoption of the amendments.

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

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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Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
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For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

PART 26. TEXAS BOARD OF LICENSURE FOR PROFESSIONAL MEDICAL PHYSICISTS

CHAPTER 601. MEDICAL PHYSICISTS

The Texas Board of Licensure for Professional Medical Physicists with the approval of the Texas Department of Health adopts amendments to §§601.1 - 601.17 and 601.19 - 601.21, the repeal of §601.18, and new §601.18 and §601.22 concerning the licensure of medical physicists. Sections 601.1, 601.2, 601.4 - 601.6, 601.8, 601.11, 601.12, 601.15, 601.19, 601.21 and new §601.18 and §601.22 are adopted with changes to the proposed text as published in the February 2, 2001, issue of the *Texas Register* (26 TexReg 1055). Sections 601.3, 601.7, 601.9, 601.10, 601.13, 601.14, 601.16, 601.17, and 601.20 are adopted without changes, and therefore the sections will not be republished. The repeal is adopted without changes, and therefore will not be republished.

Specifically, the amendments cover purpose and scope; definitions; the board's operations; fees, exemptions; application procedures; license by endorsement or reciprocity; eligibility for examination; temporary license; license issuance and license holder requirements; license and temporary license renewal; application and renewal processing times, petition for adoption of rules; code of ethics; criminal backgrounds; violations, complaints, and subsequent actions; surrender of license; suspension of license for failure to pay child support; continuing education requirements; medical physics specialties and scope of practice. The new section covers provisional licenses. The repeal covered formal hearing procedures.

The Notice of Intention to Review the sections as required by Government Code, §2001.039 was published in the *Texas Register* on September 17, 1999 (24 TexReg 7774). No comments were received in response to the notice.

The amendments satisfy the requirements of Government Code, §2001.039 that requires each state agency to consider for readoption of each rule adopted by that agency, amends the rules pursuant to the codification of the Medical Physics Practice Act into the new Texas Occupations Code, Chapter 602, deletes language that is no longer necessary; adds definitions for temporary and provisional licenses; adds fees for provisional licenses; corrects typographical errors; updates and clarifies existing language. The repeal of §601.18 allows for the adoption of the new section on formal hearing procedures. The new sections implement provisions of House Bill (HB) 2085 (76th Texas Legislature, 1999) by adding new formal hearing procedures and provisional licenses.

No comments were received during the comment period on the proposed amendments. However, the following minor changes are being made due to staff comments to correct the citation for the Texas Occupations Code and to correct typographical errors. Other minor editorial changes were made to §§601.4, 601.6, 601.12, 601.15, 601.18, 601.19, and 601.21 - 601.22 for clarification purposes.

Change: Concerning §§601.1(a)(1), 601.2(1), and 601.5(c)(2) changes were made to delete references to Texas Civil Statutes, Article 4512n.

Change: Concerning §601.2(21), language was added to clarify which activities were not considered radiological procedures.

Change: Concerning §601.11(b)(6), "licensees" was changed to "licensee's.

22 TAC §§601.1 - 601.22

The amendments and new sections are adopted under the Texas Medical Physics Practice Act, Texas Occupations Code, §602.151, which requires the Texas Board of Licensure for

Professional Medical Physicists to adopt rules, with the approval of the Texas Board of Health, that are reasonably necessary for the proper performance of its duties under the Act.

§601.1. Purpose and Scope.

(a) Purpose.

(1) These sections in this chapter are intended to implement the provisions of the Texas Medical Physics Practice Act (Act), Texas Occupations Code, Chapter 602 , concerning the regulation and licensure of medical physicists, in that:

(A) the citizens of this state are entitled to the protection of their health, safety, and welfare from the harmful effects of excessive radiation; and

(B) the practice of medical physics is a threat to the public if conducted by incompetent persons.

(2) These sections in this chapter will insure that the public is protected from the dangers described by paragraph (1)(A) and (B) of this subsection by:

(A) establishing minimum standards of education, training, and competency for persons engaged in the practice of medical physics; and

(B) ensuring that the privilege of practicing in the field of medical physics is entrusted only to those persons licensed under the Act.

(b) Scope. These sections cover definitions of words and terms used in this chapter; establish general policies governing the operation of the Texas Board of Licensure for Professional Medical Physicists (board); establish a schedule of fees, criteria for exemptions, and application procedures for licensure as a medical physicist; establish qualification requirements for licensure by examination; establish eligibility requirements a person must meet for obtaining a temporary license; establish requirements for license issuance and license holder responsibilities, and license renewal; establish the time periods and procedures the board shall follow in processing applications for or renewal of a license; delineate the board's procedures in handling a petition for adoption of a rule; establish a code of ethics; establish guidelines and criteria on eligibility of persons with criminal backgrounds to obtain a license; establish standards for handling violations, complaints and subsequent actions; sets procedures a licensee must follow for surrender of a license; and establish procedures for holding formal hearings; establish standards for suspension of license for failure to pay child support; establish continuing education requirements; establish medical physics specialties and scope of practice; and establish standards for issuance of a provisional license.

§601.2. 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 Texas Medical Physics Practice Act (Act), Texas Occupations Code, Chapter 602, concerning the licensure and regulation of professional medical physicists.

(2) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001.

(3) Applicant--A person who applies to the Texas Board of Licensure for Professional Medical Physicists (board) for a license.

(4) Board--The Texas Board of Licensure for Professional Medical Physicists.

(5) Commissioner--The commissioner of health.

(6) Department--The Texas Department of Health.

(7) Diagnostic radiological physics--The branch of medical physics that deals with the diagnostic application of roentgen rays, gamma rays from sealed sources, ultrasonic radiation, or radiofrequency radiation and the use of equipment associated with the production and use of that radiation.

(8) License--A certificate issued by the board authorizing the license holder to engage in the practice of medical physics including the temporary license and provisional license unless the context clearly indicates otherwise.

(9) Licensed medical physicist--A person who holds a license issued under the Act.

(10) Medical health physics--The branch of medical physics that deals with the safe use of roentgen rays, gamma rays, electron or other charged particle beams, neutrons, radionuclides, and radiation from sealed radionuclide sources for both diagnostic and therapeutic purposes in humans and the use of equipment required to perform appropriate radiation tests and measurements.

(11) Medical nuclear physics--The branch of medical physics that deals with the therapeutic and diagnostic application of radionuclides, except those used in sealed sources for therapeutic purposes, and the use of equipment associated with the production and use of radionuclides.

(12) Medical physics--The branch of physics that is associated with the practice of medicine; and includes, but is not limited to, the field of radiological physics.

(13) Physician--A person licensed to practice medicine by the Texas State Board of Medical Examiners under Texas Occupations Code, Chapter 152, or if out-of-state a person who holds a valid license to practice medicine in that state or territory.

(14) Practice of medical radiological physics--The use of principles and accepted protocols of physics to assure the correct quality, quantity, and placement of radiation during the performance of a radiological procedure prescribed by a practitioner that will protect the patient and others from harmful excessive radiation. The term includes radiation beam calibration and characterization, quality assurance, instrument specification, acceptance testing, shielding design, protection analysis on radiation-emitting equipment and radiopharmaceuticals, and consultation with a physician to assure accurate radiation dosage to a specific patient.

(15) Practitioner--A doctor of medicine, osteopathy, podiatry, dentistry, or chiropractic who is licensed in this state and who prescribes radiologic procedures for other persons.

(16) Provisional license--An authorization to practice medical physics for a period not to exceed 180 days for individuals currently licensed or certified in another jurisdiction.

(17) Quality assurance--An all encompassing term that includes data recording, patient management, outcome analysis and equipment performance monitoring.

(18) Quality control--A subset under quality assurance and concerns monitoring the performance of imaging, treatment and associated radiological equipment.

(19) Radiation--Ionizing and/or nonionizing radiation above background levels used to perform a diagnostic or therapeutic medical or dental radiological procedure

(20) Radiological physics--The branch of medical physics that includes diagnostic radiological physics, therapeutic radiological physics, medical nuclear physics, and medical health physics.

(21) Radiological procedure--A test, measurement, calculation, or radiation exposure used in the diagnosis or treatment of disease or other medical or dental conditions in humans that includes therapeutic radiation, diagnostic radiation, nuclear magnetic resonance, or nuclear medicine procedures. The activities and services which fall within the definitions in the Act of the practice of medical radiological physics, diagnostic radiological physics, therapeutic radiological physics, medical nuclear physics, or medical health physics are not radiological procedures. The activities and services which fall within the Texas Regulations for Control of Radiation, 25 TAC §289.227(k), (q), (o)(3)(D), (p)(3) and §289.229(h)(2)(D)(i) - (iii) and (3)(C)(iv), are not radiological procedures.

(22) Supervision--To oversee the work of a medical physicist holding a temporary license in the performance of those duties defined as the practice of medical physics. For the purpose of fulfilling the work experience and examination requirement the supervisor shall be responsible for the temporary licensee's work during this period. An individual is considered to be supervised if:

(A) the supervisor is routinely and substantially present at the facility during the performance of duties at that facility by the individual being supervised; and

(B) the supervisor assumes the responsibility, and is provided with the authority, to observe and correct the actions of the individual being supervised.

(23) Temporary License--a certificate authorizing an individual to practice medical physics under the supervision of a licensed medical physicist.

(24) Therapeutic radiological physics--The branch of medical physics that deals with the therapeutic application of roentgen rays, gamma rays, electron and other charged particle beams, neutrons, or radiations from radionuclide sources and the use of equipment associated with the production and use of that radiation.

(25) Upper division semester hour credits--Third-year level or above (junior, senior or graduate) course work completed from an accredited college or university.

§601.4. Fees.

This section sets out the fees for licensure as a medical physicist as prescribed by the board.

(1) The schedule of fees for licensure as a medical physicist is as follows:

(A) application processing and initial licensing fee:

(i) first specialty on initial application--$125;

(ii) additional specialties on initial application--$50 each;

(iii) additional specialties on subsequent applications--$75 each; and

(iv) upgrade of temporary license to annual license--$75;

(B) renewal fee:

(i) first specialty--$125; and

(ii) additional specialties--$50 each;

(C) one to 90-day penalty fee--one-half of the renewal fee (plus the renewal fee that was due at the time of expiration);

(D) 91-day to two-year penalty fee--the renewal fee (plus the renewal fee that was due at the time of expiration);

(E) license replacement fee--$20;

(F) examination fee--the fee for the specialty examination as set by contract with the examining body; and

(G) child support reinstatement fee--$50.

(2) The schedule of fees for a temporary license as a medical physicist is as follows:

(A) application processing and initial temporary license fee:

(i) first specialty on initial application--$125;

(ii) additional specialties on initial application--$50 each; and

(iii) additional specialties on subsequent applications--$75 each;

(B) temporary license renewal fee:

(i) first specialty--$125; and

(ii) additional specialties--$25 each;

(C) one to 90-day penalty fee--one-half of the temporary license renewal fee (plus the temporary license renewal fee that was due at the time of expiration);

(D) 91-day to two-year penalty fee--the renewal fee (plus the renewal fee that was due at the time of expiration); and

(E) temporary license replacement fee--$20; and

(F) child support reinstatement fee--$50.

(3) The fee for a provisional license as a medical physicist is as follows:

(A) application processing and initial temporary license fee:

(i) first specialty on initial application--$125;

(ii) additional specialties on initial application--$50 each; and

(iii) additional specialties on subsequent applications--$75 each; and

(B) provisional license replacement fee--$20.

(4) All fees are nonrefundable and shall be submitted in the form of a check or money order.

(5) An applicant whose check for the application processing and initial licensing fee or renewal fee is returned due to insufficient funds, account closed, or payment stopped shall be allowed to reinstate the application or renewal by remitting a money order or cashier's check for guaranteed funds within 30 days of the date of receipt of the board's notice that the check was returned. An application renewal will be considered incomplete until the fee has been received and cleared through the appropriate financial institution. If the license has already been issued, it shall be invalid.

(6) A license holder whose check for the renewal fee is returned due to insufficient funds, account closed, or payment stopped shall remit a money order or cashier's check for guaranteed funds within 30 days of the date of receipt of the board's notice that the check was returned. If the fee is not remitted timely, the license shall not be renewed. If the license renewal has already been issued, it shall be invalid.

(7) The board shall notify the applicant's or licensee's employer that the person has failed to comply with this section.

§601.5. Exemptions.

(a) This section sets out who is exempt from the Texas Medical Physics Practice Act (Act) and who must be licensed under the Act.

(b) Except as specifically exempted by subsection (c) of this section, the provisions of the Act and this chapter apply to any person who engages in the practice of medical physics.

(c) The Act and this chapter do not apply to:

(1) practitioners in the performance of radiological procedures;

(2) a person certified as a medical radiological technologist practicing under the Medical Radiologic Technologist Certification Act, (Texas Occupations Code, Chapter 601);

(3) persons who perform radiological procedures under a practitioner's instruction or supervision;

(4) persons performing beam calibration and characterization, quality assurance, instrument specification, acceptance testing, shielding design, or protection analysis on radiation-emitting equipment or radiopharmaceuticals for procedures not involved with the diagnosis or treatment of disease or other medical or dental conditions in humans; or

(5) a person employed by a federal or state regulatory agency who is performing duties within the scope of his or her employment.

(d) Activities that do not fall within the definition of medical physics are not governed by the Act or this chapter.

§601.6. Application Procedures.

(a) General.

(1) Unless otherwise indicated, an applicant must submit all required information and documentation of qualifications on forms prescribed by the board.

(2) The board shall not consider an application as officially submitted until the applicant pays the application fee. The fee must accompany the application form.

(3) The executive secretary shall send a notice listing the required additional materials to an applicant who does not complete the application in a timely manner. An application not completed within 30 days after the date of the notice may be invalidated.

(b) Required application materials.

(1) Application form. The application form shall include the following:

(A) specific information regarding personal data, social security number, birth month and day, place of employment, other state licenses and certifications held, misdemeanor and felony convictions, educational and training background, and work experience;

(B) a statement that the applicant has read the Act and this chapter and agrees to abide by them;

(C) the applicant's permission to the board to seek any information or references it deems necessary to determine the applicant's qualifications;

(D) a statement that the applicant, if issued a license, shall return the license to the board upon the revocation or suspension of the license;

(E) a statement that the applicant understands that fees submitted are nonrefundable;

(F) a statement that the applicant understands that materials submitted become the property of the board and are nonreturnable (unless prior arrangements have been made);

(G) a statement that the information in the application is truthful and that the applicant understands that providing false information of any kind may result in the voiding of the application and failure to be granted a license, or the revocation of any license issued;

(H) a statement that if issued a license, the applicant shall keep the board advised of his or her current mailing address; and

(I) the signature of the applicant which has been dated and notarized.

(2) Required documentation. Applicants for a license must submit:

(A) evidence of relevant work experience, including a description of the responsibilities and duties performed;

(B) an official transcript from a college or university granting the applicant's degree or certificate of completion of training course or if a college or university does not issue an official transcript, the board may accept another form of official documentation or sworn evidence of the degree or successful completion of courses;

(C) a statement of the medical physics specialty for which the application is submitted;

(D) three current professional references as follows:

(i) two medical physicists. If the applicant is applying for one specialty, both physicists must be practicing in that specialty area. If the applicant is applying for two or more specialties, one physicist must be practicing in one of those specialties and the other physicist must be practicing in another one of the specialties for which the applicant is making application;

(ii) one licensed physician practicing and certified in at least one of the specialties for which the applicant is making application; however, if the applicant is applying for a license in the specialty area of medical health physics, the physician may be practicing and certified in diagnostic radiology, radiation oncology, or nuclear medicine;

(iii) if applying for a temporary license, post-secondary academic references may be substituted; and

(E) a fee as prescribed by the board; and

(F) the completion, of the current open book examination relating to the practice of medical physics in this state. The applicant is responsible for verifying that he or she has taken and submitted the most current version of the open book examination.

(c) Consideration of application. This subsection is intended to address the applications procedures required by the Act, §602.204 and §602.209.

(1) The board or the executive secretary may require an applicant to appear before the board or executive secretary to present further information in support of the application.

(2) At any time before the board issues or renews a license, the applicant may request in writing that the board withdraw its consideration of the application, but the board shall retain the application and accompanying fee. To reapply, the applicant must submit a new application and fee.

(3) If an applicant meets all requirements of the Act and this chapter and has completed the examination, the executive secretary shall approve the application and issue a medical physicist license. The executive secretary, with direction from the chair, shall prepare and circulate to the board members a summary of each application approved under this paragraph with a recommendation that the board ratify the approval at its next meeting.

(4) If an applicant has not completed a specialty examination accepted by the board under this chapter, the executive secretary, with direction from the chair, shall forward a summary of the application and a recommendation for action to the appropriate committee of the board for review and recommendation.

(A) If the committee finds that the applicant meets all requirements of the Act and this chapter, the committee shall approve the applicant to take the required examination for a medical physicist license or to be issued a temporary license if appropriate.

(i) The executive secretary shall issue the medical physicist license once the applicant successfully completes the required examination.

(ii) The executive secretary, with direction from the chair, shall prepare and circulate to the board members a summary of each application approved under this subparagraph with a recommendation that the board ratify the approval at its next meeting.

(B) If the committee finds that the applicant does not meet all requirements of the Act and this chapter, the committee shall instruct the executive secretary to give the applicant written notice of the reason of the proposed disapproval of the application and the areas of deficiency and of the opportunity for a formal hearing. The notice shall be given by the 30th day after the committee makes a decision. Within 30 days after receipt of the written notice, the applicant shall give written notice to the executive secretary if the applicant wants the hearing. If the applicant fails to respond within 30 days after receipt of the notice, the applicant is deemed to have waived the hearing and the board shall finally disapprove the application.

(d) Disapproved applications.

(1) The appropriate committee of the board may propose disapproval and the board may disapprove the application if the person:

(A) does not meet the qualifications for a license as set forth in the Act or this chapter;

(B) has failed to pass the open book portion of the examination with a passing score of 80%;

(C) has failed to pass an accepted specialty examination described in §601.8(d) of this title;

(D) has deliberately presented false information to the board to verify the applicant's qualifications;

(E) has obtained or renewed a license by means of fraud, misrepresentation, or omission of material facts;

(F) has made application for or held a license issued by the licensing authority of another state, territory, or jurisdiction that was denied, suspended, or revoked by that licensing authority;

(G) has been convicted of a felony or misdemeanor that involved moral turpitude or that directly relates to a person's duties and responsibilities as a licensed medical physicist;

(H) has otherwise violated this Act, a lawful order or rule of the board, or the board's code of ethics; or

(I) lacks the necessary skills, abilities and professional ethics to engage in the practice of medical physics in the specialty area requested.

(2) An applicant whose application has been formally denied under paragraph (1)(F) - (H) of this subsection shall be permitted to reapply after a period of not less than one year from the date of the disapproval and shall submit with the reapplication, proof satisfactory to the board of compliance with all rules of the board and the provisions of the Act in effect at the time of reapplication.

§601.8. Eligibility For Examination.

(a) Eligibility. To take a specialty examination for a medical physicist license for a professional medical physicist, a person must:

(1) have an earned master's or doctoral degree:

(A) from a program of study in medical physics that is accredited by the American Association of Physicists in Medicine (AAPM) Commission on Accreditation of Medical Physics Education Programs;

(B) from an accredited college or university in physics, medical physics, biophysics, radiological physics, medical health physics or nuclear engineering; or

(C) from an accredited college or university:

(i) in physical science (including chemistry), applied mathematics or engineering; and

(ii) have twenty semester hours (30 quarter hours) of undergraduate or graduate level physics courses, if offered:

(I) by the faculty of a Department of Physics and would be acceptable in meeting undergraduate or graduate degree requirements in physics of the offering department; or

(II) by the faculty of a program accredited in medical physics by the AAPM Commission on Accreditation of Medical Physics Education Program; or

(III) by the faculty of another science department and acceptable to the board. .

(2) have demonstrated, to the board's satisfaction, the completion of at least two years of full-time work experience;

(3) have work experience in more than one specialty to include six additional months of full-time equivalent work experience in each specialty; and

(4) submit a completed application as required by the Act, §602.203.

(b) Work experience. Full-time work experience shall be at least 32 hours per week in the specialty area. Part-time work experience may be aggregated in order to meet the minimum of 32 work hours per week. All work experience must have been completed in the five years preceding the date of application (the date of receipt of the application for a medical physicist license or for the upgrade of a temporary license to a medical physicist license) in the medical physics specialty for which application is made.

(c) Foreign academic credit. Degrees and course work received at foreign universities shall be acceptable only if such course work could be counted as transfer credit by accredited universities as reported by the American Association of Collegiate Registrars and Admissions Officers. An applicant having a foreign degree(s) must furnish at the applicant's own expense an evaluation of the foreign degree(s) from a commercial evaluation service. The degree evaluation must be sent directly to the board by the evaluation service. An

applicant must submit with the application complete certified copies or documented proof of the degree(s) awarded (masters or doctorate) and the date it was awarded. Documents written in languages other than English shall be accompanied by a certified English translation.

(d) Approved specialty examination.

(1) An applicant under this section must successfully complete one of the following examinations in each specialty for which application is submitted:

(A) the examination in the specialty developed and administered by the board; or

(B) for the therapeutic radiological physics specialty, the examination offered by:

(i) the American Board of Radiology or its successor organization in therapeutic radiological physics or radiological physics;

(ii) the American Board of Medical Physics or its successor organization in radiation oncology physics; or

(iii) the Canadian College of Physicists in Medicine or its successor organization in general medical physics;

(C) for the medical nuclear physics specialty, the examination offered by:

(i) the American Board of Radiology or its successor organization in nuclear medicine physics or radiological physics;

(ii) the American Board of Medical Physics or its successor organization in nuclear medicine physics;

(iii) the American Board of Science in Nuclear Medicine or its successor organization in physics and instrumentation; or

(iv) the Canadian College of Physicists in Medicine or its successor organization in general medical physics;

(D) for the diagnostic radiological physics specialty, the examination offered by:

(i) the American Board of Radiology or its successor organization in diagnostic radiological physics or radiological physics;

(ii) the American Board of Medical Physics or its successor organization in diagnostic imaging physics; or

(iii) the Canadian College of Physicists in Medicine or its successor organization in general medical physics; or

(E) for the medical health physics specialty, the examination offered by:

(i) the American Board of Radiology or its successor organization in radiological physics;

(ii) the American Board of Health Physics or its successor organization in health physics or comprehensive health physics;

(iii) the American Board of Medical Physics or its successor organization in medical health physics;

(iv) the American Board of Science in Nuclear Medicine or its successor organization in radiation protection; or

(v) the Canadian College of Physicists in Medicine or its successor organization in general medical physics.

(2) An applicant who has successfully completed one of the examinations set out in paragraph (1)(B) - (E) of this subsection shall not be reexamined in that specialty area.

(e) Failure of examination. If the applicant fails a board administered examination, relating to subsection (d)(1)(A) of this section, the applicant will be required to submit a new application for re-examination.

(f) Failure of more than one board administered examination. An applicant who fails three board examinations in a specialty area may not reapply for an additional examination in the specialty area until the applicant has demonstrated, to the board's satisfaction, the completion of at least one additional year of full-time work experience after the third failed examination.

(1) The work experience must be under the supervision of a licensed medical physicist holding a license in the specialty area.

(2) The applicant must hold a temporary license in the specialty area during the work experience if the experience is gained in this state.

(A) The applicant may be issued up to two additional temporary licenses only in order to gain the work experience required by this paragraph and to retake the examination once.

(B) The applicant must take and pass the next examination offered after completion of the additional work experience.

(C) Any temporary license issued under this subsection shall expire upon notification to the board that the applicant failed to apply for or failed to appear for the examination, upon notification to the applicant of his or her failure of the examination, or upon the issuance of his or her medical physicist license if the examination was passed, whichever occurs first.

(D) An applicant who completes the work experience within the first year the additional temporary license is issued under this subsection and for whom an examination is given and results released during that year is not entitled to any further temporary licenses in that specialty area.

(3) In order to obtain a medical physicist license the applicant must reapply for licensure under subsection (a) of this section and must take and pass an examination as set out in subsection (d) of this section.

(g) Upgrade. Following successful completion of a medical physics specialty examination as set out in subsection (d) of this section and the relevant work experience, a temporary licensee may upgrade the temporary license to a medical physicist license.

(1) A medical physicist license shall not be issued until the applicant has passed the examination. The application procedures set out in §601.6 of this title (relating to Application Procedures) shall apply except that the applicant need not file a transcript unless additional relevant course work has been completed.

(2) The temporary licensee must also submit three current professional references as follows:

(A) two medical physicists. If the applicant is applying for one specialty, both physicists must be practicing in that specialty area. If the applicant is applying for two or more specialties, one physicist must be practicing in one of those specialties and the other physicist must be practicing in another one of the specialties for which the applicant is making application; and

(B) one licensed physician practicing and certified in at least one of the specialties for which the applicant is making application; however, if the applicant is applying for a license in the specialty area of medical health physics, the physician may be practicing and certified in diagnostic radiology, radiation oncology, or nuclear medicine.

(h) Expired temporary license. A person whose temporary license has expired may not upgrade the temporary license to a medical physicist license. Application must be made under the provisions set out in §601.6 of this title.

§601.11. License and Temporary License Renewal.

(a) General.

(1) A license is valid for one year from the date it is granted and must be renewed in each specialty area annually.

(A) The initial medical physicist license shall be valid through the licensee's next birth month; however, when the birth month occurs within four months, the license shall be issued for that period plus the next full year in order to establish a staggered renewal system.

(B) The renewal date of a medical physicist license shall be the last day of the licensee's birth month.

(C) The renewal date of a temporary license shall be one year from the date of issuance.

(2) Each licensee is responsible for renewing a license in each specialty and paying the renewal fee before the expiration date and shall not be excused from paying penalty fees.

(3) The board may deny the renewal of a license if the licensee is in violation of or has violated the Act or this chapter.

(4) The board shall deny renewal if required by the Education Code, §57.491 relating to defaults on guaranteed student loans.

(5) The board shall deny the license renewal of a licensee whose license is proposed for revocation, suspension, reprimand or probation in a formal hearing. A formal hearing commences when the notice described in §601.16 of this title (relating to Violations, Complaints, and Subsequent Actions) is mailed by the board.

(A) Licenses which are not revoked or suspended as a result of formal proceedings shall be renewed provided that all other requirements are met.

(B) In the case of delay in the license renewal process because of formal license suspension or revocation proceedings, penalty fees shall not apply if timely and sufficient application for renewal was made.

(b) License renewal.

(1) At least 45 days prior to the expiration date of a license, the board will send notice to the licensee of the expiration date of the license, the amount of the renewal fee due, and a license renewal form which the licensee must complete and return to the board with the required fee.

(2) The license renewal form shall require the licensee to provide current addresses, telephone numbers, and information relating to the type of practice.

(3) The completed license renewal form and the renewal fee must be postmarked or delivered on or before the expiration date of the license.

(4) The board is not responsible for lost, misdirected, or undelivered renewal application forms, fees, or renewal licenses.

(5) The board shall issue a renewal license to a licensee who has met all requirements for renewal. The licensee must display the current renewal license.

(6) The board shall issue a renewal license to a licensee who complies with paragraph (3) of this subsection but who fails to complete the continuing education requirements (if required) for relicensure as set out in §601.20 of this title. The renewal license shall expire 180 days after the last day of the licensee's birth month. If the deficiency is corrected and proof of completion of the continuing education requirements is sent to the board within the 180 day period, the board shall issue a renewal license which expires on the last day of the licensee's next birth month. An licensee who does not correct the deficiency within 180 days shall not be allowed to extend or renew the license.

(7) The license of a person who made a timely and sufficient application for renewal of his or her license does not expire until the application for renewal is finally determined by the board, or in case the application is denied, until the last day for seeking review of the board's order or a later date fixed by order of a reviewing court.

(c) Late renewal.

(1) If a person's license has been expired for not more than 90 days, the person may renew the license by submitting the license renewal form with the one to 90-day penalty fee and a completed continuing education report form (if required). A license issued under this subsection shall expire on the licensee's next birth month. The person is not eligible for a 180 day license as described in subsection (b)(6) of this section.

(2) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by submitting the license renewal form with the 91-day to two year penalty fee. The person must comply with the continuing education requirements (if required) for renewal as set out in §601.20 of this title before the late renewal is effective. The license will expire on the licensee's next birth month.

(3) If a license has been expired two years or more, the license may not be renewed. In order to regain licensure, a person shall comply with the current application requirements of the Act and this chapter and shall submit to the board:

(A) a supplemental work experience record as specified by the board;

(B) a description of professional activities undertaken during the period of non-licensure;

(C) a list of current professional references from other medical physicists and physicians; and

(D) a transcript for any degree or college credit earned since the previous license application.

(d) Active military duty. If a licensee fails to renew his or her license because the licensee is called to or is on active duty with the armed forces of the United States serving outside of the State of Texas, the licensee or the licensee's authorized representative may request that the license be renewed. A request for renewal may be made before or after the expiration date.

(1) If the request is made by the licensee's authorized representative, the request must include a copy of the appropriate power of attorney or written evidence of a spousal relationship.

(2) The written request shall include a copy of the official transfer orders of the licensee or other official military documentation showing that the licensee is called to or on active duty serving outside of the State of Texas.

(3) The written request shall include a current address and telephone number for the licensee or the licensee's authorized representative.

(4) The payment of any renewal penalty fee is waived for a licensee under this subsection.

(5) Except in extraordinary circumstances, a licensee on active duty serving outside the State of Texas shall notify the board that the licensee is on active duty. The board shall note in the licensee's file that the licensee may be eligible for renewal under this subsection.

§601.12. Application and Renewal Processing Times.

(a) Application processing.

(1) The following periods of time shall apply from the date of receipt of an application for a license or renewal of a license until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(A) issuance of license or renewal for a license--30 days; or

(B) letter of application or renewal deficiency--30 days.

(2) The following periods of time shall apply from the date of receipt of the last item necessary to complete the application for a license or renewal of a license until the date of issuance of written notice approving or denying the application for a license or renewal of a license. The time periods for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with the law, and of the opportunity for a formal hearing. The time periods are as follows:

(A) issuance of a license or renewal of a license--30 days; or

(B) letter of denial of a license or renewal of a license--30 days.

(b) Reimbursement of fees.

(1) In the event an application for a license or renewal is not processed within the time periods stated in subsection (a) of this section, the applicant or licensee has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the executive secretary. If the executive secretary does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(2) Good cause for exceeding the time period is considered to exist if the number of applications for license and license renewal exceeds by 15% or more the number of applications or renewals processed in the same calendar quarter of the preceding year, another public or private entity relied upon by the board in the application or renewal process caused the delay, or any other condition exists giving the board good cause for exceeding the time period.

(c) Appeal. If a request for reimbursement under subsection (b) of this section is denied by the executive secretary, the applicant or licensee may appeal to the board for a timely resolution of any dispute arising from a violation of the time periods. The applicant or licensee shall give written notice to the board at the address of the board that he or she requests full reimbursement of all fees paid because his or her application or renewal was not processed within the applicable time period. The executive secretary shall submit a written report of the facts related to the processing of the application or renewal and of any good cause for exceeding the applicable time period. The board shall provide written notice of the decision to the applicant or licensee and the executive secretary. An appeal shall be decided in favor of the applicant or licensee if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant or licensee, full reimbursement of all fees paid in that particular application or renewal process shall be made.

(d) Contested cases. The time periods for contested cases related to the denial of licensure or license renewals are not included with the time periods stated in subsection (a) of this section. The time period for conducting a contested case hearing runs from the date the board receives a written request for a hearing and ends when the decision of the board is final and appealable. A hearing may be completed within one to six months, but may extend for a longer period of time depending on the particular circumstances of the hearing.

§601.15. Criminal Backgrounds.

(a) This section establishes guidelines and criteria on the eligibility of persons with criminal backgrounds to obtain licensure as a medical physicist.

(b) Criminal convictions which directly relate to the profession of medical physics shall be considered as follows.

(1) The board may suspend or revoke any existing license, disqualify a person from receiving any license, deny to a person the opportunity to be examined for a license, reprimand a licensee, or place a licensee on probation because of a person's conviction of a felony or misdemeanor if the crime:

(A) directly relates to the duties and responsibilities of a licensed medical physicist; or

(B) involves moral turpitude.

(2) In considering whether a criminal conviction directly relates to the profession of medical physics the board shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes of licensure as a medical physicist;

(C) the extent to which any license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibility of a medical physicist. In making this determination, the board shall apply the criteria outlined in Texas Occupations Code, Chapter 53.

(c) The following felonies and misdemeanors directly relate to a license of a medical physicist because these criminal offenses indicate an inability or a tendency to be unable to properly engage in the practice of medical physics:

(1) a conviction under the Texas Medical Physics Practice Act (Act), §602.302;

(2) a conviction involving moral turpitude as defined by statute or common law;

(3) a conviction relating to deceptive business practices;

(4) a conviction relating to practicing another health care related profession without a license, certificate, or other approval required by state or federal law;

(5) a conviction relating to controlled substances, dangerous drugs, other illegal substances, or alcohol;

(6) a conviction under the Atomic Energy Act of 1954;

(7) a conviction under the Texas Radiation Control Act, Health and Safety Code, Chapter 40l;

(8) a conviction for assault;

(9) an offense under various titles of the Texas Penal Code:

(A) offenses against the person (Title 5);

(B) offenses against property (Title 7);

(C) offenses against public order and decency (Title 9);

(D) offenses against public health, safety, and morals (Title 10);

(E) offenses of attempting or conspiring to commit any of the offenses in this subsection (Title 4);

(F) insurance claim fraud under the Penal Code, §32.55; and

(10) other misdemeanors and felonies which indicate an inability or a tendency for the person to be unable to properly engage in the practice of medical physics. Other misdemeanors or felonies shall be considered in order to promote the intent of the Act, this chapter, and Texas Occupations Code, Chapter 53.

(d) The executive secretary shall give written notice to the person that the board intends to deny, suspend, or revoke the license or reprimand or place on probation the licensee after hearing in accordance with the provisions of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

(e) If the board takes action under this section, the executive secretary shall give the person written notice:

(1) of the reasons for the decision;

(2) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County for review of the evidence presented to the board and its decision;

(3) that the person must begin the judicial review by filing a petition with the court within 30 days after the board's action is final and appealable; and

(4) of the earliest date that the person may appeal.

§601.18. Formal Hearings.

(a) General. Formal hearings will be governed by the contested case provisions of the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001, and will be conducted by the State Office of Administrative Hearings.

(b) Notice requirements.

(1) Notice of the hearing shall be given according to the notice requirements of APA.

(2) If a party fails to appear or be represented at a hearing after receiving notice, the Administrative Law Judge may proceed with the hearing or take whatever action is fair and appropriate under the circumstances.

(3) All parties shall timely notify the Administrative Law Judge of any changes in their mailing addresses.

(c) Parties to the hearing.

(1) The parties to the hearing shall be the applicant or licensee and the complaints subcommittee chair and/or executive secretary, as appropriate.

(2) A party may appear personally or be represented by counsel or both.

(d) Prehearing conferences.

(1) In a contested case, the Administrative Law Judge, on his own motion or the motion of a party, may direct the parties to appear at a specified time and place for a conference prior to the hearing for the purpose of:

(A) the formulation and simplification of issues;

(B) the necessity or desirability of amending the pleading;

(C) the possibility of making admissions or stipulations;

(D) the procedure at the hearing.

(E) specifying the number of witnesses;

(F) the mutual exchange of prepared testimony and exhibits;

(G) the designation of parties; and

(H) other matters which may be expedite the hearing.

(2) The Administrative Law Judge shall have the minutes of the conference recorded in an appropriate manner and shall issue whatever orders are necessary covering said matters or issues.

(3) Any action taken at the prehearing conference may be reduced to writing, signed by the parties, are made a part of the record.

(e) Assessing the cost of a court reporter and the record of the hearing.

(1) In the event a court reporter is utilized in the making of the record of the proceedings, the board shall bear the cost of the per diem or other appearance fee for such reporter.

(2) The board may prepare, or order the preparation of, a transcript (statement of facts) of the hearing upon the written request of any party. The board may pay the cost of the transcript or assess the cost to one or more parties.

(3) In the event a final decision of the board is appealed to the district court wherein the board is required to transmit to the reviewing court a copy of the record of the hearing proceeding, or any part thereof, the board may be require the appealing party to pay all or part of the cost of preparations of the original or a certified copy of the record of the board proceedings that is required to be transmitted to the reviewing court.

(f) Disposition of case. Unless precluded by law, informal disposition may be made of any contested case by agreed settlement order or default order.

(g) Agreements in writing. No stipulation or agreement between the parties with regard to any matter involved in any proceeding shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, dictated into the record during the course of a hearing, or incorporated in an order bearing their written approval. This rule does not limit a party's ability to waive, modify, or stipulate away any right or privilege afforded by these sections.

(h) Final orders or decisions.

(1) The final order or decision will be rendered by the board. The board is not required to adopt the recommendation of the Administrative Law Judge and may take action as it deems appropriate and lawful.

(2) All final orders or decisions shall be in writing and shall set forth the findings of fact and conclusions required by law.

(3) All final orders shall be signed by the executive secretary and the chairman of the board; however, interim orders maybe issued by the Administrative Law Judge.

(4) A copy of all final orders and decisions shall be timely provided to all parties as required by law.

(i) Motion for rehearing. A motion for rehearing shall be governed by APA, Texas Government Code, §2001.146, and shall be addressed to the board and filed with the executive secretary.

(j) Appeals. All appeals from final board orders or decisions shall be governed by APA, Texas Government Code, Subchapter G, and communications regarding any appeal shall be made to the executive secretary.

§601.19. Suspension of License for Failure to Pay Child Support.

(a) On receipt of a final court or attorney general's order suspending a license due to failure to pay child support, the executive secretary shall immediately determine if the board has issued a license to the obligor named on the order, and, if a license has been issued:

(1) record the suspension of the license in the board's records;

(2) report the suspension as appropriate; and

(3) demand surrender of the suspended license.

(b) The board shall implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The board will provide notice as appropriate to the licensee or to others concerned with the license.

(c) The board may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Family Code, Chapter 232, and may not review, vacate, or reconsider the terms of an order.

(d) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the board.

(e) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the normal renewal procedures in the Act and this chapter; however, the license will not be renewed until subsections (g) and (h) of this section are met.

(f) An individual who continues to use the title "licensed medical physicist" or practice medical physics after the issuance of a court or attorney general's order suspending the license is liable for the same civil and criminal penalties provided for engaging in the prohibited activity without a license or while a license is suspended as any other license holder of the board.

(g) On receipt of a court or attorney general's order vacating or staying an order suspending a license, the executive secretary shall promptly issue the affected license to the individual if the individual is otherwise qualified for the license.

(h) The individual must pay a reinstatement fee as set out at §601.4 of this title prior to issuance of the license under subsection (g) of this section.

§601.21. Medical Physics Specialties and Scope of Practice.

(a) Content. Recognizing that assessing the degree of radiation safety is a complex task of balancing radiation risk with optimizing the benefit of the procedure to the patient, rules are provided which identify certain specific activities or tests as the practice of medical physics. The purpose of the Act and the rules is to ensure the radiation safety of the citizens of Texas by restricting the practice of medical physics to qualified medical physicists. The Act and these rules are fully consistent with, and implement, the recommendations of the National Council of Radiation Protection and Measurement (NCRP) as they pertain to the conduct of certain activities related to medical radiation safety and the efficacy of the use of radiation in medicine as well as the recommendations of the NCRP for the qualifications of individuals who conduct or supervise those activities. They are also consistent with published standards of practice of relevant professional and scientific organizations.

(b) Role of the service engineers. Service engineers, when installing or maintaining medical equipment, conduct tests or activities which are similar or identical to tests or activities identified in these rules. Such activity does not constitute the practice of medical physics provided that:

(1) the service engineer or his employer does not represent that the outcome of the test or activity or the intent of performing the test or activity ensures the radiation safety of the use of the medical equipment for either the user, the patient, or a member of the public; or

(2) the service engineer or his employer does not conclude that the medical equipment is radiologically safe, effective or suitable for use on humans based on the tests or activities performed by the service engineer; or

(3) the service engineer or his employer does not certify that the medical equipment is radiologically safe and consequently compliant with any state or federal regulation for the control of radiation; and

(4) the test or activity performed by the service engineer is required to install or repair the medical equipment.

(c) Scope of practice.

(1) The diagnostic radiological physics specialty services include the following:

(A) providing evidence that imaging equipment continues to meet applicable rules and regulations of radiation safety and performance standards required by accrediting and regulatory agencies;

(B) acceptance testing or monitoring diagnostic imaging equipment;

(C) evaluating policies and procedures pertaining to radiation and its safe and appropriate application in imaging procedures;

(D) providing consultation in development and management of the quality control program;

(E) measurement and characterization of radiation from diagnostic equipment;

(F) specification of instrumentation to be used in the practice of diagnostic radiological physics;

(G) providing consultation on patient or personnel radiation dose (effective dose equivalent, fetal dose calculations, specific organ dose determination, etc.) and the associated risk; and

(H) protective shielding design and evaluation of a diagnostic imaging facility.

(I) conducting performance evaluations of medical radiologic and fluoroscopic imaging systems which include the following physical tests and assessments:

(i) kilovolts peak (kVp) and timer accuracy;

(ii) exposure reproducibility and linearity;

(iii) exposure geometry, e.g. source to image distance (SID) and collimation;

(iv) entrance skin exposure and exposure rate;

(v) beam quality; and

(vi) image quality.

(2) The therapeutic radiological physics specialty services include the following:

(A) development of specifications for radiotherapy treatment and simulation equipment;

(B) development of procedures for testing and evaluating performance levels of radiotherapy treatment and simulation equipment;

(C) acceptance testing of radiotherapy treatment and simulation equipment;

(D) calibration and characterization of radiation beams from therapeutic equipment including radiation quantity, quality, and distribution characteristics, and assessment of the mechanical and geometric optics for proper placement of the beam;

(E) providing documentation that radiotherapy treatment and simulation equipment meet accreditation and regulatory compliance requirements;

(F) calibration and/or verification of the physical and radiological characteristics of brachytherapy sources;

(G) specification of the physics instrumentation used in the measurement and performance testing of therapeutic equipment;

(H) acceptance testing, management, and supervision of computer systems used for treatment planning and calculation of treatment times or monitor units. This includes measurement and input of dosimetry data base and verification of output for external beam radiotherapy and brachytherapy;

(I) implementation and management of dosimetric and beam delivery aspects of external beam source brachytherapy irradiation. External beam delivery aspects include treatment aids, beam modifiers, and geometrical arrangements. Special procedures are included for both external beam (e.g. radiosurgery, total body irradiation, total skin irradiation, intraoperative therapy) and brachytherapy (e.g. high dose rate, pulsed dose rate);

(J) provision of consultation to the physician in assuring accurate delivery of prescribed radiation dosage to a specific human patient, and the associated risk;

(K) development and management of quality control program for a radiation treatment facility which includes applicable facility accreditation requirements, and the review of policies and procedures pertaining to therapeutic radiation and its safe and appropriate use;

(L) development and/or evaluation of a radiation safety program in a therapeutic radiation facility including written procedures for the protection of patients, workers, and the public; and

(M) protective shielding design and radiation safety surveys in a radiotherapy facility.

(3) The medical nuclear physics specialty services include the following:

(A) development of procedures for continuing evaluations of performance levels of radionuclide imaging devices and ancillary equipment;

(B) providing evidence that radionuclide imaging equipment continues to meet applicable rules and regulations of performance and radiation safety required by accrediting and regulatory agencies;

(C) acceptance testing of radionuclide imaging equipment;

(D) development and/or evaluation of a radiation safety program in a nuclear medicine facility;

(E) determination of radiation shielding necessary to protect workers, patients, and the public in a nuclear medicine facility;

(F) development of specifications for radionuclide imaging instrumentation or equipment;

(G) development and monitoring of a quality control program for radionuclide imaging equipment, computers and other patient related radiation detectors such as uptake probes, well counters and dose calibrators;

(H) providing consultation on patient or personnel radiation dose (effective dose equivalent, fetal dose calculations, specific organ dose determination, etc.) and the associated risk;

(I) evaluating policies and procedures pertaining to the safe and appropriate application of radionuclides;

(J) specification of instrumentation used in the practice of medical nuclear physics; and

(K) verification of calculated radiation absorbed doses from unsealed radioactive sources.

(4) The medical health physics specialty services include, but are not limited to, the following:

(A) planning and design of radiation shielding needed to protect workers, patients, and the general public from radiation produced incident to the diagnosis or treatment of humans. This includes calculation of required shielding thickness, selection of shielding material and specification of source-shield geometry;

(B) assessment and evaluation of installed shielding, installed shielding apparatus or portable shielding designed to protect workers, patients, and the general public from radiation produced incident to the diagnosis or treatment of humans. Such evaluation specifically includes determination of whether the shielding is adequate to ensure compliance with state or federal regulatory requirements for limiting the effective dose equivalent and organ dose equivalent of medical radiation workers and members of the public. This includes the selection of appropriate radiation measurement instrumentation to conduct such evaluation as well as the methodology to be employed;

(C) providing consultation, by which determination of the presence and extent of any radiological hazard, in any controlled, restricted, uncontrolled or unrestricted area, resulting from the use of ionizing radiation or radioactivity in the treatment or diagnosis of disease in humans, is made. This includes the design, conduct, and evaluation of results of radiation surveys of health care facilities and the immediate environs intended to determine whether occupancy by medical radiation workers, patients, and members of the public is compliant with state and federal regulations for the control of ionizing radiations. A survey includes the directing of physical measurements of radiation levels and radioactivity, the interpretation of those measurements, and

the provision of any conclusions or recommendations intended to limit or prevent exposure of workers, members of the public, and patients;

(D) performing dose and associated risk assessment in which an effective dose equivalent, committed effective dose equivalent, organ dose equivalent, or committed organ dose equivalent is determined by measurement or calculation or both, to any worker, member of the public, fetus or patient who received exposure to ionizing radiation or radioactivity from radiation sources used to treat or diagnose disease in humans. This does not include either the prospective or retrospective determination of absorbed doses to patients undergoing radiation therapy; and

(E) consultation which consists of the evaluation or assessment of the radiation safety aspects of policies or procedures which pertain to the safe and appropriate use of radiation or radioactivity, administered to human research volunteers or used to treat or diagnose conditions in humans, when such evaluation or assessment provides conclusions or recommendations regarding dose equivalent assessment, the overall radiation safety afforded to individuals resulting from activities conducted in compliance with the evaluated policies or procedures, or the compliance of any or all provisions of the policies or procedures with either state or federal regulatory requirements for the control of radiation.

§601.22. Provisional Licenses.

(a) A provisional license may be issued to a person who is currently licensed or certified in another jurisdiction and who:

(1) has been licensed or certified in good standing as a practitioner of medical or radiological physics for at least two years in another jurisdiction, including a foreign county, that has licensing or certification requirements substantially equivalent to the requirements of the Act;

(2) has passed a national or other examination recognized by the board relating to the practice of medical or radiological physics; and

(3) is sponsored by a person licensed as a medical physicist in Texas with whom the provisional license holder will practice under this section.

(b) Upon formal written request, the board may waive the requirement set out in subsection (a)(3) of this section if it is determined that compliance with subsection (a)(3) of this section would cause undue hardship to the applicant.

(c) The board shall issue a provisional license if:

(1) the provisional license holder is eligible to be certified under §601.7 of this title (relating to Licensing by Endorsement or Reciprocity); or

(2) the provisional license holder passes the part of the examination under §601.8 of this title (relating to Eligibility For Examination) that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of medical physics in this state and;

(A) the board verified that the provisional license holder meets the academic and experience requirement for a license under §601.8 of this title; and

(B) the provisional license holder satisfies any other licensing requirements under the Act.

(d) The board must complete the processing of a provisional license holder's application for license within 180 days after the provisional license was issued. The board may extend the 180-day deadline to allow for the receipt of pending examination results.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 16, 2001.

TRD-200104098
Louis B. Levy, Ph.D.
Presiding Officer
Texas Board of Licensure for Professional Medical Physicists
Effective date: August 5, 2001
Proposal publication date: February 2, 2001
For further information, please call: (512) 458-7236

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22 TAC §601.18

The repeal is adopted under the Texas Medical Physics Practice Act, Texas Occupations Code, §602.151, which requires the Texas Board of Licensure for Professional Medical Physicists to adopt rules, with the approval of the Texas Board of Health, that are reasonably necessary for the proper performance of its duties under the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 97. COMMUNICABLE DISEASES SUBCHAPTER F. SEXUALLY TRANSMITTED DISEASES INCLUDING ACQUIRED IMMUNODEFICIENCY SYNDROME (AIDS) AND HUMAN IMMUNODEFICIENCY VIRUS (HIV)

25 TAC §§97.131, 97.134, 97.137, 97.140, 97.142, 97.144

The Texas Department of Health (department) adopts amendments to §§97.131, 97.134, 97.137, 97.140, 97.142, and 97.144 concerning sexually transmitted diseases including acquired immunodeficiency syndrome (AIDS) and human immunodeficiency virus (HIV) without changes to the proposed text as published in the March 9, 2001, issue of the *Texas Register* (26 TexReg 1977), and therefore the sections will not be republished.

Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that

agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Sections 97.131 - 97.146 have been reviewed and the department has determined that reasons for adopting the sections continue to exist; specific amendments covering definitions; how to report sexually transmitted disease; exposure of health-care personnel to AIDS, HIV infection; counseling and testing for state employees exposed to HIV infection on the job; model health education program/resource guide for HIV/AIDS education of school-age children; and model policies for handling, care, and treatment of HIV/AIDS-infected persons in the custody of or under the supervision of correctional facilities, law enforcement agencies, fire departments, emergency medical services providers, and district probation departments are necessary and described in this preamble.

The department published a Notice of Intention to Review §§97.131 - 97.146 as required by Government Code §2001.039 in the *Texas Register* on January 14, 2000 (25 TexReg 275). No comments were received due to this publication.

The adopted amendment to §97.131 deletes a reference to the United States Public Health Service and retains the definition of AIDS and HIV infection as defined by the Centers for Disease Control and Prevention. The amendment adds the four-digit expanded code "-3199" to the department's zip code.

The adopted amendment to §97.134 pluralizes the word disease in the title of the section, and adds the four-digit expanded code "-3199" to the department's zip code.

The adopted amendment to §97.137 deletes the specific name of the publication to which health-care personnel should refer to prevent job-related exposures to HIV infection, and re-directs them to follow the most current guidance provided by the Centers for Disease Control and Prevention. This adopted amendment is necessary to prevent incorrect reference to federal guidance which may be subject to title change, and refers stakeholders to contact the department for publications related to the prevention of HIV or AIDS.

The adopted amendment to §97.140 deletes the specific name of the publication which provides guidelines for counseling state employees who are exposed to HIV on the job, and re-directs them to follow the most current guidelines developed by the department. This adopted amendment is necessary to prevent incorrect reference to department guidance which may be subject to title change. The adopted amendment also reflects a change of name and address for the State Office of Risk Management.

The adopted amendment to §97.142 deletes the specific name of the publication which provides information on the model education program and also serves as a resource guide for health educators in accordance with the Health and Safety Code, Chapter 85, §§85.004 - 85.005 and §85.007, and Chapter 163, §§163.001 - 163.002. This adopted amendment is necessary to prevent incorrect reference to department guidance which may be subject to title change. The adopted amendment also removes language that reflected a charge would be imposed for copies of the publication. Adopted amended language makes copies available upon request.

The adopted amendment to §97.144 deletes the specific name of the publication which serves as model policies concerning persons in custody as required by the Health and Safety Code, Chapter 85, §85.141. This adopted amendment is necessary to prevent incorrect reference to department guidance which may be subject to title change. The adopted amendment also reflects a change of name in the program from which copies may be obtained.

Minor editorial changes were made in the proposed rules to clarify intent and improve the accuracy of the sections.

No comments were received on the proposal during the comment period.

The amendments are adopted under the Health and Safety Code, §81.004, which provides the board authority to adopt rules necessary for the effective administration and implementation of Chapter 81, Communicable Diseases; §85.016, which provides the board with authority to adopt rules necessary to implement Subchapters A through F of Chapter 85, Acquired Immune Deficiency Syndrome and Human Immunodeficiency Virus Infection; and the Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner of health.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 16, 2001.

TRD-200104102
Susan Steeg
General Counsel
Texas Department of Health
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Proposal publication date: March 9, 2001
For further information, please call: (512) 458-7236

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PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 406. ICF/MR PROGRAMS
SUBCHAPTER C. VENDOR PAYMENTS

25 TAC §§406.101, 406.103 - 406.107

The Texas Department of Mental Health and Mental Retardation (department) adopts the repeal of Chapter 406, Subchapter C, governing vendor payments, without changes to the text as proposed in the March 30, 2001, issue of the *Texas Register* (26 TexReg 2479).

Except for §406.106, the subject matter of the subchapter is addressed in new sections of Chapter 419, Subchapter E, governing ICF/MR Programs. The department does not believe that the subject matter of §406.106 should be required.

The repeal is part of a comprehensive reorganization of chapters and subchapters within the department's portion of the Texas Administrative Code in conjunction with the sunset review of agency rules required by Texas Government Code, §2001.039 (as added by Senate Bill 178, Section 1.11, 76th Legislature).

No written comments were received concerning the proposed repeal.

The repeals are adopted under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200104171
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: September 1, 2001
Proposal publication date: March 30, 2001
For further information, please call: (512) 206-5232

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SUBCHAPTER E. ELIGIBILITY AND REVIEW

25 TAC §§406.201 - 406.217

The Texas Department of Mental Health and Mental Retardation (department) adopts the repeal of Chapter 406, Subchapter E, governing eligibility and review, without changes to the text as proposed in the May 18, 2001, issue of the *Texas Register* (26 TexReg 3599).

Except for §406.216, the subject matter of the subchapter is addressed in new sections of Chapter 419, Subchapter E, governing ICF/MR Programs. The department does not believe that the subject matter of §206.216 should be required.

The repeal is part of a comprehensive reorganization of chapters and subchapters within the department's portion of the Texas Administrative Code in conjunction with the sunset review of agency rules required by Texas Government Code, §2001.039 (as added by Senate Bill 178, §1.11, 76th Legislature).

No written comments were received concerning the proposed repeal.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
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For further information, please call: (512) 206-5232

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SUBCHAPTER G. ADDITIONAL FACILITY RESPONSIBILITIES

25 TAC §§406.302 - 406.309, 406.311

The Texas Department of Mental Health and Mental Retardation (department) adopts the repeals of §§406.302-406.309 and §406.311 of Chapter 406, Subchapter G, governing additional facility responsibilities, without changes to the text as proposed in the March 30, 2001, issue of the *Texas Register* (26 TexReg 2479).

The subject matter of the following sections that are being repealed is addressed in new sections of Chapter 419, Subchapter E, governing ICF/MR Program: §406.303, governing facility capacity; §406.304, governing release from the facility; §406.308, record retention and other related record requirements; §406.309, governing abuse and neglect reporting requirements; and §406.311, governing living options. The subject matter of the following sections that are being repealed is not addressed in the new sections because those topics already are addressed in either federal regulations or Texas Department of Health rules: §406.302, governing day services; §406.305, governing health and hygiene services; §406.306, governing requirements for self-administration of medication; and §406.307, governing medical transportation.

The repeals are part of a comprehensive reorganization of chapters and subchapters within the department's portion of the Texas Administrative Code in conjunction with the sunset review of agency rules required by Texas Government Code, §2001.039 (as added by Senate Bill 178, Section 1.11, 76th Legislature).

No written comments were received concerning the proposed repeal.

The repeals are adopted under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (HHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of HHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources

Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. HHSC has delegated to the department the authority to operate the ICF/MR Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
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For further information, please call: (512) 206-5232

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

25 TAC §§409.505, 409.523, 409.525

The Texas Department of Mental Health and Mental Retardation (department) adopts amendments to §409.505, concerning eligibility criteria, §409.523 concerning maintenance of MRLA program waiting list, and §409.525, concerning process for referral and enrollment of individuals, of Chapter 409, Subchapter L, concerning mental retardation local authority (MRLA) program, without changes to the text as proposed in the June 1, 2001, issue of the *Texas Register* (26 TexReg 3914).

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

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

A hearing to accept public comment concerning the proposed amendments was held on June 13, 2001, in Austin. No testimony was presented. Written comments were received from the parent/guardian of a state MR facility resident, Garland; and the Parent Association for the Retarded of Texas, Austin.

Concerning the amendments to §§409.505 and 409.523, two commenters questioned why the criteria for level-of-care (LOC) I, V, and VI have been combined under a single LOC designation, LOC I, while retaining the current LOC VIII designation. The department responds that because the assignments of LOCs for the waiver programs are based upon criteria used in the ICF/MR Program, these rules were revised to be consistent with changes in the ICF/MR program to be effective September 1, 2001. The revision of the ICF/MR Program rules combined three levels of care for a diagnosis of mental retardation to one level of care. Upon implementation of the revision there will be one level of care for the diagnosis of mental retardation and one level of care for the diagnosis of a related condition.

Concerning the amendments to §419.165, two commenters asked what method an MRA uses to contact applicants and LARs and how the attempts are documented. The commenters asked if the contact is by registered letter, which requires a proof of receipt, and whether more than one attempt is made to contact the applicant or LAR. The department responds that the contract between the department and an MRA requires MRA staff to attempt to contact the individual or LAR. If attempts to contact the individual or LAR are unsuccessful, the MRA must contact the individual by certified mail, telephone, or face-to-face to determine continued interest in having the individual's name remain on the waiting list. The MRA must document these efforts in the Client Assignment and Registration System (CARE).

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

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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Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: September 1, 2001
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For further information, please call: (512) 206-5232

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

25 TAC §§419.155, 419.159, 419.164, 419.165

The Texas Department of Mental Health and Mental Retardation (department) adopts amendments to §419.155, concerning eligibility criteria, §419.159, concerning level of care (LOC) determination, and §419.165, concerning maintenance of HCS Program waiting list, of Chapter 419, Subchapter D, concerning home and community-based services (HCS) program, without changes to the text as proposed for public comment in the June 1, 2001, issue of the *Texas Register* (26 TexReg 3915). Section 419.164, concerning process for enrollment of applicants, is adopted with changes.

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

The amendments to §419.165, concerning maintenance of HCS Program waiting list, change the length of time an applicant or the applicant's legally authorized representative (LAR) has to respond to an mental retardation authority's (MRA) notification that a program opening is available to the applicant. The current rule permits 60 calendar days; the amendments shorten the time to 20 working days. In addition, the amendments allow the MRA to remove an applicant's name from the waiting list if the applicant or the LAR does not respond to the MRA's attempts to contact the applicant or LAR during the MRA's annual update of the its waiting list. The amendments also add provisions allowing an applicant's name to be re-instated to an MRA's waiting list based on the department's review of the circumstances under which the name was removed.

Clauses (a)(4)(B)(i) and (ii) of §419.164, concerning process for enrollment of applicants, are restructured to more clearly delineate the actions an MRA must take to enroll an applicant, and clause (iii) is relettered as new clause (ii).

A hearing to accept public comment concerning the proposed amendments was held on June 13, 2001, in Austin. No testimony was presented. Written comments were received from the parent/guardian of a state MR facility resident, Garland; and the Parent Association for the Retarded of Texas, Austin.

Concerning the amendments to §419.155, two commenters questioned why the criteria for level-of-care (LOC) I, V, and VI have been combined under a single LOC designation, LOC I, while retaining the current LOC VIII designation. The department responds that because the assignments of LOCs for the waiver programs are based upon criteria used in the ICF/MR Program, these rules were revised to be consistent with changes in the ICF/MR program to be effective September 1, 2001. The revision of the ICF/MR Program rules combined three levels of care for a diagnosis of mental retardation to one level of care. Upon implementation of the revision there will be one level of care for the diagnosis of mental retardation and one level of care for the diagnosis of a related condition.

Concerning the amendments to §419.165, two commenters asked what method an MRA uses to contact applicants and LARs and how the attempts are documented. The commenters asked if the contact is by registered letter, which requires a proof of receipt, and whether more than one attempt is made to contact the applicant or LAR. The department responds that the contract between the department and an MRA requires MRA staff to attempt to contact the individual or LAR. If attempts to contact the individual or LAR are unsuccessful, the MRA must contact the individual by certified mail, telephone, or face-to-face to determine continued interest in having the individual's name remain on the waiting list. The MRA must document these efforts in the Client Assignment and Registration System (CARE).

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

§419.164. Process for Enrollment of Applicants.

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

(1) The MRA must register the applicant on the MRA's waiting list as specified in §419.165 of this title (relating to Maintenance of HCS Program Waiting List).

(2) Upon written notification by the department of a program vacancy in the MRA's local service area, the MRA notifies the first applicant on the waiting list of the vacancy and begins the enrollment process by informing the applicant or the LAR of the applicant's right to choose between participation in the ICF/MR Program in a state school setting or a community-based setting, the HCS Program, or other services. The MRA must document the applicant's choice of programs or the LAR's choice on behalf of the applicant on the HCS Verification of Choice form. Copies of the HCS Verification of Choice form are available by contacting the Texas Department of Mental Health and Mental Retardation, Office of Medicaid Administration, P.O. Box 12668, Austin, Texas 78711-2668.

(3) If the applicant or the LAR chooses participation in the HCS Program, the MRA will assign a service coordinator who develops a person-directed plan (PDP) in conjunction with the service planning team. The service planning team must include the applicant and the

LAR acting on the applicant's behalf and may include other persons chosen by the applicant and the LAR. At minimum, the PDP must include the following:

(A) a description of the applicant's current services and supports, identifying those that will be available if the applicant is enrolled in the HCS Program;

(B) a description of outcomes to be achieved for the applicant through the HCS Program, including determinations of further service needs through assessments to be accomplished after enrollment, and justification for each service component to be included in the IPC;

(C) documentation that the type and amount of each service component included in the individual's IPC:

(i) are necessary for the individual to live in the community, to ensure the individual's health and welfare in the community, and to prevent the need for institutional services;

(ii) do not replace existing natural supports or other non-program sources for the service components; and

(iii) when the proposed IPC includes residential support, the reasons that the team concluded that supervision and assistance from awake service providers during normal sleeping hours are required to assure the individual's health and welfare including but not limited to the individual's demonstrated needs for staff intervention to respond to:

(I) the individual's medical condition;

(II) a behavior displayed by the individual that poses a danger to the individual or to others; or

(III) the individual's need for assistance with activities of daily living during normal sleeping hours;

(D) a description of all determinations needed to establish the applicant's eligibility for SSI or Medicaid benefits and for a LOC; and

(E) a description of actions and methods to be used to reach identified service outcomes, projected completion dates, and person(s) responsible for completion.

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

(A) If the applicant's financial eligibility for the HCS Program must be established, the MRA initiates, monitors, and supports the processes necessary to obtain a financial eligibility determination.

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

(i) The MRA must:

(I) perform or endorse a determination that the applicant has mental retardation in accordance with Chapter 415, Subchapter D of this title (relating to Diagnostic Eligibility for Services and Supports -- Mental Retardation Priority Population and Related Conditions); or

(II) verify that the applicant has been diagnosed by a licensed physician as having a related condition as defined in §419.203 of this title (relating to Definitions).

(ii) The MRA must administer the ICAP and recommend a LON assignment to the department in accordance with §§419.161 and 419.162 of this title (relating Level of Need Assignment and Department Review of Level of Need (LON), respectively).

(C) The MRA must develop a proposed IPC with the applicant or the LAR based on the PDP and in accordance with this subchapter.

(5) The service coordinator must inform the applicant or the LAR of all available HCS program providers in the local service area. The service coordinator must:

(A) provide information to the applicant or the LAR regarding program providers in the MRA's local service area;

(B) review the proposed IPC with potential program providers as requested by the applicant or the LAR;

(C) arrange for meetings/visits with potential program providers as desired by the applicant or the LAR;

(D) assure that the applicant's or LAR's choice of a program provider is documented, signed by the applicant or the LAR, and retained by the MRA in the applicant's record; and

(E) negotiate/finalize the proposed IPC and the date services will begin with the selected program provider. If the service coordinator and the selected program provider are unable to agree on the proposed IPC, the service coordinator and program provider will consult jointly with the department to achieve resolution.

(b) When the proposed IPC is finalized and the selected program provider has agreed to deliver the services delineated on the IPC, the MRA will submit the enrollment information to the department. When appropriate, the MRA will also submit supporting documentation as required in §419.158(b) of this title (relating to Department Review of Individual Plan of Care (IPC)) and §419.162(b) of this title (relating to Department Review of Level of Need (LON)).

(c) The department will notify the applicant or the LAR, the selected program provider, and the MRA of its approval or denial of the applicant's enrollment. When enrollment is approved, the department must authorize the applicant's enrollment in the HCS Program through the automated enrollment and billing system and issue an enrollment letter that includes the effective date of the applicant's enrollment in the HCS Program.

(d) Upon notification of an applicant's enrollment approval, the MRA must provide the selected program provider copies of all enrollment documentation, and associated supporting documentation including relevant assessment results and recommendations and the applicant's PDP.

(e) The selected program provider must not initiate services until notified of the department's approval of the individual's enrollment.

(f) The selected program provider must develop an initial ISP in accordance with §419.174 of this title (relating to Certification Principles: Service Delivery) based on the PDP and IPC as developed by the service planning team.

(g) When the department assigns a program vacancy to an applicant who is a member of a specific target group identified in the approved waiver, the MRA must assist the applicant with the enrollment process in accordance with this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200104168
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
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Proposal publication date: June 1, 2001
For further information, please call: (512) 206-5232

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SUBCHAPTER P. HOME AND COMMUNITY-BASED SERVICES - OBRA (HCS-O) PROGRAM

25 TAC §419.655, §419.659

The Texas Department of Mental Health and Mental Retardation (department) adopts amendments to §419.655, concerning eligibility criteria, and §419.659, concerning level of care (LOC) determination, of Chapter 419, Subchapter P, concerning home and community-based services -- OBRA (HCS-O) program, without changes to the text as proposed in the July 2, 2001, issue of the *Texas Register* (26 TexReg 3917).

The amendments to §419.655, concerning eligibility criteria, correspond to revisions in Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) Program rules that combine the criteria for level-of-care (LOC) I, V, and VI under a single LOC designation, LOC I, while retaining the current LOC VIII designation. The amendments to §419.659, concerning level of care (LOC) determination, update references to the new sections of Chapter 419, Subchapter E, concerning ICF/MR Program rules, which were approved for adoption in June by the Texas Mental Health and Mental Retardation Board.

A hearing to accept public comment concerning the proposed amendments was held on June 13, 2001, in Austin. No testimony was presented. Written comments were received from the parent/guardian of a state MR facility resident, Garland; and the Parent Association for the Retarded of Texas, Austin.

Concerning the amendments to §419.655, two commenters questioned why the criteria for level-of-care (LOC) I, V, and VI have been combined under a single LOC designation, LOC I, while retaining the current LOC VIII designation. The department responds that because the assignments of LOCs for the waiver programs are based upon criteria used in the ICF/MR Program, these rules were revised to be consistent with changes in the ICF/MR program to be effective September 1, 2001. The revision of the ICF/MR Program rules combined three levels of care for a diagnosis of mental retardation to one level of care. Upon implementation of the revision there will be one level of care for the diagnosis of mental retardation and one level of care for the diagnosis of a related condition.

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

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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Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
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For further information, please call: (512) 206-5232

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE
SUBCHAPTER H. PUBLIC LANDS PROCLAMATION

31 TAC §§65.190, 65.193, 65.197, 65.198, 65.202

The Texas Parks and Wildlife Commission adopts amendments to §§65.190, 65,193, 65.197, 65.198, and 65.202, concerning Public Lands Proclamation, without changes to the proposed text as published in the February 23, 2001, issue of the *Texas Register* (26 TexReg 1680).

The amendment to §65.190, concerning Application, is necessary to clearly identify the properties on which the regulations apply. The amendment to §65.193, concerning Access Permit Required and Fees is necessary to provide a mechanism for allowing persons in possession of an Annual Public Hunting Permit to participate in designated hunts without having to be issued a Regular Permit; for persons in selected instances to purchase a Regular Permit for participation in hunts that are other wise restricted to holders of an Annual Public Hunting Permit; to enable the department to more accurately discern revenues generated by the various levels of permits; to remove confusion concerning permit requirements of non-hunting adults who are supervising minors during youth-only hunts, and to allow the department to retain application fees to defray costs of processing invalid applications for a Special Permit. The amendment to §65.197, concerning Reinstatement of Preference Points, is necessary to avoid the reinstatement of preference points if, due to an error in processing, a person is drawn for a hunt for which they did not apply and agrees to accept the hunt. The amendment to §65.198, concerning Entry, Registration, and Checkout, is necessary to allow the department to supervise access and activity on public lands by persons hunting under an Annual Public Hunting Permit (check-in and check-out not currently required) during a Regular Permit hunt (check-in and check-out required) that is

also open to persons possessing an Annual Public Hunting Permit. The amendment to §65.202, concerning Minors Hunting on Public Lands, is necessary to promote public safety by restricting participation in drawn hunts to persons who have achieved the minimum age needed to acquire the physical skills and mental development required to participate in drawn hunts in a competent and responsible manner.

The amendment to §65.190, concerning Application, updates the listing of the units of public hunting lands. The amendment to §65.193, concerning Access Permit Required and Fees, allows the department to conduct hunts totally or in part by Regular Permit, makes uniform the permit requirements of supervising adults during youth-only hunts, and stipulates that the department will retain application fees submitted with an invalid application for a Special Permit. The amendment to §65.197, concerning Reinstatement of Preference Points, clarifies procedures for reinstating preference points in drawings for Special Permits. The amendment to §65.198, concerning Entry, Registration, and Checkout, conforms the requirements of the section to accommodate the changes to §65.193. The amendment to §65.202, concerning Minors Hunting on Public Lands, establishes a minimum age for participants in Special-Permit hunts.

The department received 28 comments opposing the proposal to require supervising adults on youth-only hunts to possess a valid access permit. The department disagrees with the comments and responds that it is necessary to create a uniform policy for adults supervising youth hunters. No changes were made as a result of the comments. The department received 69 comments in support of adoption of the rule.

The department received 37 comments opposing the proposal allowing the department to retain application fees submitted with invalid applications for public hunts. The department disagrees with the comments and responds that the cost of processing applications is the same for invalid applications as it is for valid applications. No changes were made as a result of the comments. The department received 57 comments in support of adoption of the rule.

The department received one comment in opposition to the proposal to require all participants in hunts conducted by Regular Permit to check in and check out. The department disagrees with the comment and responds that the need to monitor the number of hunters on a particular Regular Permit hunt necessitates a check in and check out requirement; thus, it is also necessary to require the same of a person participating in a Regular Permit hunt under the privileges of an Annual Public Hunting Permit. No changes were made as a result of the comment. The department received 86 comments in support of adoption of the rule.

The department received 32 comments in opposition to the proposal to reinstate preference points to persons erroneously selected for a hunt and who elect to decline participation. The department disagrees with the comments and responds that under the current regulations, a person erroneously selected for a hunt must forfeit their preference point regardless of whether or not they participate in the hunt. The department feels this in unfair, and accordingly will allow persons in such circumstances to decline the hunt without loss of preference points. No changes were made as a result of the comment. The department received 42 comments in support of adoption of the rule.

The department received 14 comments in opposition to the proposal to require applicants in drawings for special hunts to be at least eight years of age of at the time of the application. The department disagrees with the comments and responds that because of the small number of hunts available and the high demand, it is necessary to ensure that applicants selected for participation in special hunts are reasonably capable of taking advantage of the opportunity if selected. No changes were made as a result of the comment. The department received 82 comments in support of adoption of the rule.

The department received one comment opposing adoption of the proposed rules on the basis that units of the state park system are not listed in §65.190, concerning Applicability, and therefore should not be used for public hunting. The department disagrees with the comment and responds that under Parks and Wildlife Code, Chapter 62, Subchapter D, the commission may prescribe an open season for hunting in state parks, which does not necessitate rulemaking activity by the department. No changes were made as a result of the comment.

Texas Wildlife Association commented in favor of adoption of the proposed rules.

The amendments are adopted under Parks and Wildlife Code, Chapter 81, Subchapter E, which provides the Parks and Wildlife Commission with authority to establish an open season on wildlife management areas and public hunting lands and authorizes the executive director to regulate numbers, means, methods, and conditions for taking wildlife resources on wildlife management areas and public hunting lands; Chapter 12, Subchapter A, which provides that a tract of land purchased primarily for a purpose authorized by the code may be used for any authorized function of the department if the commission determines that multiple use is the best utilization of the land's resources; Chapter 62, Subchapter D, which provides authority, as sound biological management practices warrant, to prescribe seasons, number, size, kind, and sex and the means and method of taking any wildlife; and §42.0177, which authorizes the commission to modify or eliminate the tagging requirements of Chapter 42.

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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Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
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Proposal publication date: February 23, 2001
For further information, please call: (512) 389-4775

SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §65.315, §65.319

The Texas Parks and Wildlife Commission adopts amendments to §65.315 and §65.319, concerning the Migratory Game Bird Proclamation. Section 65.315 is adopted with changes to the proposed text as published in the April 27, 2001, issue of the *Texas Register* (26 TexReg 3141). Section 65.319 is adopted without change and will not be republished. The change to §65.315, concerning Open Seasons and Bag and Possession

Limits--Early Season Species, does three things. First, the department's proposal to implement a 70-day, 12-bird per day dove season statewide has been altered to retain a 60-day, 15-bird season in the North Zone and to advance the opening of the late split in the South Zone from December 26 to December 22. Second, the change removes seasons and bag limits for sandhill cranes, which will be relocated in §65.318, concerning Open Seasons and Bag and Possession Limits--Late Season Species, when that section is adopted in late August. Third, the season dates for dove in the special white-wing dove area are separated from the south zone season dates for clarity's sake.

The amendments generally are necessary to implement commission policy to provide the maximum hunter opportunity possible under frameworks issued by the U.S. Fish and Wildlife Service, and to discharge the department's statutory duty to manage the migratory game bird resources of this state. Specifically, the amendment to §65.315 is necessary to establish the time periods during which it is lawful to hunt certain migratory game birds and to specify the number of migratory game birds that may be taken by individual hunters. The amendment to §65.319 is necessary for the same reasons.

The amendment to §65.315 will function by establishing an open season for various species of migratory game birds and specifying bag limits. The amendment to §65.319 will function in the same manner, but with respect to hunting by means of falconry.

The department received 475 comments concerning adoption of the proposed rules, 83 of them following publication of the proposal in the *Texas Register*. Of the 475 comments, the proposal to replace the current 60-day/15-bird dove season with a 70-day/12-bird season was favored by 44% of the commenters. With respect to implementation in the various zones, the proposal was favored by 18% in the North Zone, 60% in the Central Zone, and 64% in the South Zone. Of the 83 comments received following the publication of the proposal in the *Texas Register*, seven commenters opposed adoption of a 12-bird/70-day dove season in the South Zone. The department disagrees with the comments and responds that harvest and hunter surveys indicate that the longer season and lower bag limit is favored by hunters in the South Zone and will not adversely affect hunter success. No changes were made as a result of the comments. Ten persons commented in favor of a 12-bird/70-day season for doves in the South Zone. Five commenters opposed adoption of a 12-bird/70-day dove season in the Central Zone. The department disagrees with the comments and responds that harvest and hunter surveys indicate that the longer season and lower bag limit is favored by hunters in the Central Zone and will not adversely affect hunter success. No changes were made as a result of the comments. Ten persons commented in favor of a 12-bird/70-day season for doves in the Central Zone. Ten commenters opposed adoption of a 12-bird/70-day dove season in the North Zone, stating that the northern part of the state holds doves for a smaller period of time compared to the zones to the south, and that therefore the shorter season and higher bag limit was more advantageous for hunters in that zone. The department agrees with the comments and has made changes accordingly. The department received ten comments in support of a 12-bird/70-day season for doves in the North Zone. The department received 14 comments concerning the placement of the ten additional days of dove-hunting opportunity created in the South and Central Zones. One commenter wanted the ten days to be added before Christmas, five commenters favored late October, one commenter favored late November or early December, one commenter favored early January, and six commenters favored eliminating the split season and keeping the season open straight through October instead. The department weighed public comment, hunter preference survey data, and harvest data, and elected to retain the split season in both zones, adopting the season dates as proposed for the Central Zone (which provide for a season running through October) and opening the second half of the South Zone split season four days earlier. The department did not disagree with any of the comments, but made the selection based on the preferences of the greatest number of hunters and the highest probabilities of hunter success. The department received three comments opposing all-day dove hunting and requesting half-day hunting instead, on the basis that dove populations cannot withstand the pressure of all-day hunting. The department disagrees with the comments and responds that there is no biological evidence to suggest that dove populations are declining due to hunting pressure. No changes were made as a result of the comments. The department received three comments requesting that zone boundaries be altered. The department disagrees with the comments and responds that such changes are not possible at this time, since they would have to have received prior approval by the U.S. Fish and Wildlife Service, and that in any event, no such changes are viewed as necessary. No changes were made as a result of the comments. The department received one comment requesting that baiting regulations be revised to allow hunting near feeders. The department disagrees with the comment and responds that because baiting regulations are established independently by the federal government, the department has no authority to liberalize them. No changes were made as a result of the comment. One commenter opposed adoption of the proposed rules, stating that 29% of hunting fatalities occurred while persons were hunting doves, and requested that the season be closed. The department disagrees with the commenter and responds that although hunting is an inherently dangerous activity due to the presence and use of firearms, nearly all hunting accidents are preventable, which is why the department places a high emphasis on hunter education and hunter safety. No changes were made as a result of the comment.

Texas Wildlife Association commented in favor of adoption of the proposed rules.

The amendments are adopted under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

§65.315. Open Seasons and Bag and Possession Limits--Early Season

(a) Rails.

(1) Dates: September 15 - 30, 2001 and October 27 - December 19, 2001.

(2) Daily bag and possession limits:

(A) king and clapper rails: 15 in the aggregate per day; 30 in the aggregate in possession.

(B) sora and Virginia rails: 25 in the aggregate per day; 25 in the aggregate in possession.

(b) Dove seasons.

(1) North Zone.

(A) Dates: September 1 - October 30, 2001.

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 30 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(2) Central Zone.

(A) Dates: September 1 - October 28, 2001, and December 26, 2001 - January 6, 2002.

(B) Daily bag limit: 12 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 24 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(3) South Zone.

(A) Dates: Except in the special white-winged dove area as defined in §65.314 of this title (relating to Zones and Boundaries for Early Season Species), September 21 - November 4, 2001, and December 22, 2001 - January 15, 2002.

(B) Daily bag limit: 12 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 24 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(4) Special white-winged dove area.

(A) Dates: September 1, 2, 8, and 9, 2001, September 21 - November 4, 2001 and December 22, 2001 - January 11, 2002.

(B) Daily bag limit: 10 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than five mourning doves and two white-tipped doves per day;

(C) Possession limit: 20 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than 10 mourning doves and four white-tipped doves in possession.

(c) Gallinules.

(1) Dates: September 15 - 30, 2001, and October 27 - December 19, 2001.

(2) Daily bag and possession limits: 15 in the aggregate per day; 30 in the aggregate in possession.

(d) September teal-only season.

(1) Dates: September 15 - 30, 2001.

(2) Daily bag and possession limits: four in the aggregate per day; eight in the aggregate in possession.

(e) Red-billed pigeons, and band-tailed pigeons. No open season.

(f) Shorebirds. No open season.

(g) Woodcock: December 18, 2001 - January 31, 2002. The daily bag limit is three. The possession limit is six.

(h) Common snipe (Wilson's snipe or jacksnipe): October 20, 2001 - February 3, 2002. The daily bag limit is eight. The possession limit is 16.

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-200104196
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

DIVISION 3. FORMAL ACTION BY THE BOARD

31 TAC §363.33

The Texas Water Development Board (board) adopts amendment to 31 TAC §363.33, concerning the Interest Rates for Loans and Purchase of Board's Interest in State Participation Projects without change to the proposed amendment as published in the June 1, 2001 issue of the *Texas Register* (26 TexReg 3918) and will not be republished. The changes are adopted to set the interest rates for revenue bonds when revenue bonds constitute the consideration for the purchase of the board's interest in a state participation project by a political subdivision.

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

The amendment to §363.33(b) is adopted to establish a new lending rate schedule for revenue bonds accepted by the board in connection with the sale of state facilities. The determinative factor in setting this lending rate is the existence of outstanding board debt in connection with the board's purchase of its interest in a state participation project. If no board debt was incurred in the board's initial purchase of its interest in a facility, the interest rate is set at the prevailing lending rate for funds from the State Participation Account. If board debt was incurred in the board's initial purchase of its interest in a facility, the interest rate is based on the rate in effect at the time the board provided the funds through the issuance of bonds to participate in the project. This lending rate structure maximizes the ability of the board to match incoming revenues with outstanding debt service while promoting flexibility in the method by which political subdivisions can buy back the interest in a state facility.

No comments were received on the proposed amendments.

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

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-200104164
Suzanne Schwartz
General Counsel
Texas Water Development Board
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For further information, please call: (512) 463-7981

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31 TAC §363.34

The Texas Water Development Board (the board) adopts new 31 TAC §363.34, Financial Guarantees for Political Subdivision Bonds and Required Reserves, without change to the proposed new section as published in the June 1, 2001 issue of the *Texas Register* (26 TexReg 3919) and will not be republished. Chapter 363 governs the administration of the Water Assistance Fund and the Development Funds I and II. The new section is adopted to describe the minimum criteria that financial guarantors must meet in order to provide insurance for municipal bond debt payments owed to the board.

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

There were no comments received on the proposed new section.

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

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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Suzanne Schwartz
General Counsel
Texas Water Development Board
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CHAPTER 371. DRINKING WATER STATE REVOLVING FUND
SUBCHAPTER D. BOARD ACTION ON APPLICATION

31 TAC §371.53

The Texas Water Development Board (the board) adopts new 31 TAC §371.53, Financial Guarantees for Political Subdivision Bonds and Required Reserves, without change to the proposed new section as published in the June 1, 2001 issue of the *Texas Register* (26 TexReg 3919 and 3920) and will not be republished. Chapter 371 governs the administration of the Drinking Water State Revolving Fund. The new section is adopted to describe the minimum criteria that financial guarantors must meet in order to provide insurance for municipal bond debt payments owed to the board.

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

There were no comments received on the proposed new section.

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

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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Suzanne Schwartz
General Counsel
Texas Water Development Board
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CHAPTER 375. CLEAN WATER STATE REVOLVING FUND
SUBCHAPTER A. GENERAL PROVISIONS
DIVISION 4. BOARD ACTION ON APPLICATIONS

31 TAC §375.53

The Texas Water Development Board (the board) adopts new 31 TAC §375.53, Financial Guarantees for Political Subdivision Bonds and Required Reserves, without change to the proposed new section as published in the June 1, 2001 issue of the *Texas Register* (26 TexReg 3920 and 3921) and will not be republished. Chapter 375 governs the administration of the Clean Water State Revolving Fund. The new section is adopted to describe the minimum criteria that financial guarantors must meet in order to provide insurance for municipal bond debt payments owed to the board.

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

There were no comments received on the proposed new section.

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

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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Suzanne Schwartz
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Texas Water Development Board
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PART 20. EDWARDS AQUIFER AUTHORITY

CHAPTER 707. PROCEDURE BEFORE THE AUTHORITY

INTRODUCTION

The Edwards Aquifer Authority ("Authority") adopts amendments to §§707.309, 707.405, 707.515, and 707.605 of its rules in order to correct errors in the text of those rules as published in the *Texas Register* and codified in the Texas Administrative Code. The sections are adopted without changes to the proposed text as published in the May 18, 2001, issue of the *Texas Register* (26 TexReg 3601).

BRIEF EXPLANATION OF EACH AMENDMENT

On October 10, 2000, the Authority issued a final order adopting its Chapter 707 rules (relating to Procedure Before the Authority). That final order was published in the November 3, 2000 issue of the *Texas Register* (25 TexReg 10944-10979) (2000).

Six inconsistencies appear in these rules as published in the *Texas Register* and as codified in Title 31, Texas Administrative Code. By the term "inconsistencies," the Authority refers to instances in which the language that was published in the *Texas Register* and codified in the Texas Administrative Code does not reflect the language adopted by the Board of Directors of the Authority ("Board"), as reflected in the Board minutes on file at the Authority's offices. The amendments that are the subject of this notice are proposed to correct these inconsistencies. As a result of these amendments, the Authority's rules, as codified in the Texas Administrative Code, will reflect the rules that were approved by the Board. The following is a brief description and explanation of each amendment.

Section 707.309 of the Authority's rules concerns the requirements for well owners to file an application for a permit to install or modify a meter. The second sentence of that section, as published in the *Texas Register* and codified in the Texas Administrative Code, contains a typographical error whereby the word that was intended to read "modify" mistakenly reads "moAdify." The Authority adopts to amend §707.309 to correct this error.

Section 707.405 of the Authority's rules lists required contents for an application for an initial regular permit. Subsection (3) of that section, as published in the *Texas Register* and codified in the Texas Administrative Code, requires such an application to contain "the proposed maximum rate of withdrawal . . . ." The rule that the Board adopted requires the application to contain "the maximum rate of withdrawal . . . ." The word "proposed" was mistakenly published in the *Texas Register* and codified in the Texas Administrative Code. In addition, subsection (4) of that section, as published in the *Texas Register* and codified in the Texas Administrative Code, requires such an application to contain "the method to be used to withdraw groundwater. . . ." The rule that the Board adopted requires the application to contain "the method used to withdraw groundwater. . . ." The words "to be" were mistakenly published in the *Texas Register* and codified in the Texas Administrative Code. The Authority adopts to amend §707.405 to correct these errors.

Section 707.515 delegates authority to the general manager to take action on behalf of the Board. Paragraph (1) of subsection (b) of that section, as published in the *Texas Register* and codified in the Texas Administrative Code, lists "applications for new well construction permits" as one type of application that the general manager may grant. The version of §707.515(b)(1) that the Board adopted lists "applications for well construction permits." The word "new" was mistakenly published in the *Texas Register* and codified in the Texas Administrative Code. In addition, paragraph (4) of subsection (b) of that section, as published in the *Texas Register* and codified in the Texas Administrative Code, lists "applications to: (1) transfer interim authorization status and amend applications for initial regular permit; and (2) transfer and amend permit in all instances other than when the location of the point of withdrawal is proposed to be transferred from west of Cibolo Creek to east of Cibolo Creek." However, the version of § 707.515(b)(4) that the Board adopted applies the qualifying language, "in all instances other than when the location of the point of withdrawal is proposed to be transferred from west of Cibolo Creek to east of Cibolo Creek" to both applications to transfer interim authorization status and amend applications for

initial regular permit and to applications to transfer and amend permit. The version of §707.515(b)(4) published in the *Texas Register* and codified in the Texas Administrative Code mistakenly applies the qualifying language only to applications to transfer and amend permit. The Authority adopts to amend §707.515 to correct these errors.

Section 707.605 provides procedures for the processing of requests for contested case hearings by the Authority. Subsection (c) of that section pertains to the notice that is required to be provided by the docket clerk regarding the Board's consideration of such a request. The first sentence of that subsection, as published in the *Texas Register* and codified in the Texas Administrative Code, contains a typographical error whereby the docket clerk is required to give notice of the Board's consideration of the hearing requests "30 days prior to the first meeting at which the board considers the request." The rule that the Board adopted requires the docket clerk to provide such notice "30 days prior to the first meeting at which the board considers the request." The Authority adopts to amend §707.605 to correct this error.

No comments were received regarding adoption of the amendments.

SUBCHAPTER D. REQUIREMENTS TO FILE APPLICATIONS AND REGISTRATION

31 TAC §707.309

STATEMENT OF AUTHORITY TO ADOPT RULES

The rules were originally adopted and are now being amended under §§1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.15(a), 1.15(b), 1.15(c), 1.16(a), 1.16(b), 1.16(d), and 1.24(c) of the Edwards Aquifer Authority Act (Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2350, 2358-59, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, Chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, Chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, Chapter 163, 1999 Texas General Laws 634 ("Act") and section 2001.004(1) of the Texas Administrative Procedure Act (TEXAS GOVERNMENT CODE ANNOTATED §§2001.001-.902 (Vernon 2000) ("APA").

Section 1.08(a) of the Act provides that the Authority "has all of the powers, rights, and privileges necessary to manage, conserve, preserve, and protect the aquifer and to increase the recharge of, and prevent the waste or pollution of water in, the aquifer." This section provides the Authority with broad and general powers to take actions as necessary to manage, conserve, preserve, and protect the aquifer and to increase the recharge of, and prevent the waste or pollution of water in, the aquifer.

Section 1.11(a) of the Act provides that the Board "shall adopt rules necessary to carry out the authority's powers and duties under (Article 1 of the Act), including rules governing procedures of the board and the authority." This section requires the Board to adopt rules as necessary to implement the various substantive programs set forth in the Act related to the Edwards Aquifer, including, in particular, administrative procedures of the Authority.

Section 1.11(b) of the Act requires the Authority to "ensure compliance with permitting, metering, and reporting requirements and shall regulate permits." This section, in conjunction with §§1.11(a) and (h) of the Act, and section 2001.004(1) of the APA, requires the Authority to establish procedures related to the filing and processing of various applications and registrations with the Authority.

Section 1.11(h) of the Act provides, among other things, that the Authority is "subject to" the APA. Pursuant to this section, the Authority is required to comply with the APA in connection with its rulemaking, even though the Authority is not a state agency and would therefore otherwise not generally be subject to APA requirements. Section 2001.004(1) of the APA requires agencies subject to the APA to "adopt rules of practice stating the nature and requirements of all available formal and informal procedures."

Section 1.15(a) of the Act directs the Authority to manage withdrawals from the aquifer and manage all withdrawal points from the aquifer as provided by the Act. This section, in conjunction with §§1.11(a) and (h) of the Act, and section 2001.004(1) of the APA, requires the Authority to adopt procedural rules that would allow the Authority to fulfill these mandates.

Section 1.15(b) of the Act states that "except as provided by §1.17 and §1.33 of (Article 1 of the Act), a person may not withdraw water from the aquifer or begin construction of a well or other works designed for the withdrawal of water from the aquifer without obtaining a permit from the authority." This section, in conjunction with §§1.11(a) and (h) of the Act, and section 2001.004(1) of the APA, requires the Authority to adopt procedural rules that will implement this limitation.

Section 1.15(c) of the Act allows the Authority to issue regular permits, term permits, and emergency permits. This section, in conjunction with §§1.11(a) and (h) of the Act, and section 2001.004(1) of the APA, empowers the Authority to establish procedures related to the filing and processing of applications for initial and additional regular permits, term permits and emergency permits.

Section 1.16(a) of the Act allows an existing user to apply for an initial regular permit by filing a declaration of historical use. This section, in conjunction with §§ 1.11(a) and (h) of the Act, and section 2001.004(1) of the APA, requires the Authority to adopt procedural rules governing the filing and processing of such applications or declarations.

Section 1.16(b) of the Act sets forth certain requirements concerning an existing user's declaration of historical use and an applicant's payment of application fees required by the Board. This section, in conjunction with §§1.11(a) and (h) of the Act, and section 2001.004(1) of the APA, requires the Authority to adopt procedural rules that will implement these requirements.

Section 1.16(d) of the Act requires the Board to grant an initial regular permit to an existing user who: (1) files a declaration and pays fees as required by this section; and (2) establishes by convincing evidence beneficial use of underground water from the aquifer. This section, in conjunction with §§1.11(a) and (h) of the Act, and section 2001.004(1) of the APA, requires the Authority to adopt procedural rules that will allow the Authority to fulfill this mandate.

The articles or sections of the Act or any other code that are affected by the proposed rule are: §§1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.15(a), 1.15(c), 1.16(a), 1.16(b), 1.16(d), and 1.24(c) of the Act, and section 2001.004(1) of the APA. The sections of Chapter 31, Texas Administrative Code, that are to be affected are §§707.309, 707.405, 707.515, and 707.605.

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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Gregory M. Ellis
General Manager
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SUBCHAPTER E. REQUIREMENTS FOR APPLICATIONS AND REGISTRATION

31 TAC §707.405

These rules were originally adopted and are now being amended under §§1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.15(a), 1.15(b), 1.15(c), 1.16(a), 1.16(b), 1.16(d), and 1.24(c) of the Edwards Aquifer Authority Act (Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2350, 2358-59, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, Chapter 261, 1995 Tex Gen. Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, Chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, Chapter 163, 1999 Texas General Laws 634 ("Act") and section 2001.004(1) of the Texas Administrative Procedure Act (TEXAS GOVERNMENT CODE ANNOTATED §§2001.001-.902 (Vernon 2000) ("APA").

The articles or sections of the Act or any other code that are affected by the proposed rule are: §§1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.15(a), 1.15(c), 1.16(a), 1.16(b), 1.16(d), and 1.24(c) of the Act, and section 2001.004(1) of the APA. The sections of Chapter 31, Texas Administrative Code, that are to be affected are §§707.309, 707.405, 707.515, and 707.605.

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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Gregory M. Ellis
General Manager
Edwards Aquifer Authority
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For further information, please call: (210) 222-2204

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SUBCHAPTER F. ACTIONS ON APPLICATIONS AND REGISTRATIONS BY THE AUTHORITY

31 TAC §707.515

These rules were originally adopted and are now being amended under §§1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.15(a), 1.15(b), 1.15(c), 1.16(a), 1.16(b), 1.16(d), and 1.24(c) of the Edwards Aquifer Authority Act (Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2350, 2358-59, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, Chapter 261, 1995 Tex Gen. Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, Chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, Chapter 163, 1999 Texas General Laws 634 ("Act") and section 2001.004(1) of the Texas Administrative Procedure Act (TEXAS GOVERNMENT CODE ANNOTATED §§2001.001-.902 (Vernon 2000) ("APA").

The articles or sections of the Act or any other code that are affected by the proposed rule are: §§1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.15(a), 1.15(c), 1.16(a), 1.16(b), 1.16(d), and 1.24(c) of the Act, and section 2001.004(1) of the APA. The sections of Chapter 31, Texas Administrative Code, that are to be affected are §§707.309, 707.405, 707.515, and 707.605.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. PROCEDURES FOR CONTESTED CASE HEARINGS ON APPLICATIONS

31 TAC §707.605

These rules were originally adopted and are now being amended under §§1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.15(a), 1.15(b), 1.15(c), 1.16(a), 1.16(b), 1.16(d), and 1.24(c) of the Edwards Aquifer Authority Act (Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2350, 2358-59, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, Chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, Chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, Chapter 163, 1999 Texas General Laws 634 ("Act") and section 2001.004(1) of the Texas Administrative Procedure Act (TEXAS GOVERNMENT CODE ANNOTATED §§2001.001-.902 (Vernon 2000) ("APA").

The articles or sections of the Act or any other code that are affected by the proposed rule are: §§1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.15(a), 1.15(c), 1.16(a), 1.16(b), 1.16(d), and 1.24(c) of the Act, and section 2001.004(1) of the APA. The sections of Chapter 31, Texas Administrative Code, that are to be affected are §§707.309, 707.405, 707.515, and 707.605.

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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CHAPTER 711. GROUNDWATER WITHDRAWAL PERMITS

INTRODUCTION

The Edwards Aquifer Authority ("Authority") adopts amendments to §§711.68, 711.100, 711.102, 711.104, 711.112, 711.134, 711.176, 711.302, 711.338, 711.402 and 711.406 of its rules in order to correct errors in the text of those rules as published in the *Texas Register* and codified in the Texas Administrative Code. The sections are adopted without changes to the proposed text as published in the May 18, 2001, issue of the *Texas Register* (26 TexReg 3606).

BRIEF EXPLANATION OF EACH AMENDMENT

On October 10 and 11, 2000, and on December 18, 2000, the Authority issued final orders adopting its Chapter 711 rules (relating to Groundwater Withdrawal Permits). Those final orders were published in the November 3, 2000, and the January 12, 2001, issues of the *Texas Register* (25 TexReg 10996-11076) (2000) (adopting Subchapters A, B, E, F, G, and I of Chapter 711), (26 TexReg 633-688) (2001) (adopting Subchapters C, D, H, K, L, and M of Chapter 711).

Sixteen inconsistencies appear in these rules as published in the *Texas Register* and as codified in Title 31, Texas Administrative Code. By the term "inconsistencies," the Authority refers to instances in which the language that was published in the *Texas Register* and codified in the Texas Administrative Code does not reflect the language adopted by the Board of Directors of the Authority ("Board"), as reflected in the Board minutes on file at the Authority's offices. The amendments that are the subject of this notice are proposed to correct these inconsistencies. As a result of these amendments, the Authority's rules, as codified in the Texas Administrative Code, will reflect the rules that were approved by the Board. The following is a brief description and explanation of each amendment.

Section 711.68 of the Authority's rules specifies the uses to which water withdrawn from a well during the interim authorization period may be placed. Section 711.68, as published in the *Texas Register* and codified in the Texas Administrative Code, states that "during the interim authorization period, a person owning a well qualifying for interim authorization status may beneficially use groundwater withdrawn from the aquifer through the well only for the purpose(s) of use designated in the person's declaration and falling within one or more of the following categories...." The version of section 711.68 adopted by the Board states that "during the interim authorization period, a person owning a well qualifying for interim authorization status may beneficially use groundwater withdrawn from the aquifer through the well for the purpose(s) of use designated in the person's declaration and falling within one or more of the following categories...." The word "only" was mistakenly published in the *Texas Register* and codified in the Texas Administrative Code. The Authority adopts to amend section 711.68 to correct this error.

Section 711.100 of the Authority's rules identifies those who may apply for an additional regular permit, states when such an application may be made, describes the attributes of such a permit, and lists the elements that an applicant must prove in order to be granted such a permit. Subparagraph (B) of subsection (j) of that section, as published in the *Texas Register* and codified in the Texas Administrative Code, mistakenly contains the phrase "of this chapter." The version of subparagraph (B) adopted by the Board does not include that phrase. The Authority adopts to amend section 711.100 to correct this error.

Section 711.102 of the Authority's rules identifies those who may apply for a term permit, states when such an application may be made, describes the attributes of that type of permit, and lists the elements that an applicant must prove in order to be granted such a permit. Paragraph (14) of subsection (f) of that section, as published in the *Texas Register* and codified in the Texas Administrative Code, mistakenly includes the plural term "systems" instead of the singular "system." The version of paragraph (14) adopted by the Board uses the singular. The Authority adopts to amend section 711.102 to correct this error.

Section 711.104 of the Authority's rules identifies those who may apply for an emergency permit, describes the attributes of that type of permit, and lists the elements that an applicant must prove in order to be granted such a permit. Paragraph (7) of subsection (e) of that section, as published in the *Texas Register* and codified in the Texas Administrative Code, mistakenly includes the adjective "beneficial" instead of the adverb "beneficially." The version of paragraph (7) adopted by the Board uses the adverb "beneficially." The Authority adopts to amend section 711.104 to correct this error.

Section 711.112 of the Authority's rules identifies the contents of well construction permits issued by the Authority. Subsection (13) of that section, as published in the *Texas Register* and codified in the Texas Administrative Code, mistakenly contains the phrase "of the chapter" instead of the phrase "of this chapter." The version of paragraph (13) adopted by the Board includes the phrase "of this chapter." The Authority adopts to amend section 711.112 to correct this error.

Section 711.134 of the Authority's rules lists the conditions to which all groundwater withdrawal permits issued by the Authority are subject. Paragraph (14) of that section, as published in the *Texas Register* and codified in the Texas Administrative Code, mistakenly includes the word "and" at the end of that subsection. The version of paragraph (14) adopted by the Board does not include the word "and" at the end of that subsection. The Authority adopts to amend section 711.134 to correct this error.

Section 711.176 of the Authority's rules establishes and explains how groundwater withdrawal amounts in initial regular permits will be determined. Subsection (b) of that section sets forth the method of calculating a groundwater withdrawal amount under six different scenarios. Subsection (b) of that section, as published in the *Texas Register* and codified in the Texas Administrative Code, mistakenly includes the plural word "amounts" instead of the singular "amount." The version of subsection (b) adopted by the Board uses the singular. The Authority adopts to amend section 711.176 to correct this error.

Subsection (c) of section 711.176 explains that initial regular permits may be issued with provisional groundwater withdrawal amounts. Subsection (c), as published in the *Texas Register*

and codified in the Texas Administrative Code, contains several punctuation errors. Specifically, it does not include a period after the phase "groundwater withdrawal amount" in the first sentence. Also, it includes a period after the parenthetical "(relating to Proportional Adjustment of Initial Regular Permits)" and begins a new sentence immediately following that parenthetical. The version of subsection (c) adopted by the Board includes a period after the phase "groundwater withdrawal amount" in the first sentence and a comma (instead of a period) after the parenthetical. The Authority adopts to amend section 711.176 to correct these errors as well.

Section 711.302 of the Authority's rules concerns the authority of the Board to issue an order increasing the cap on permitted withdrawals and lists several findings that the Board must make in order to allow for such action. Subsection (1) of that section lists one of those findings and, as published in the *Texas Register* and codified in the Texas Administrative Code, refers to "Comal Springs and San Marcos Springs." The version of section 711.302 adopted by the Board refers to "Comal Springs or San Marcos Springs." The Authority adopts to section 711.302 to correct this error.

Section 711.338 of the Authority's rules concerns the transfer of "base irrigation groundwater." Subsection (a) of that section, as published in the *Texas Register* and codified in the Texas Administrative Code, mistakenly begins "except as provided in subsection (b), ..." The version of subsection (a) adopted by the Board begins "except as provided in subsections (b) and (c), ..." The Authority adopts to amend section 711.338 to correct this error.

Also, the version of section 711.338 adopted by the Board includes subsection (c), which states as follows:

"A permittee may temporarily transfer by a lease with a term not in excess of ten years the place of use for all or part of an initial regular permit issued for base irrigation groundwater to another place of use not owned by the permittee. If the permittee subsequently transfers the ownership of the place of use of the initial regular permit to a third party, then section 711.328(c) of this chapter (relating to Transfer of Ownership) would then control, and the base irrigation groundwater shall pass with the transfer of ownership of the irrigated lands identified as the place of use in the initial regular permit. However, the third party to which the permittee transferred the ownership of the place of use of the initial regular permit shall take title of the irrigated lands subject to the lease during its term."

Subsection (c) was omitted in its entirety from the version of section 711.338 that was published in the *Texas Register* and codified in the Texas Administrative Code. The Authority adopts to amend section 711.338 to correct this error.

Also, the Authority's response to public comment bearing on the addition of subsection (c) to section 711.338 was omitted from the *Texas Register* as well. In that response, the Authority noted that the basic points of section 1.34(c) of the Act is that groundwater should be available for irrigation purposes within the jurisdiction of the Authority and that Base Irrigation Groundwater (BIG) should remain appurtenant to the place of use identified in the original initial regular permits (IRPs) issued by the Authority. However, and also as explained in that response, the purpose of the appurtenancy rule would not be served by prohibiting transfers of a well owner's BIG to another place of use not owned by the owner of the BIG if the transfer is temporary and for a sufficiently short period of time such as not to constitute a transfer of the BIG to another place of use in violation of the appurtenancy rule and so long as the groundwater will continue to be used for irrigation purposes. In this context, if the owner of the place of use identified in the IRP to which the BIG is appurtenant sought to transfer the ownership of the place of use, then the appurtenancy rule would control over the transfer of the BIG to another place of use not owned by the transferor and the transferee would acquire the BIG due to the operation of section 1.34(c) of the Act, although such acquisition would be subject to the term of the lease by which the temporary transfer of the place of use (but not the purpose of use) was effectuated. In this context, the BIG would continue to be used for irrigation purposes so long as the irrigated lands to which the BIG is appurtenant continue to be suitable for irrigation and the BIG would not be permanently severed from the irrigated lands constituting the original place of use in the original IRP in violation of the appurtenancy rule.

Section 711.402 of the Authority's rules concerns the duty of well owners to install and operate meters on their wells. Subsection (d) of that section, as published in the *Texas Register* and codified in the Texas Administrative Code, concerns the accuracy of such a meter and states that it "shall ensure an error of not greater than ± five percent." The version of subsection (d) adopted by the Board states that such a meter "shall ensure an error of not greater than ± five percent." The Authority adopts to amend section 711.402 to correct this error.

Section 711.406 of the Authority's rules concerns approval for the installation of meters. Subsections (a) and (b) of this section, as published in the *Texas Register* and codified in the Texas Administrative Code, include several errors in punctuation. Specifically, as published in the *Texas Register* and codified in the Texas Administrative Code, these subsections mistakenly include several commas and omit one comma. Also, paragraph (1) of subsection (b) of that section, as published in the *Texas Register* and codified in the Texas Administrative Code, states that the general manager shall approve an application to install or modify a meter if the application shows that "the meter . . . has a certified error of not greater than ± five percent." The version of paragraph (1) of subsection (b) adopted by the Board refers to the requirement that "the meter . . . has a certified error of not greater than ± five percent." The Authority adopts to amend section 711.406 to correct these errors.

No comments were received regarding adoption of the amendments.

SUBCHAPTER D. INTERIM AUTHORIZATION

31 TAC §711.68

STATEMENT OF AUTHORITY TO ADOPT RULES

These rules were originally adopted and are now being amended under §§1.03(11), 1.03(12), 1.03(13), 1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.14(d), 1.15(a), 1.15(b), 1.17(a), 1.18, 1.19, 1.20, 1.21, 1.31, and 1.34 of the Edwards Aquifer Authority Act (Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2350, 2358-59, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, Chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, Chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, Chapter 163, 1999 Texas General Laws 634 ("Act"), and section 2001.004(1) of the Texas Administrative Procedure Act

(TEXAS GOVERNMENT CODE ANNOTATED §§2001.001-.902 (Vernon 2000)) ("APA").

Section 1.03(11) of the Act defines "industrial use." Section 1.03(12) of the Act defines "irrigation use." Section 1.03(14) of the Act defines "municipal use."

Section 1.08(a) of the Act provides that the Authority "has all of the powers, rights, and privileges necessary to manage, conserve, preserve, and protect the aquifer and to increase the recharge of, and prevent the waste or pollution of water in, the aquifer."

Section 1.11(a) of the Act provides that the Board "shall adopt rules necessary to carry out the authority's powers and duties under (Article 1 of the Act), including rules governing procedures of the board and the authority."

Section 1.11(b) of the Act requires the Authority to "ensure compliance with permitting, metering, and reporting requirements and . . . regulate permits." The Authority interprets this section, in conjunction with §§1.11(a) and (h) of the Act, and §2001.004(1) of the APA, to require the Authority to adopt and enforce rules related to the Authority's permit program.

Section 1.11(h) of the Act provides, among other things, that the Authority is "subject to" the APA. This section essentially provides that the Authority is required to comply with the APA for its rulemaking, even though the Authority is a political subdivision and not a state agency, and therefore, would typically not be subject to APA requirements.

Section 1.14(d) of the Act provides that the statutory "caps" on the amount of permitted withdrawals may be raised by the Authority if, through studies and implementation of certain strategies, the Authority, in consultation with state and federal agencies, determines the caps may be raised.

Section 1.15(a) of the Act directs the Authority to manage withdrawals from the aquifer and manage all withdrawal points from the aquifer as provided by the Act.

Section 1.15(b) of the Act states that "except as provided by §§1.17 and 1.33 of this article, a person may not withdraw water from the aquifer or begin construction of a well or other works designed for the withdrawal of water from the aquifer without obtaining a permit from the authority."

Section 1.17(a) of the Act provides that a person who, on the effective date of Article 1 of the Act (i.e., June 28, 1996), owns a producing well that withdraws water from the aquifer may continue to withdraw and beneficially use water without waste until final action on permits by the Authority, if certain conditions are met.

Section 1.18 of the Act allows the Authority, in certain circumstances, to issue additional regular permits.

Section 1.19 of the Act allows the Authority to issue term permits and places certain limitations and conditions on the right to withdraw water under such a permit.

Section 1.20 of the Act allows the Authority to issue emergency permits under certain circumstances and subject to certain conditions.

Section 1.21 of the Act sets out a process by which the Authority is to implement a plan for reducing the withdrawal "cap" from 450,000 to 400,000 acre-feet per year by January 1, 2008. If, on or after January 1, 2008, total permitted withdrawals still exceed the 400,000 acre-feet cap, then the Authority must implement "equal percentage reductions" of all permits in order to reach the cap.

Section 1.31 of the Act provides that nonexempt well owners must install and maintain meters or alternative measuring devices to measure the flow rate and cumulative amount of water withdrawn from each well. The section further provides that the Authority must pay for such meters on irrigation wells in existence on the effective date of the Act.

Section 1.34 of the Act authorizes the transfer of water rights and imposes certain limitations on such transfers. The Authority interprets the first sentence of subsection (c) of this section to provide that the owner of an initial regular permit for irrigation use may transfer the place or purpose of use not to exceed 50 percent of the groundwater withdrawal amount recognized in the original initial regular permit to any other place or purpose of use.

The articles or sections of the Act or any other code that are affected by the proposed rule are: 1.03(11), 1.03(12), 1.03(13), 1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.14(d), 1.15(a), 1.15(b), 1.17(a), 1.18, 1.19, 1.20, 1.21, 1.31, and 1.34 of the Act, and section 2001.004(1) of the APA. The sections of Chapter 31, Texas Administrative Code, that are to be affected are §§711.68, 711.100, 711.102, 711.104, 711.112, 711.134, 711.176, 711.302, 711.338, 711.402 and 711.406.

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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Gregory M. Ellis
General Management
Edwards Aquifer Authority
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SUBCHAPTER E. PERMITTED WELLS

31 TAC §§711.100, 711.102, 711.104, 711.112

These rules were originally adopted and are now being amended under §§1.03(11), 1.03(12), 1.03(13), 1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.14(d), 1.15(a), 1.15(b), 1.17(a), 1.18, 1.19, 1.20, 1.21, 1.31, and 1.34 of the Edwards Aquifer Authority Act (Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2350, 2358-59, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, Chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, Chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, Chapter 163, 1999 Texas General Laws 634 ("Act"), and section 2001.004(1) of the Texas Administrative Procedure Act (TEXAS GOVERNMENT CODE ANNOTATED §§2001.001-.902 (Vernon 2000)) ("APA").

The articles or sections of the Act or any other code that are affected by the proposed rule are: 1.03(11), 1.03(12), 1.03(13), 1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.14(d), 1.15(a), 1.15(b), 1.17(a), 1.18, 1.19, 1.20, 1.21, 1.31, and 1.34 of the Act, and section 2001.004(1) of the APA. The sections of Chapter 31, Texas Administrative Code, that are to be affected

are §§711.68, 711.100, 711.102, 711.104, 711.112, 711.134, 711.176, 711.302, 711.338, 711.402 and 711.406.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. STANDARD GROUNDWATER WITHDRAWAL CONDITIONS

31 TAC §711.134

These rules were originally adopted and are now being amended under §§1.03(11), 1.03(12), 1.03(13), 1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.14(d), 1.15(a), 1.15(b), 1.17(a), 1.18, 1.19, 1.20, 1.21, 1.31, and 1.34 of the Edwards Aquifer Authority Act (Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2350, 2358-59, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, Chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, Chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, Chapter 163, 1999 Texas General Laws 634 ("Act"), and section 2001.004(1) of the Texas Administrative Procedure Act (TEXAS GOVERNMENT CODE ANNOTATED §§2001.001-.902 (Vernon 2000)) ("APA").

The articles or sections of the Act or any other code that are affected by the proposed rule are: 1.03(11), 1.03(12), 1.03(13), 1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.14(d), 1.15(a), 1.15(b), 1.17(a), 1.18, 1.19, 1.20, 1.21, 1.31, and 1.34 of the Act, and section 2001.004(1) of the APA. The sections of Chapter 31, Texas Administrative Code, that are to be affected are §§711.68, 711.100, 711.102, 711.104, 711.112, 711.134, 711.176, 711.302, 711.338, 711.402 and 711.406.

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SUBCHAPTER G. GROUNDWATER AVAILABLE FOR PERMITTING; PROPORTIONAL ADJUSTMENT; EQUAL PERCENTAGE REDUCTION

31 TAC §711.176

These rules were originally adopted and are now being amended under §§ 1.03(11), 1.03(12), 1.03(13), 1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.14(d), 1.15(a), 1.15(b), 1.17(a), 1.18, 1.19, 1.20, 1.21, 1.31, and 1.34 of the Edwards Aquifer Authority Act (Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2350, 2358-59, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, Chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, Chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, Chapter 163, 1999 Texas General Laws 634 ("Act"), and section 2001.004(1) of the Texas Administrative Procedure Act (TEXAS GOVERNMENT CODE ANNOTATED §§ 2001.001-.902 (Vernon 2000)) ("APA").

The articles or sections of the Act or any other code that are affected by the proposed rule are: 1.03(11), 1.03(12), 1.03(13), 1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.14(d), 1.15(a), 1.15(b), 1.17(a), 1.18, 1.19, 1.20, 1.21, 1.31, and 1.34 of the Act, and section 2001.004(1) of the APA. The sections of Chapter 31, Texas Administrative Code, that are to be affected are §§ 711.68, 711.100, 711.102, 711.104, 711.112, 711.134, 711.176, 711.302, 711.338, 711.402 and 711.406.

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 K. ADDITIONAL GROUNDWATER SUPPLIES

31 TAC §711.302

These rules were originally adopted and are now being amended under §§ 1.03(11), 1.03(12), 1.03(13), 1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.14(d), 1.15(a), 1.15(b), 1.17(a), 1.18, 1.19, 1.20, 1.21, 1.31, and 1.34 of the Edwards Aquifer Authority Act (Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2350, 2358-59, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, Chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, Chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, Chapter 163, 1999 Texas General Laws 634 ("Act"), and section 2001.004(1) of the Texas Administrative Procedure Act (TEXAS GOVERNMENT CODE ANNOTATED §§ 2001.001-.902 (Vernon 2000)) ("APA").

The articles or sections of the Act or any other code that are affected by the proposed rule are: 1.03(11), 1.03(12), 1.03(13),

1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.14(d), 1.15(a), 1.15(b), 1.17(a), 1.18, 1.19, 1.20, 1.21, 1.31, and 1.34 of the Act, and section 2001.004(1) of the APA. The sections of Chapter 31, Texas Administrative Code, that are to be affected are §§ 711.68, 711.100, 711.102, 711.104, 711.112, 711.134, 711.176, 711.302, 711.338, 711.402 and 711.406.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200104161
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Effective date: August 7, 2001
Proposal publication date: May 18, 2001
For further information, please call: (210) 222-2204

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SUBCHAPTER L. TRANSFERS

31 TAC §711.338

These rules were originally adopted and are now being amended under §§1.03(11), 1.03(12), 1.03(13), 1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.14(d), 1.15(a), 1.15(b), 1.17(a), 1.18, 1.19, 1.20, 1.21, 1.31, and 1.34 of the Edwards Aquifer Authority Act (Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2350, 2358-59, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, Chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, Chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, Chapter 163, 1999 Texas General Laws 634 ("Act"), and section 2001.004(1) of the Texas Administrative Procedure Act (TEXAS GOVERNMENT CODE ANNOTATED §§2001.001-.902 (Vernon 2000)) ("APA").

The articles or sections of the Act or any other code that are affected by the proposed rule are: 1.03(11), 1.03(12), 1.03(13), 1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.14(d), 1.15(a), 1.15(b), 1.17(a), 1.18, 1.19, 1.20, 1.21, 1.31, and 1.34 of the Act, and section 2001.004(1) of the APA. The sections of Chapter 31, Texas Administrative Code, that are to be affected are §§711.68, 711.100, 711.102, 711.104, 711.112, 711.134, 711.176, 711.302, 711.338, 711.402 and 711.406.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200104162
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Effective date: August 7, 2001
Proposal publication date: May 18, 2001
For further information, please call: (210) 222-2204

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SUBCHAPTER M. METERS; ALTERNATIVE MEASURING METHODS; AND REPORTING

31 TAC §711.402, §711.406

These rules were originally adopted and are now being amended under §§ 1.03(11), 1.03(12), 1.03(13), 1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.14(d), 1.15(a), 1.15(b), 1.17(a), 1.18, 1.19, 1.20, 1.21, 1.31, and 1.34 of the Edwards Aquifer Authority Act (Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2350, 2358-59, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, Chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, Chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, Chapter 163, 1999 Texas General Laws 634 ("Act"), and section 2001.004(1) of the Texas Administrative Procedure Act (TEXAS GOVERNMENT CODE ANNOTATED §§ 2001.001-.902 (Vernon 2000)) ("APA").

The articles or sections of the Act or any other code that are affected by the proposed rule are: 1.03(11), 1.03(12), 1.03(13), 1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.14(d), 1.15(a), 1.15(b), 1.17(a), 1.18, 1.19, 1.20, 1.21, 1.31, and 1.34 of the Act, and section 2001.004(1) of the APA. The sections of Chapter 31, Texas Administrative Code, that are to be affected are §§ 711.68, 711.100, 711.102, 711.104, 711.112, 711.134, 711.176, 711.302, 711.338, 711.402 and 711.406.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200104163
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Effective date: August 7, 2001
Proposal publication date: May 18, 2001
For further information, please call: (210) 222-2204

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 6. LICENSE TO CARRY HANDGUNS

SUBCHAPTER D. TIME, PLACE, AND MANNER RESTRICTIONS ON LICENSE HOLDERS

37 TAC §6.47

The Texas Department of Public Safety adopts the repeal of §6.47, concerning License to Carry Handguns, without changes to the proposed text as published in the April 27, 2001, issue of the *Texas Register* (26 TexReg 3154) and will not be republished.

The justification for the repeal is deletion of a rule that is outdated.

The repeal of §6.47 is deemed necessary because the department now uses Penal Code, §30.06, Trespass By Holder Of License to Carry Concealed Handgun to prohibit weapons on department property. In addition, Attorney General Opinion JC-0325 held that a unit of government may not, by promulgating its own rules, bar the holder of a concealed handgun license from carrying his weapon onto property owned by that governmental unit.

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Government Code, §411.197, which authorizes the department to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 23, 2001.

TRD-200104240
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: August 12, 2001
Proposal publication date: April 27, 2001
For further information, please call: (512) 424-2135

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 5. TEXAS VETERANS LAND BOARD

CHAPTER 175. GENERAL RULES OF THE VETERANS LAND BOARD

The Veterans Land Board of the State of Texas (the "Board") adopts the repeal of Title 40, Part 5, Chapter 175 of the Texas Administrative Code, §175.5 (relating to Appraisal of Land) of the General Rules of the Veterans Land Board and simultaneously adopts the new §175.5 (relating to Appraisal of Land) without changes to the text as published in the May 18, 2001 issue of the *Texas Register* (26 TexReg 3614).

The adopted new rule provides that property evaluations be prepared by appraisers approved by the Board, requires that written notice be provided to the seller and the Board when the loan applicant cancels a transaction because of the appraisal, has deleted the mandatory requirement that the Board's representative meet a loan applicant on the property to be purchased, permits the applicant to require the appraiser to inspect the property with the applicant, allows the Board to adopt resolutions that establish procedures relating to inspection of property by the loan applicant or the applicant's representative, establishes procedures for requesting re-appraisals, and allows the chairman or executive secretary to waive requirements related to re-appraisals.

The Board expects the new rule to reduce the time needed to approve loan applications by eliminating the requirement that every loan applicant schedule an appointment to personally meet with the appraiser to inspect the property. The adopted new rule protects the best interests of the Veterans Land Program by describing procedures for personal inspections by the loan applicant, including the requirements for requesting a re-appraisal.

No comments regarding the repeal and proposed new rule were received.

40 TAC §175.5

The repeal of this section is adopted under the Natural Resources Code, Title 7, Chapter 161, §161.063 and §161.284, which provides authorization for the Board to adopt rules for the Program which it considers necessary and advisable and to adopt rules relating to appraisals.

Natural Resources Code §161.212 and §161.284 are affected by this adopted action.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 23, 2001.

TRD-200104225
Larry R. Soward
Chief Clerk, General Land Office
Texas Veterans Land Board
Effective date: August 12, 2001
Proposal publication date: May 18, 2001
For further information, please call: (512) 305-9129

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40 TAC §175.5

The new section is adopted under the Natural Resources Code, Title 7, Chapter 161, §161.063 and §161.284, which provides authorization for the Board to adopt rules for the Program which it considers necessary and advisable and to adopt rules relating to appraisals.

Natural Resources Code §161.212 and §161.284 are affected by this adopted action.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 23, 2001.

TRD-200104226
Larry R. Soward
Chief Clerk, General Land Office
Texas Veterans Land Board
Effective date: August 12, 2001
Proposal publication date: May 18, 2001
For further information, please call: (512) 305-9129

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40 TAC §§175.9, 175.12, 175.14 - 175.16, 175.19

The Veterans Land Board of the State of Texas (the "Board") adopts the amendments to Title 40, Part 5, Chapter 175 of the

Texas Administrative Code, §§175.9 (relating to "Death of a Purchaser"), 175.12 (relating to "Severances"), 175.14 (relating to "Mineral Leases"), 175.15 (relating to "Approval of Easements"), 175.16 (relating to "Payment in Full"), and 175.19 (relating to "Subdivision Loan Processing") of the General Rules of the Veterans Land Board without changes to the text as published in the April 27, 2001, issue of the *Texas Register* (26 TexReg 3200).

These adopted amendments have deleted references to fee amounts in the above listed sections, corrected a prescribed form that referenced years beginning with "19__," corrected some punctuation errors, and eliminated some procedures relating to appraisals of subdivisions. These amendments are being adopted concurrently with the adopted repeals of, and adoption of new rules for, §175.17 (relating to "Fees and Deposits") of the General Rules of the Veterans Land Board and §177.9 (relating to "Fees, Expenses, and Interest") of the Veterans Housing Assistance Program.

The existing rules prior to these amendments contained fees that are charged by the Board. The amounts of these fees were found in several different rules. The adopted amendments delete the specific fee amounts from all these rules. Concurrently published adopted repeals and adopted new rules for §175.17 of the General Rules of the Veterans Land Board and §177.9 of the rules for The Veterans Housing Assistance Program will specify fee amounts respectively for the Veterans Land Program (the "Program") and the Veterans Housing Assistance Program.

The amendments were a necessary first step to protecting the best interests of the Program by allowing the Board to list all fees in one rule for the Program and in one rule for the Veterans Housing Assistance Program.

No comments were received regarding the proposed amendments.

The amendments to the sections are adopted under the Natural Resources Code, Title 7, Chapter 161, §§161.063, 161.069, and 161.070, which provides authorization for the Board to adopt rules for the Program which it considers necessary and advisable, and to set fees charged by the Board.

Natural Resources Code §§161.069 and 161.070 are affected by this adopted action.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 23, 2001.

TRD-200104227
Larry R. Soward
Chief Clerk, General Land Office
Texas Veterans Land Board
Effective date: August 12, 2001
Proposal publication date: April 27, 2001
For further information, please call: (512) 305-9129

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CHAPTER 175. GENERAL RULES OF THE VETERANS LAND BOARD

The Veterans Land Board of the State of Texas (the "Board") adopts the repeal and new §175.17 (relating to Fees and Deposits) of the General Rules of the Veterans Land Board, Title 40, Part 5, Chapter 175 of the Texas Administrative Code without changes to the text as published in the April 27, 2001, issue of the *Texas Register* (26 TexReg 3203).

The proposed repeal and substitution are being adopted concurrently with amendments to Title 40, Part 5, Chapter 175 of the Texas Administrative Code, §§175.9 (relating to Death of a Purchaser), 175.12 (relating to Severances), 175.14 (relating to Mineral Leases), 175.15 (relating to Approval of Easements), 175.16 (relating to Payment in Full), 175.19 (relating to Subdivision Loan Processing) and 177.9 (relating to Fees, Expenses, and Interest) of the General Rules of the Veterans Land Board. The foregoing amendments remove references to the amounts of all fees charged by the Board from all existing rules.

By adopting the repeal of §175.17 and adopting a new rule in its place, the Board is able to describe in a single rule all fees it charges in the Veterans Land Program. The adopted rule changes the existing fees as follows: (1) It authorizes the Board to adopt by resolution, from time-to-time, a schedule describing all services for which it charges a fee; (2) It authorizes the chairman or executive secretary of the Board to waive the collection of any fee, on a case by case basis, if it serves the best interests of the program; (3) It establishes maximum amounts for fees the Board can set by resolution. These maximum amounts are described in the rule. In order to set any fee in a greater amount, the Board must propose an amendment to the rule; and (4) It changes the appraisal fee from $120 to an amount not to exceed $250 and the reappraisal fee from $120 to an amount not to exceed $100. The service fee for contracts is changed from $70 to an amount not to exceed $75. The returned check fee is changed from $15 to $25. The $25 application fee; the $25 forfeited land bid fee; the $375 administrative cost and application processing fee; and the reinstatement fee are all eliminated. All other existing fees are limited to an amount not to exceed $75 each.

All of the adopted new rules protect the best interests of the Programs by allowing the Board to list all fees in one rule for each loan program and set the amount of individual fees, expenses, and interest rates by resolution. This allows the Board to operate the Program in a manner that is responsive to the needs of veterans as market conditions change over time.

No comments were received regarding the repeal and proposed new section.

40 TAC §175.17

The repeal of the section is adopted under the Natural Resources Code, Title, 7, Chapter 161, §§161.063, 161.069, and 161.070 which authorize the Board to set fees and adopt rules for the Programs which it considers necessary and advisable.

Natural Resources Code §§161.069 and 161.070 are affected by this adopted action.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 23, 2001.

TRD-200104228

Larry R. Soward
Chief Clerk, General Land Office
Texas Veterans Land Board
Effective date: August 12, 2001
Proposal publication date: April 27, 2001
For further information, please call: (512) 305-9129

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40 TAC §175.17

The new section is adopted under the Natural Resources Code, Title 7, Chapter 161, §§161.063, 161.069, and 161.070 which authorize the Board to set fees and adopt rules for the Programs which it considers necessary and advisable.

Natural Resources Code §§161.069 and 161.070 are affected by this adopted action.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 23, 2001.

TRD-200104229
Larry R. Soward
Chief Clerk, General Land Office
Texas Veterans Land Board
Effective date: August 12, 2001
Proposal publication date: April 27, 2001
For further information, please call: (512) 305-9129

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40 TAC §175.20

The Veterans Land Board of the State of Texas (the "Board") adopts the amendments to Title 40, Part 5, Chapter 175 of the Texas Administrative Code, §175.20 (relating to Delinquencies and Forfeiture Procedures) of the General Rules of the Veterans Land Board without changes to the text as published in the May 18, 2001, issue of the *Texas Register* (26 TexReg 3616).

These adopted amendments have changed the term "penalty interest" to "delinquent interest," changed the term "reinstatement fee" to "reinstatement penalty," defined the term "reinstatement penalty," allow the Board to restore the eligibility of a person to participate in the Board's loan programs, allows the Board Chairman to restore in certain instances the eligibility of a person to participate in the Board's loan programs, provide for a usury savings clause, and provide that Board land contracts are subject to the constitution, statutes, and Board rules as they may from time to time be amended. The adopted amendments have changed the term "penalty interest" to "delinquent interest" because the term "delinquent interest" more accurately describes the interest charged as a result of delinquent payments.

The dollar amount of a "reinstatement fee" was specified in §175.17 (relating to Fees and Deposits); however, the repeal of that rule is currently being adopted and with the simultaneously adoption of a new §175.17, that will not provide for a "reinstatement fee." The term in the adopted amendment to §175.20 has been changed to "reinstatement penalty" and is redefined to provide for a penalty amount based on a percentage calculation and is intended to discourage contract forfeitures.

Under current §175.2(d) (relating to Loan Eligibility Requirements), a person may have only one land loan at a time as a veteran and that loan must be paid in full before he or she may apply for an additional land loan as a veteran. If a person's loan has been forfeited and ordered for sale (and therefore not paid in full), the person would not be eligible to apply for another loan. The adopted amendment to §175.20(f)(1) allows the Board to restore the eligibility of a person to participate in the Board's loan programs, notwithstanding §175.2, if that person is able to justify to the Board the circumstances that led to the previous forfeiture and order for sale and that person fulfills the conditions established by the Board for the reinstatement of the eligibility. The adopted amendments §175.20 will in certain specified instances allow the Board Chairman, without further approval by the Board, to restore the eligibility of a person to participate in the Board's loan programs. Allowing the Board Chairman to restore the eligibility in these specified instances will provide the Board more time to devote to other Board matters and will allow for a more expeditious restoration of eligibility in the specified instances.

While the Board does not intend to ever charge usurious interest, the adopted amendments to §175.20 provide for a usury savings clause to help protect the Board from the negative consequences of any unintended usurious charge. In addition, Board contracts generally refer to the laws and rules of the Board. The adopted amendments to §175.20 provide that all Board contracts are subject to the laws and rules that govern the Board as such laws and rules may from time to time be amended and are intended to make Board contracts (at least those entered into on or after the effective date of this proposed amendment) subject to future statutory and rule changes without the need for contract amendments.

The adopted amendments are in the best interest of the Program for the reasons stated above.

No comments were received regarding the proposed amendments.

The amendments to the section are adopted under the Natural Resources Code, Title 7, Chapter 161, §§161.061, 161.063, 161.236, 161.317, and 161.320, which authorize the Board to adopt rules for the Program that it considers necessary and advisable, to determine the number of tracts of land that a veteran may purchase, to impose a reinstatement penalty, and to collect interest on delinquent payments.

Natural Resources Code §§161.236, 161.317, and 161.320 are affected by this adopted action.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 23, 2001.

TRD-200104230
Larry R. Soward
Chief Clerk, General Land Office
Texas Veterans Land Board
Effective date: August 12, 2001
Proposal publication date: May 18, 2001
For further information, please call: (512) 305-9129

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CHAPTER 177. VETERANS HOUSING ASSISTANCE PROGRAM

The Veterans Land Board of the State of Texas (the "Board") adopts the repeal and new §177.9 (relating to Fees, Expenses, and Interest) of the Veterans Housing Assistance Program, Title 40, Part 5, Chapter 177 of the Texas Administrative Code as published in the April 27, 2001, issue of the *Texas Register* (26 TexReg 3204).

The repeal and new rule are adopted concurrently with amendments to Title 40, Part 5, Chapter 175 of the Texas Administrative Code, §§175.9 (relating to Death of a Purchaser), 175.12 (relating to Severances), 175.14 (relating to Mineral Leases), 175.15 (relating to Approval of Easements), 175.16 (relating to Payment in Full), 175.17 (relating to Fees and Deposits) and 175.19 (relating to Subdivision Loan Processing). The foregoing amendments remove references to the amounts of all fees charged by the Board from all existing rules.

By repealing §177.9 and adopting a new rule in its place, the Board describes in a single rule all fees that may be charged by all parties participating in the Veterans Housing Assistance Program. The proposed rule makes the following changes: (1) It requires all fees and interest rates changed in connection with the Veterans Housing Assistance Program by any party to be submitted to the Board for approval. This includes fees charged to borrowers by the Board or by participating lending institutions and fees charged to participating lending institutions by the administrator; (2) It permits the Board to approve and set all fees by the adoption of resolutions from time-to-time; (3) It limits the amounts of fees, expenses, and interest rates charged by lending institution to those amounts collected by the institutions in the normal course of their residential mortgage lending businesses; and (4) The administrator shall incorporate in the Servicing Guide for the Veterans Housing Assistance Program provisions for the maximum amounts of fees, expenses and interest rates that participating lending institutions may charge.

All of the adopted new rules protect the interests of the Programs by allowing the Board to list all fees in one rule for each loan program and set the amount of individual fees, expenses, and interest rates by resolution. This allows the Board to operate the Programs in a manner that is responsive to the needs of veterans as market conditions change over time.

No comments were received regarding the proposed repeal and new rule.

40 TAC §177.9

The repeal is adopted under the Natural Resources Code, Title 7, §§162.003(a)(3) and (b), 162.011(e), and 162.013, which authorize the Board to set fees and adopt rules for the Programs which it considers necessary and advisable.

Natural Resources Code §§162.003(a)(3) and (b); 162.011(e); and 162.013 are affected by this adopted action.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 23, 2001.

TRD-200104232
Larry R. Soward
Chief Clerk, General Land Office
Texas Veterans Land Board
Effective date: August 12, 2001
Proposal publication date: April 27, 2001
For further information, please call: (512) 305-9129

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40 TAC §177.9

The new section is adopted under the Natural Resources Code, Title 7, §§162.003(a)(3) and (b), 162.011(e), and 162.013, which authorize the Board to set fees and adopt rules for the Programs which it considers necessary and advisable.

Natural Resources Code §§162.003(a)(3) and (b); 162.011(e); and 162.013 are affected by this adopted action.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 23, 2001.

TRD-200104231
Larry R. Soward
Chief Clerk, General Land Office
Texas Veterans Land Board
Effective date: August 12, 2001
Proposal publication date: April 27, 2001
For further information, please call: (512) 305-9129

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REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Agency Rule Review Plan (Revised)

Texas Education Agency

Title 19, Part 2

Filed: July 23, 2001

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Proposed Rule Review

Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission proposes to review Chapter 8, concerning the TexShare Library Consortium Program, in accordance with the requirements of the Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999, which require state agencies to review and consider for readoption each of their rules every four years.

The reasons for adopting the rules in Chapter 8 continue to exist. The rules were adopted pursuant to Government Code, §441.225, that authorizes the Commission to adopt rules to govern the operation of the TexShare Library Consortium program.

Comments on the review of Chapter 8 may be submitted in writing to Beverley Shirley, Director of Library Resource Sharing, PO Box 12927, Austin, Texas, 78711; may be faxed to (512) 936-2306; or may be submitted electronically to beverley.shirley @tsl.state.tx.us.

TRD-200104193
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Filed: July 20, 2001

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Adopted Rule Reviews

Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission has completed the review of rules in Title 13, Chapter 6, concerning the management, retention, microfilming, and electronic storage of state agency records and fee schedules for the Commission's imaging and records storage services. Notice of the review was published in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9965). The Commission readopts §§6.1-6.10, 6.21-6.35, 6.91-6.96, 6.121, and 6.122-6.123 of this chapter in accordance with the Government Code, §2001.039 and the General Appropriations Act (1999), Article IX, §9-10.13. The readoption of §§6.121 and 6.122-6.123, relating to fee schedules, is temporary, pending their proposed repeal. While the agency is required to charge fees for its imaging and records storage services to recover the costs of those services, the Commission is not required to adopt the fees by rule. The Commission believes that the agency will be able to respond in a more timely manner to changes in the costs of its services if the fees are developed and established by a means other than through the adoption of rules.

No comments were received on the review of Chapter 6.

The Commission finds that the reasons for the adoption of the remaining rules in Title 13, Chapter 6, continue to exist. They enable the Commission to fulfill its statutory obligations in the management of state records and for state agencies to meet the requirements of the Government Code, Subchapter K, relating to the preservation and management of state records.

TRD-200104265
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Filed: July 24, 2001

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Texas Department of Mental Health and Mental Retardation

Title 25, Part 2

The Texas Department of Mental Health and Mental Retardation (department) has completed the review of Texas Administrative Code, Title 25, Part 2, Chapter 406, governing ICF/MR programs, in accordance with the requirements of the Texas Government Code, §2001.039.

Notice of the department's intent to review was published in the March 30, 2001, issue of the *Texas Register* (26 TexReg 2548). No comments were received regarding the review of the chapter.

The department believes that the reasons for initially adopting the following rules continue to exist: Subchapter B, concerning contracting requirements; §§406.301 and 406.310 of Subchapter G, concerning additional facility responsibilities; and Subchapter H, concerning dental program. The department readopts these rules in accordance with the General Appropriations Act, House Bill 1, 76th Legislature, Article IX, 9-10.13, and the Texas Government Code, §2001.039, which requires the Texas Board of Mental Health and Mental Retardation to review and consider for readoption each of its rules every four years, and under the department's broad rulemaking authority for mental health and mental retardation services pursuant to Texas Health and Safety Code, §532.015(a).

The department finds that the reasons for initially adopting the following rules no longer exist: Subchapter C, concerning vendor payments; Subchapter E, concerning eligibility and review; and §§406.302-406.309 and §406.311 of Subchapter G, concerning additional facility responsibilities. The repeals of these rules are published for adoption elsewhere in this issue of the *Texas Register*. The issues addressed in these rules have been addressed in recently adopted new sections of Chapter 419, Subchapter E, concerning ICF/MR programs.

TRD-200104174
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: July 18, 2001

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The Texas Department of Mental Health and Mental Retardation (department) has completed the review of Texas Administrative Code, Title 25, Part 2, Chapter 409, Subchapter B, governing adverse actions, and Subchapter C, governing fraud and abuse and recovery of benefits, in accordance with the requirements of the Texas Government Code, §2001.039.

Notice of the department's intent to review was published in the March 23, 2001, issue of the *Texas Register* (26 TexReg 2411). No comments were received regarding the review of the chapter.

The department believes that the reasons for initially adopting the two subchapters continue to exist, and readopts these rules in accordance with the General Appropriations Act, House Bill 1, 76th Legislature, Article IX, 9-10.13, and the Texas Government Code, §2001.039, which requires the Texas Board of Mental Health and Mental Retardation to review and consider for readoption each of its rules every four years, and under the department's broad rulemaking authority for mental health and mental retardation services pursuant to Texas Health and Safety Code, §532.015(a).

TRD-200104175
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: July 18, 2001

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Texas Workforce Commission

Title 40, Part 20

The Texas Workforce Commission (Commission) adopts the review of Chapter 800, Subchapter D. Incentive Award Rules, Subchapter E. Sanctions Rules, Subchapter F. Interagency Matters, and Subchapter G. Petition for Adoption of Rules in accordance with Texas Government Code §2001.039. The proposed review was published in the May 25, 2001 issue of the *Texas Register* (26 TexReg 3834).

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The rules reviewed were determined by the Commission to continue to be needed, reflective of current legal and policy considerations, and reflective of current procedures of the Commission.

No comments were received on the proposed notice of intention to review.

The rule review is adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 2 and 4 as well as Texas Government Code Chapter 2308.

For information about the Commission, please visit our web page at www.texasworkforce.org.

TRD-200104212
John Moore
General Counsel
Texas Workforce Commission
Filed: July 23, 2001

♦ ♦ ♦

The Texas Workforce Commission (Commission) adopts the review of Chapter 803 relating to the Skills Development Fund in accordance with Texas Government Code §2001.039. The proposed review was published in the May 25, 2001 issue of the *Texas Register* (26 TexReg 3834).

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The rules reviewed were determined by the Commission to continue to be needed, reflective of current legal and policy considerations, and reflective of current procedures of the Commission.

No comments were received on the proposed review.

The rule review is adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 2 and 4 as well as Texas Government Code Chapter 2308.

For information about the Commission, please visit our web page at www.texasworkforce.org.

TRD-200104211
John Moore
General Counsel
Texas Workforce Commission
Filed: July 23, 2001

♦ ♦ ♦

The Texas Workforce Commission (Commission) adopts the review of Chapter 813 relating to Food Stamp Employment and Training in accordance with Texas Government Code §2001.039. The proposed review was published in the May 25, 2001 issue of the *Texas Register* (26 TexReg 3834).

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The rules reviewed were determined by the Commission to continue to be needed, reflective of current legal and policy considerations, and reflective of current procedures of the Commission.

No comments were received on the proposed review.

The rule review is adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 2 and 4 as well as Texas Government Code Chapter 2308.

For information about the Commission, please visit our web page at www.texasworkforce.org.

TRD-200104217
John Moore
Assistant General Counsel
Texas Workforce Commission
Filed: July 23, 2001

♦ ♦ ♦

The Texas Workforce Commission (Commission) adopts the review of Chapter 817 relating to Child Labor in accordance with Texas Government Code §2001.039. The proposed review was published in the May 25, 2001 issue of the *Texas Register* (26 TexReg 3834).

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The rules reviewed were determined by the Commission to continue to be needed, reflective of current legal and policy considerations, and reflective of current procedures of the Commission.

No comments were received on the proposed review.

The rule review is adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 2 and 4 as well as Texas Government Code Chapter 2308.

For information about the Commission, please visit our web page at www.texasworkforce.org.

TRD-200104216
John Moore
Assistant General Counsel
Texas Workforce Commission
Filed: July 23, 2001

♦ ♦ ♦

The Texas Workforce Commission (Commission) adopts the review of Chapter 823 relating to General Hearings in accordance with Texas Government Code §2001.039. The proposed review was published in the May 25, 2001 issue of the *Texas Register* (26 TexReg 3834).

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The rules reviewed were determined by the Commission to continue to be needed, reflective of current legal and policy considerations, and reflective of current procedures of the Commission.

No comments were received on the proposed review.

The rule review is adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 2 and 4 as well as Texas Government Code Chapter 2308.

For information about the Commission, please visit our web page at www.texasworkforce.org.

TRD-200104215
John Moore
Assistant General Counsel
Texas Workforce Commission
Filed: July 23, 2001

♦ ♦ ♦

The Texas Workforce Commission (Commission) adopts the review of Chapter 835 relating to the Self-Sufficiency Fund in accordance with Texas Government Code §2001.039. The proposed review was published in the May 25, 2001 issue of the *Texas Register* (26 TexReg 3834).

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The rules reviewed were determined by the Commission to continue to be needed, reflective of current legal and policy considerations, and reflective of current procedures of the Commission.

No comments were received on the proposed review.

The rule review is adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 2 and 4 as well as Texas Government Code Chapter 2308.

For information about the Commission, please visit our web page at www.texasworkforce.org.

TRD-200104214
John Moore
Assistant General Counsel
Texas Workforce Commission
Filed: July 23, 2001

♦ ♦ ♦

The Texas Workforce Commission (Commission) adopts the review of Chapter 839, Subchapter A. General Provisions and Subchapter B. Nondiscrimination and Equal Opportunity in accordance with Texas Government Code §2001.039. The proposed review was published in the May 25, 2001 issue of the *Texas Register* (26 TexReg 3834).

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The rules reviewed were determined by the Commission to continue to be needed, reflective of current legal and policy considerations, and reflective of current procedures of the Commission.

No comments were received on the proposed review.

The rule review is adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 2 and 4 as well as Texas Government Code Chapter 2308.

For information about the Commission, please visit our web page at www.texasworkforce.org.

TRD-200104213
John Moore
Assistant General Counsel
Texas Workforce Commission
Filed: July 23, 2001

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Texas Workers' Compensation Commission

Title 28, Part 2

In accordance with the General Appropriation Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039, as added by SB-178, 76th Legislature, and pursuant to the notice of intention to review published in the May 25, 2001 issue of the *Texas Register*, (26 TexReg 3835) the Texas Workers' Compensation Commission (the commission) has reviewed and considered for readoption the following rules in Title 28, Part II of the Texas Administrative code

CHAPTER 166. WORKERS' HEALTH & SAFETY - ACCIDENT PREVENTION SERVICES §166.1. Definitions of Terms. §166.2. Initial Licensing and Resumption of Writing of Workers' Compensation Insurance. §166.3. Annual Report to the Commission. §166.4. Required Accident Prevention Services. §166.5. Required Periodic Inspections of Accident Prevention Services and Site of Inspection. §166.6. Exchange of Information for the Inspection. §166.7. Inspection of Accident Prevention Services: Conducting and Reporting. §166.8. Qualification of Field Safety Representatives. §166.9. Approval of Occupational Health and Safety Education Programs.

The commission has assessed whether the reason for adopting or readopting these rules continues to exist. No comments were received regarding the review of this rule.

As a result of the review, the commission has determined that the reason for adoption of these rules continues to exist. Therefore, the commission readopts this rule. If the commission determines that this rule should be revised, the revision will be accomplished in accordance with the Administrative Procedure Act.

TRD-200104208
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: July 20, 2001

♦ ♦ ♦

TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 19 TAC §61.1061(c)

APPLICATION FOR A HIGH SCHOOL DIPLOMA FOR CERTAIN VETERANS

Texas Education Code (TEC), §28.0251, provides for a school district to issue a high school diploma to certain veterans. An eligible applicant is one who: (a) is or was an honorably discharged member of the armed forces of the United States; (b) was scheduled to graduate from high school after 1940 and before 1951; and (c) left high school before graduation to serve in World War II. A veteran or person acting on behalf of a deceased veteran should use this form to request a high school diploma. The completed form and required documentation must be submitted to the local school district where the veteran was enrolled in high school. This form is also available at: http://www.tea.state.tx.us. **See back of this form for additional information and instructions**. Please contact the Texas Education Agency's Office of Continuing Education and School Improvement at (512) 463-8532 if you have questions about this application.

Name of Applicant: _____

Social Security Number: _____--_____--_____

Address of Veteran or Family Member (if deceased):

_____

City: _____

State: _____ Zip Code: _____

Telephone Number: _____--_____--_____

Name of District Where Veteran Was Enrolled in High School: _____

Year in Which Veteran Was Scheduled to Graduate from High School: _____

I hereby certify that the person named above is or was an honorably discharged member of the armed forces of the United States, was scheduled to graduate from high school after 1940 and before 1951, and left high school before graduation to serve in World War II. **I have attached a copy of the discharge notification (DD Form 214, enlisted record and report of separation, or discharge certificate) from the appropriate branch of the United States armed forces indicating dates of military service during World War II.**

_____ _____

Signature of Veteran or Person Acting on Behalf of a Deceased Veteran — Date

_____

Name of Person Acting on Behalf of Deceased Veteran (if applicable)

SEE REVERSE OF FORM FOR ADDITIONAL INFORMATION AND INSTRUCTIONS.

Information and Instructions for *Application for a High School Diploma for Certain Veterans*

A veteran or person acting on behalf of a deceased veteran will use the front of this form to request a high school diploma for certain veterans, as provided in Texas Education Code Section 28.0251.

1. The completed form (signed and dated) and required documentation must be submitted to the local Texas school district where the veteran was enrolled in high school. The form should be submitted to the district superintendent's office. The mailing addresses for all school districts in Texas can be located at http://askted.tea.state.tx.us or by calling (512) 463-9374. If the veteran's school district no longer exists (e.g., the district was consolidated into another district), the form should be submitted to the consolidated district, which will be responsible for issuing the high school diploma. If the veteran's high school no longer exists, (e.g., the high school was closed), the district in which the high school was formerly located is still responsible for issuing the high school diploma.

2. One of the following pieces of documentation must accompany the completed form:

    - DD Form 214
    - Enlisted Record and Report of Separation form
    - Discharge Certificate

    For more information about military records and how to order them, please contact the National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132-5100; (301) 713-6800; or at: http://www.nara.gov.

Figure: 28 TAC §21.2816(g)

CLAIMS MAIL LOG

Name of Claimant: _____
Claimant Address: _____
_____
Claimant Telephone: (____) _____

Name of Addressee: _____
Name of Carrier: _____
Date of Mailing or Hand delivery: _____ Page ____ of____

Subscriber Name	Subscriber ID#	Patient Name	Date(s) of Service/Occurrence	Total Charge	Delivery Method (M) (HD)

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 Water Code Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Clean Air Act and the Texas Water Code. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: Harris County, Texas, and the State of Texas, et al. v. Triple B Services, Inc., Case No. 2001-04702, 80th District Court of Harris County, Texas

Nature of Defendant's Operations: Defendant has be accused of operating a trench burner improperly in Harris County. Defendant is in violation of several statutory provisions relating to trench burning operations. These include: emitting air contaminants without proper authorization from TNRCC; causing adverse affect on human health and/or creating a nuisance; improper stack piling of materials; and failure to keep written log of the hours of operations.

Proposed Agreed Judgment: The judgment requires Defendant to remedy the violations by complying with injunctive provisions designed to bring the facility into compliance with a written record or log of hours of operation. The Agreed Judgment requires Defendant to pay Twelve Thousand Dollars and no cents ($12,000.00) in civil penalties and Three Thousand Dollars and no cents ($3,000.00) in attorney fees. Defendant is also required to pay all costs of court.

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 Lisa Sanders Richardson, 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 call A.G. Younger at (512) 463-2110.*

TRD-200104291
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: July 25, 2001

♦ ♦ ♦

Coastal Coordination Council

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

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were received for the following projects(s) during the period of July 13, 2001, through July 19, 2001. The public comment period for these projects will close at 5:00 p.m. on August 24, 2001.

FEDERAL AGENCY ACTIONS:

Applicant: Harold McGuire; Location: The project is located on Sabine Lake at 3684 State Highway 82 in the Laffite's Landing Subdivision, Phase II, on Pleasure Island in Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Port Arthur South, Texas-Louisiana. Approximate UTM Coordinates: Zone 15; Easting: 408800; Northing: 3296000. CCC Project No.: 01-0261-F1; Description of Proposed Action: The applicant requests authorization to place fill material into approximately 0.10-acre of wetland habitat to construct a residence and associated septic system. In addition, the applicant proposes to construct a 140-foot long

bulkhead 9 feet out from the existing shoreline. The applicant also requests authorization to construct a pier and covered T-head. The pier would measure 230 feet in length by 4 feet in width and the T-head would be 30 feet in length by 10 feet in width. Type of Application: U.S.A.C.E. permit application #22318 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and section 404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: County of Galveston; Location: The project is located on the Gulf of Mexico beaches at Caplen and Gilchrist near Rollover Pass on Bolivar Peninsula, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Frozen Point, Texas and High Island, Texas. Approximate UTM Coordinates: Zone 15; Easting: 349814; Northing: 3263194. CCC Project No.: 01-0262-F1; Description of Proposed Action: The applicant proposes to amend Department of the Army Permit 21755 to add an additional sand source to renourish the permit area beaches for shoreline stabilization. Beach quality sand from Kahla's Sand Pit would be trucked from the upland source via Highway 87 and any County beach access road that allows vehicles to enter onto the beaches. Type of Application: U.S.A.C.E. permit application #21755(01) is being evaluated under section 404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Vintage Petroleum; Location: The project is to run a pipeline from State Tract 77 to the number 1 well site in State Tract 84 located in Trinity Bay in Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Smith Point, Texas. Approximate UTM Coordinates: Zone 15; Easting: 326355; Northing: 3275444. CCC Project No.: 01-0263-F1; Description of Proposed Action: The applicant proposes to install a 6-5/8 inch diameter pipeline, at a length of 4439.76 linear feet, to connect a production platform to a well site. Type of Application: U.S.A.C.E. permit application #09161(16)/206 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and section 404 of the Clean Water Act (33 U.S.C.A. §§125-1387). NOTE: The CMP consistency review for this project may be conducted by the Railroad Commission of Texas as part of its certification under section 401 of the Clean Water Act.

FEDERAL AGENCY ACTIVITIES:

Applicant: Minerals Management Service (MMS), U.S. Dept. of the Interior; Location: Gulf of Mexico; CCC Project No.: 01-0258-F2; Description of Proposed Activity: This document, the Annual Studies Plan for Fiscal Year 2002-2004 Minerals Management Service Environmental Studies Program, details what studies MMS will be undertaking in the Gulf of Mexico over the next three years to provide information on various aspects of the oil and gas industry. Type of Application: The MMS Environmental Studies Program was established in 1973 as a means to gather information to support decision making for offshore oil and gas leasing. Applicant: U.S. Army Corps of Engineers; Location: Gulf of Mexico; CCC Project No.: 01-0264-F2; Description of Proposed Activity: General Permits 15638(04), 16026(03), 16458(04), 16510(04), 16525(04), 16637(04), 16761(04) give authorization to erect and maintain structures and appurtenances to be used in connection with the drilling of wells for the production of oil, gas, or other minerals and for the production and transportation of these materials. This includes activities for the installation of pipelines associated with the drilling structures, including trenching, disking, and jetting methods. Type of Application: In an effort to streamline the permit evaluation process, the U.S. Army Corps of Engineers, Galveston District and the Texas General Land Office (GLO) have signed an agreement to delegate the evaluation of permit applications for the seven existing General Permits to the GLO.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information for the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at (512) 475-0680.

TRD-200104288
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: July 25, 2001

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, and Sections 403.011 and 403.020, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP #123a) from qualified, independent firms to provide consulting services to Comptroller. The successful respondent will assist Comptroller in conducting a management and performance review of the Aransas County Independent School District (Aransas County ISD). Comptroller reserves the discretion to award one or more contracts for a review of the Aransas County ISD under this RFP. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about September 24, 2001.

Contact: Parties interested in submitting a proposal should contact Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, August 3, 2001, between 2 p.m. and 5 p.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller also made the complete RFP available electronically on the Texas Marketplace at: http://www.marketplace.state.tx.us after 2 p.m. (CZT) on Friday, August 3, 2001.

Mandatory Letters of Intent and Questions: All Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Harris at: (512) 475-0973, not later than 2:00 p.m. (CZT), on Wednesday, August 22, 2001. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace no later than August 24, 2001, or as soon thereafter as practical. Mandatory Letters of Intent received after the 2:00 p.m., August 22 deadline will not be considered.

Closing Date: Proposals must be received in Assistant General Counsel's Office at the address specified above (ROOM G-24) no later than 2 p.m. (CZT), on Friday, August 31, 2001. Proposals received after this time and date will not be considered. Proposals will not be accepted from respondents who do not submit mandatory letters of intent by the August 22 deadline.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision regarding the award of a contract. Comptroller reserves the right to award one or more contracts under this RFP.

Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - August 3, 2001, 2 p.m. CZT; All Mandatory Letters of Intent and Questions Due - August 22, 2001, 2 p.m. CZT; Official Responses to Questions Posted - August 24, 2001, or as soon thereafter as practical; Proposals Due - August 31, 2001, 2 p.m. CZT; Contract Execution - September 14, 2001, or as soon thereafter as practical; Commencement of Project Activities - September 24, 2001.

TRD-200104289
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: July 25, 2001

♦ ♦ ♦

Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, and Sections 403.011 and 403.020, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP #124a) from qualified, independent firms to provide consulting services to Comptroller. The successful respondent will assist Comptroller in conducting a management and performance review of the Glen Rose Independent School District (Glen Rose ISD). Comptroller reserves the discretion to award one or more contracts for a review of the Glen Rose ISD under this RFP. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about September 24, 2001.

Contact: Parties interested in submitting a proposal should contact Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, August 3, 2001, between 2 p.m. and 5 p.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller also made the complete RFP available electronically on the Texas Marketplace at: http://www.marketplace.state.tx.us after 2 p.m. (CZT) on Friday, August 3, 2001.

Mandatory Letters of Intent and Questions: All Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Harris at: (512) 475-0973, not later than 2:00 p.m. (CZT), on Monday, August 20, 2001. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace no later than August 22, 2001, or as soon thereafter as practical. Mandatory Letters of Intent received after the 2:00 p.m., August 20th deadline will not be considered.

Closing Date: Proposals must be received in Assistant General Counsel's Office at the address specified above (ROOM G-24) no later than 2 p.m. (CZT), on Wednesday, August 29, 2001. Proposals received after this time and date will not be considered. Proposals will not be accepted from respondents who do not submit mandatory letters of intent by the August 20th deadline.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision regarding the award of a contract. Comptroller reserves the right to award one or more contracts under this RFP.

Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - August 3, 2001, 2 p.m. CZT; All Mandatory Letters of Intent and Questions Due - August 20, 2001, 2 p.m. CZT; Official Responses to Questions Posted - August 22, 2001, or as soon thereafter as practical; Proposals Due - August 29, 2001, 2 p.m. CZT; Contract Execution - September 14, 2001, or as soon thereafter as practical; Commencement of Project Activities - September 24, 2001.

TRD-200104290
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: July 25, 2001

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Office of Consumer Credit Commissioner

Notice of Rate Bracket Adjustment

The Consumer Credit Commissioner of Texas has ascertained the following brackets and ceilings by use of the formula and method described in Tex. Fin. Code §341.203.[1]

The amounts of brackets in Tex. Fin. Code §342.201(a) are changed to $1,500.00 and $12,500.00, respectively.

The amounts of brackets in Tex. Fin. Code §342.201(e) are established at $2,500.00, $5,250.00, and $12,500.00, respectively.[2]

The ceiling amount in Tex. Fin. Code § 342.251 is changed to $500.00.

The amounts of the brackets in Tex. Fin. Code §345.055 are changed to $2,500.00 and $5,000.00, respectively.

The amounts of the bracket in Tex. Fin. Code §345.103 is changed to $2,500.00.

The ceiling amount of Tex. Fin. Code §371.158 is changed to $12,500.00.

The amounts of the brackets in Tex. Fin. Code §371.159 are changed to $150.00, $1,000.00,[3] and $1,500.00, respectively.

The above dollar amounts of the brackets and ceilings shall govern all applicable credit transactions and loans made on or after July 1, 2001, and extending through June 30, 2002.

[1]Computation method: The Reference Base Index (the Index for December 1967) = 101.6. The December 2000 Index = 508.5. The percentage of change is 500.49%. This equates to an increase of 500% after disregarding the percentage of change in excess of multiples of 10%.

[2]The dollar amount of these brackets and ceilings shall govern all applicable credit transactions and loans made on or after September 1, 2001, and extending through June 30, 2002. These brackets and ceilings were established in Senate Bill 272, 77th Legislative Session.

[3]The dollar amount of this bracket and ceiling shall govern all applicable credit transactions and loans made on or after September 1, 2001, and extending through June 30, 2002. This bracket and ceiling was amended in Senate Bill 317, 77th Legislative Session.

TRD-200104259
Leslie L. Pettijohn
Commissioner
Office of the Consumer Credit Commissioner
Filed: July 24, 2001

♦ ♦ ♦

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 07/30/01 - 08/05/01 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.09 for the period of 07/30/01 - 08/05/01 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200104258
Leslie L. Pettijohn
Commissioner
Office of the Consumer Credit Commissioner
Filed: July 24, 2001

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Office of Court Administration

Notice of Consultant Contract Award

In accordance with §2254.030 of the Texas Government Code, the Office of Court Administration announces the award of a major consulting services contract.

The notice of invitation for offers for consulting services was published in the June 15, 2001 issue of the *Texas Register* (26 TexReg 4548).

(1) The consultant will document a comprehensive emergency contingency plan for any type of disaster that has the potential to result in an interruption of business. The plan will cover all potential business interruptions, including all potential emergency and disaster situations and procedures for bringing the agency back to normal operations as soon as possible. It will include procedures for identifying and recalling key personnel, deciding which functions must continue at what level of performance, relocating existing work areas including computer operations to a pre-selected site and identifying vital records. Procedures will be developed and maintained for the identification, duplication, storage, and protection of the vital/essential records, and responsibility for accomplishments of these tasks will be clearly identified.

(2) The contract is awarded to BTG, Inc., 6100 Bandera Road, San Antonio, Texas 78238.

(3) The dollar value of the contract is not to exceed $27,850.00. The contract was executed on July 23, 2001; it is effective as of July 23, 2001, and shall terminate on the earlier of the completion of the project or August 31, 2001.

(4) The plan that BTG, Inc. is required to present to the agency is due on or before August 31, 2001.

TRD-200104284
Margaret McGloin Bennett
General Counsel
Office of Court Administration
Filed: July 25, 2001

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Texas Education Agency

Correction of Error

The Texas Education Agency withdrew proposed 19 TAC §105.1021. The notice appeared in the July 13, 2001, *Texas Register* (26 TexReg 5233).

Due to an error by the *Texas Register*, the published notice incorrectly said the rule was an "automatic withdrawal". The notice should have said that TEA withdrew from consideration proposed new §105.1021 which appeared in the January 5, 2001, issue of the *Texas Register* (26 TexReg 55).

TRD-200104312

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Texas Department of Health

Notice of Revocation of Certificates of Registration

The Texas Department of Health, having duly filed complaints pursuant to 25 Texas Administrative Code §289.205, has revoked the following certificates of registration: John K. Echols, D.D.S., Port Arthur, R12467, July 12, 2001; BP Exploration, Inc., Houston, R18962, July 12, 2001; Robert D. Balboa, D.D.S., Dallas, R19882, July 12, 2001; Abilene Regional Medical Center, Cisco, R22725, July 21, 2001.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200104261
Susan Steeg
General Counsel
Texas Department of Health
Filed: July 24, 2001

♦ ♦ ♦

Notice of Revocation of the Radioactive Material License of Dowser Consulting, Inc.

The Texas Department of Health, having duly filed complaints pursuant to 25 Texas Administrative Code §289.205, has revoked the following radioactive material license: Dowser Consulting, Inc., Houston, L04165, July 12, 2001.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200104260
Susan Steeg
General Counsel
Texas Department of Health
Filed: July 24, 2001

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Texas Department of Human Services

Public Hearing for Temporary Assistance for Needy Families (TANF) State Plan

The Texas Department of Human Services (DHS) will conduct a public hearing to receive comments on the Temporary Assistance for Needy Families (TANF) State Plan. The public hearing will be held on September 10, 2001, at 1:00 p.m. in the Public Hearing Room at DHS, Winters Building, 701 West 51st Street, Austin, Texas.

In addition, comments may be submitted during the public comment period, which begins August 3, 2001 and ends September 17, 2001. Comments must be submitted in writing to Texas Department of Human Services, Eric McDaniel, Mail Code W-312, P.O. Box 149030, Austin, Texas 78714-9030. Comments also may be submitted electronically to eric.mcdaniel@dhs.state.tx.us. For additional information or a copy of the TANF State Plan, contact Eric McDaniel at (512) 438-2909.

Individuals who require auxiliary aids or services for this hearing should contact Eric McDaniel at (512) 438-2909 by August 27, 2001 so that appropriate arrangements can be made.

TRD-200104275
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Filed: July 24, 2001

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Texas Health and Human Services Commission

Notice of Proposed Medicaid Provider Payment Rates

Proposal. As single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) proposes new per diem payment rates for the nursing facilities program operated by the Texas Department of Human Services (DHS). Payment rates are proposed to be effective September 1, 2001, as follows: Figure: 1

Rates by TILE (Texas Index for Level of Effort) class:

TILE	Facilities Participating in the Enhanced Direct Care Staff Rate	Facilities not Participating in the Enhanced Direct Care Staff Rate
201	$149.68	$143.44
202	$133.53	$128.17
203	$126.35	$121.38
204	$105.65	$101.81
205	$98.12	$94.69
206	$99.22	$95.74
207	$90.14	$87.15
208	$87.08	$84.26
209	$81.24	$78.74
210	$70.79	$68.86
211	$68.24	$66.45
212 (default)	$68.24	$66.45
Supplemental Payments:		
Ventilator - Continuous	$80.99	$76.57
Ventilator - Less than Continuous	$32.34	$30.48
Pediatric Tracheostomy	$48.50	$45.72

Methodology and justification. The proposed rates in the chart above were determined in accordance with the rate setting methodology at 1 Texas Administrative Code (TAC) Chapter 355, subchapter C (relating to Reimbursement Methodology for Nursing Facilities), §355.307 and (relating to Enhanced Direct Care Staff Rate), §355.308.

Participating facilities requesting to staff above the minimum staffing requirements included in the rates in the above chart may receive one of the following payment rates per day in addition to the above payment rates (within available funds): Figure: 2

Minutes Associated with Proposed Rate	Proposed Rate Per Diem
1 LVN Minute = 1.82 Aide Minutes = 0.69 RN Minutes	$0.31
2 LVN Minutes = 3.65 Aide Minutes = 1.38 RN Minutes	$0.62
[illegible]	[illegible]
utes = 7.29 Aide Minutes = 2.76 RN Minutes	$1.24
utes = 9.12 Aide Minutes = 3.44 RN Minutes	$1.55
utes = 10.94 Aide Minutes = 4.13 RN Minutes	$1.86
utes = 12.76 Aide Minutes = 4.82 RN Minutes	$2.17
utes = 14.59 Aide Minutes = 5.51 RN Minutes	$2.48
utes = 16.41 Aide Minutes = 6.20 RN Minutes	$2.79
nutes = 18.24 Aide Minutes = 6.89 RN Minutes	$3.10
nutes = 20.06 Aide Minutes = 7.58 RN Minutes	$3.41
nutes = 21.88 Aide Minutes = 8.27 RN Minutes	$3.72
nutes = 23.71 Aide Minutes = 8.96 RN Minutes	$4.03
nutes = 25.53 Aide Minutes = 9.64 RN Minutes	$4.34
nutes = 27.35 Aide Minutes = 10.33 RN Minutes	$4.65

[illegible]	[illegible]
4 LVN Minu	
5 LVN Minu	
6 LVN Minu	
7 LVN Minu	
8 LVN Minu	
9 LVN Minu	
10 LVN Mir	
11 LVN Mir	
12 LVN Mir	
13 LVN Mir	
14 LVN Mir	
15 LVN Mir	

Methodology and justification. The proposed rates in the chart above were determined in accordance with the rate setting methodology at 1

Texas Administrative Code (TAC) Chapter 355, subchapter C (relating to Enhanced Direct Care Staff Rate), §355.308.

TRD-200104283
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: July 25, 2001

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Texas Department of Insurance

Important Notice Postponement of Hearing

At the request of State Farm Insurance Companies, the Texas Department of Insurance has postponed the public hearing set for Tuesday, July 24, 2001, to consider State Farm's request for adoption of three new residential property policy forms and new endorsement forms. The Department will issue notice of a future hearing prior to considering the current or any amended filings by State Farm.

TRD-200104203
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: July 20, 2001

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Notice

Notice of Cancellation of Request for Proposals Concerning Telephone Survey of Uninsured Individuals.

The Texas Department of Insurance (TDI) published Request for Proposals (RFP) 01-RBD-Grant Survey1 concerning a statewide telephone survey of uninsured individuals in the State of Texas in the June 1, 2001 issue of the *Texas Register* (26 TexReg 3972). TDI hereby gives notice of the cancellation of RFP 01-RBD-GrantSurvey1.

TRD-200104191
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: July 20, 2001

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Notice of Applications by Small Employer Carriers to Change to Risk-Assuming Carriers for Good Cause

Notice is given to the public of the application of the listed small employer carriers to be risk-assuming carriers under Texas Insurance Code Articles 26.51 and 26.52. A small employer carrier is defined by Chapter 26 of the Texas Insurance Code as a health insurance carrier that offers, delivers or issues for delivery, or renews small employer health benefit plans subject to the chapter. A risk-assuming carrier is defined by Chapter 26 of the Texas Insurance Code as a small employer carrier that elects not to participate in the Texas Health Reinsurance System or is approved for good cause to change its status to risk-assuming. The following small employer carriers have applied to change their state to risk-assuming carriers for good cause:

Employers Health Insurance Company, and

Humana Insurance Company

The applications are subject to public inspection at the offices of the Texas Department of Insurance, Financial Monitoring Unit, 333 Guadalupe, Hobby Tower 3, 3rd Floor, Austin, Texas.

If you wish to comment on these applications to be risk-assuming carriers, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Lynda H. Nesenholtz, Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-91204. An additional copy of the comments must be submitted to Mike Boerner, Managing Actuary, Actuarial Division of the Financial Program, Mail Code 304-3A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. Upon consideration of the applications, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the applications to change status to risk-assuming carriers.

TRD-200104266
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: July 24, 2001

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of P5 e.Health Services, Inc., a foreign third party administrator. The home office is Reno, Nevada.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-200104267
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: July 24, 2001

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Texas Lottery Commission

Instant Game No. 203 "Cash Explosion"

1.0 Name and Style of Game.

A. The name of Instant Game No. 203 is "CASH EXPLOSION". The play style is a "match three (3) of nine (9) with a doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 203 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 203.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: $1.00, $2.00, $4.00, $8.00, $10.00, $20.00, $40.00, $50.00, $80.00, $100, $200, and $1,000, and FIRECRACKER.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol

Caption which corresponds with and verifies each Play Symbol is as follows: Table 1 of this section.

Table 1
Figure 1: GAME NO. 203 – 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$8.00	EIGHT$
$10.00	TEN$
$20.00	TWENTY
$40.00	FORTY
$50.00	FIFTY
$80.00	EIGHTY
$100	ONE HUND
$200	TWO HUND
$1,000	ONE THOU
FIRECRACKER SYMBOL	FIRECRACKER

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are: Table 2 of this section.

Table 2
Figure 2: GAME NO. 203 – 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
EGT	$8.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $8.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $40.00, $50.00, $80.00, $100, or $200.

I. High-Tier Prize - A prize of $1,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A twenty-two (22) digit number consisting of the three (3) digit game number (203), 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: 203-0000001-000.

L. Pack - A pack of "CASH EXPLOSION" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five. Tickets 000-004 will be on the top page. Tickets 005-009 will be on the next page and so forth and ticket 245-249 will be on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number through the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CASH EXPLOSION" Instant Game No. 203 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "CASH EXPLOSION" Instant Game is determined once the latex on the ticket is scratched off to expose nine (9) play symbols. If the player finds three (3) like amounts, the player will win that amount. If the player finds two (2) like amounts and a FIRECRACKER symbol, the player doubles that amount. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly nine (9) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly nine (9) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the nine (9) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the nine (9) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical play data, spot for spot.

B. No ticket will have four (4) or more like play symbols on a ticket.

C. The doubler symbol will never appear on a ticket which contains three (3) like play symbols.

D. There will be no more than one (1) doubler symbol on a ticket .

E. No more than one (1) pair of like play symbols will appear on a ticket containing a doubler symbol.

F. No more than two (2) pairs of like play symbols will appear on a ticket which does not contain a doubler symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "CASH EXPLOSION" Instant Game prize of $1.00, $2.00, $4.00, $8.00, $10.00, $20.00, $40.00, $50.00, $80.00, $100, or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $40.00, $50.00, $80.00, $100, or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "CASH EXPLOSION" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASH EXPLOSION" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "CASH EXPLOSION" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "CASH EXPLOSION" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 29,338,500 tickets in the Instant Game No. 203. The approximate number and value of prizes in the game are as follows: Table 3 of this section.

Table 3
Figure 3: GAME NO. 203 – 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1.00	3,168,690	1:9.26
$2.00	2,346,965	1:12.50
$4.00	704,222	1:41.66
$8.00	234,610	1:125.05
$10.00	58,628	1:500.42
$20.00	58,726	1:499.58
$40.00	42,704	1:687.02
$50.00	12,308	1:2,383.69
$80.00	5,843	1:5,021.14
$100	2,224	1:13,191.77
$200	1,219	1:24,067.68
$1,000	56	1:523,901.79

*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.42. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 203 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. 203, 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-200104198
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 20, 2001

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Instant Game No. 229 "Weekly Grand"

1.0 Name and Style of Game.

A. The name of Instant Game No. 229 is "WEEKLY GRAND". This ticket contains three (3) games, as indicated as "Game 1", "Game 2", and "Game 3", or "Quick $20". The play style of "Game 1" is a "Your Number Beats Their Number" play style. The play style of "Game 2" is a Match 3 Like Prize Amounts" play style. The play style of "Game 3", or "Quick $20", is a "Match 2 Like Symbols" play style.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 229 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 229.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols for "Game 1" are: 1, 2, 3, 4, 5, 6, 7, 8, 9, $1.00, $2.00, $4.00, $5.00, $10.00, $40.00, $100, 300, and GRAND. The possible Play Symbols for "Game 2" are: $1.00, $2.00, $4.00, $5.00, $10.00, $40.00, $100, $300, and GRAND. The possible game symbols for "Game 3" are: MONEY BAG symbol, GOLD BAR symbol, POT OF GOLD symbol, TOP HAT symbol, CLOVER symbol, and DIAMOND symbol.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows: Table 1 of this section.

Figure 1: GAME NO. 229 – 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
GRAND	WEEK
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$40.00	FORTY
$100	ONE HUND
$300	THR HUND
[CLOVER]	CLVR
[DIAMOND]	DIAMD
[GOLD BAR]	GOLD
[POT OF GOLD]	POTGLD
[MONEY BAG]	MBAG
[TOP HAT]	TPHAT

E. Retailer Validation Code - Three (3) small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are: Table 2 of this section.

Table 2
Figure 2: GAME NO. 229 – 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00, $20.00.

H. Mid-Tier Prize - A prize of $40.00 or $300.

I. High-Tier Prize - A prize of GRAND.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A thirteen (13) digit number consisting of the three (3) digit game number (229), 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: 229-0000001-000.

L. Pack - A pack of "WEEKLY GRAND" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 000 and 001 will be on the first page, tickets 002 and 003 will be on the next page and so forth with tickets 248-249 on the last page.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WEEKLY GRAND" Instant Game No. 229 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in "Game 1" of the "WEEKLY GRAND" Instant Game is determined once the latex on the ticket is scratched off to expose the "Your Number", "Their Number", and "Prize" Play Symbols on the front of the ticket. The player wins "Prize" amount if a Play Symbol shown under "YOUR NUMBER" is greater than the Play Symbol appearing under "THEIR NUMBER" in each of the two (2) rows. The player wins $1,000 per week for 20 (twenty) years if a Play Symbol shown under "YOUR NUMBER" is grater than the Play Symbol appearing under "THEIR NUMBER" in either row and the Play Symbol "GRAND" appears in the "Prize" spot for that row. In "Game 2", the player wins the prize amount that appears three (3) times on the play area. If the Play Symbol "GRAND" appears three times on the play area of "Game 2", the player wins $1,000 per week for 20 years. In "Game 3", the player wins $20 instantly if there are two (2) out of three (3) matching Play Symbols under "QUICK $20". No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly six (6) Play Symbols must appear under the latex overprint on "Game 1", exactly six (6) Play Symbols must appear under the latex overprint on "Game 2", and exactly three (3) Play Symbols must appear under "Game 3".

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly six (6) Play Symbols and exactly six Play Symbol Captions under "Game 1", exactly six (6) Play Symbols and exactly six (6) Play Symbol Captions under "Game 2", and exactly three (3) Play Symbols and exactly three (3) Play Symbol Captions under "Game 3" on the front of the ticket under the latex overprint on the front portion of the ticket, exactly one (1) Serial Number, exactly one (1) Retailer Validation Code, and exactly one (1) Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the six (6) Play Symbols appearing under "Game 1", each of the six Play Symbols appearing under "Game 2", and each of the three (3) Play Symbols appearing under "Game 3" must be exactly one of those described in Section 1.2.C of these Game Procedures, and each of the Play Symbol Captions to those Play Symbols must be exactly one of these described in Section 1.2.D of these Game Procedures;

17. Each of the six (6) Play appearing under "Game 1", each of the six (6) Play Symbols appearing under "Game 2", and each of the six (6) Play Symbols appearing under "Game 3" on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Validation Numbers must be printed in the Validation font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received or recorded by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. There will be no three (3) or more like non-winning play symbols on a ticket.

C. Consecutive non-winning tickets will not have identical play data, spot for spot.

D. Non-winning PRIZE SYMBOLS will not match a winning prize symbol on a ticket.

E. The GRAND symbol may only be used in "Game 1" and "Game 2".

F. In "Game 1", the wins will be approximately evenly distributed among the two (2) chances.

G. In "Game 1", there will be no ties between Your and Theirs in a row.

H. There will be no duplicate games on a ticket in "Game 1".

I. There will be no duplicate non-winning prize symbols in "Game 1".

J. In "Game 2", no more than four (4) or more of a kind will appear.

K. In "Game 3", all symbols will be used an approximately even number of times on winning and non-winning tickets.

L. There will never be three (3) like symbols in "Game 3"

2.3 Procedure for Claiming Prizes.

A. To claim a "WEEKLY GRAND" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "WEEKLY GRAND" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

1. When claiming a "WEEKLY GRAND" Instant Game prize of GRAND, the claimant must choose one of four (4) payment options for receiving their prize:

a. Weekly via wire transfer to the claimant/winner's account. This will be similar to the current "WEEKLY GRAND" (Game 173) payment process. With this plan, a payment of $1,000.00 less Federal withholding will be made once a week for twenty years. After the initial payment, installment payments will be made every Wednesday.

b. Monthly via wire transfer to the claimant/winner's account. If the claim is made during the month, the claimant/winner will still receive the entire month's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of $4,337.00 less Federal withholding will be made the month of the claim. Each additional month, a payment of $4,333.00 less Federal withholding will be made once a month for 20 years. After the initial payment, installment payments will be made on the first business day of each month.

c. Monthly via wire transfer to the claimant/winner's account. If the claim is made during the quarter, the claimant/winner will still receive the entire quarter's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of $13,000.00 less Federal withholding will be made each quarter (four times a year) for 20 years. After the initial payment, installment payments will be made on the first business day of the first month of every quarter (January, April, July, October).

d. Annually via wire transfer to the claimant/winner's account. These payments will be made in a manner similar to how jackpot payments are currently handled. With this plan, a payment of $52,000.00 less Federal withholding will be made once a year during the anniversary month of the claim for 20 years. After the initial payment, installment payments will be made on the first business day of the anniversary month.

C. As an alternative method of claiming a "WEEKLY GRAND" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, or $300, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the

"WEEKLY GRAND" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $1,000 per week for 20 years from the "WEEKLY GRAND" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 25,814,500 tickets in the Instant Game No. 229. The expected number and value of prizes in the game are as follows: Table 3 of this section.

Table 3
Figure 3: GAME NO. 229 – 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2.00	2,684,686	1:9.62
$4.00	2,116,800	1:12.20
$5.00	103,258	1:250.00
$10.00	361,390	1:71.43
$20.00	232,337	1:111.11
$40.00	154,947	1:166.60
$300	9,460	1:2,728.81
GRAND	3	1:8,604,833.33

*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.56. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 229 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. 229, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant tot he State Lottery Act and reference in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200104197

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 20, 2001

♦ ♦ ♦

Instant Game No. 236 "9's in a line"

1.0 Name and Style of Game.

A. The name of Instant Game No. 236 is "9's IN A LINE". The play style is a "tic-tac-toe" play style.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 236 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 236.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 2, 3, 4, 5, 6, 7, 8, 9, $1.00, $2.00, $3.00, $9.00, $19.00, $49.00, $99, $199, and $900.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows: Table 1 of this section.

Table 1
Figure 1: GAME NO. 236 – 1.2D

PLAY SYMBOL	CAPTION
2	(position)2(ticket number)
3	(position)3(ticket number)
4	(position)4(ticket number)
5	(position)5(ticket number)
6	(position)6(ticket number)
7	(position)7(ticket number)
8	(position)8(ticket number)
9	(position)9(ticket number)
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$9.00	NINE$
$19.00	NINTN
$49.00	FRYNIN
$99.00	NTYNIN
$199	ONNYNN
$900	NINHUN

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to

verify and validate instant winners. The possible validation codes are: Table 2 of this section.

Table 2
Figure 2: GAME NO. 236 – 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
THR	$3.00
NIN	$9.00
NNT	$19.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $9.00, or $19.00.

H. Mid-Tier Prize - A prize of $49.00, $99.00, or $199.

I. High-Tier Prize - A prize of $900.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A thirteen (13) digit number consisting of the three (3) digit game number (236), a seven (7) digit pack number and a three (3) digit ticket number. Ticket numbers start with 000 and end with 074 within each pack. The format will be : 236-0000001-000.

L. Pack - A pack of "9's IN A LINE" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five. Tickets 000 - 004 will be on the top page 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 "9's IN A LINE" Instant Game No. 236 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 "9's IN A LINE" Instant Game is determined once the latex on the ticket is scratched off to expose 10 (ten) play symbols. If a player finds three (3) 9's in any one row, column, or diagonal, the player wins the prize in the Prize Box. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 10 (ten) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 10 (ten) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 10 (ten) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 10 (ten) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No ticket will contain three (3) or more of a kind other than the 9 (nine) symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "9's IN A LINE" Instant Game prize of $1.00, $2.00, $3.00, $9.00, $19.00, $49.00, $99.00, or $199, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $49.00, $99.00 or $199 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "9's IN A LINE" Instant Game prize of $900, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "9's IN A LINE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "9's IN A

LINE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "9's IN A LINE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,557,500 tickets in the Instant Game No. 236. The approximate number and value of prizes in the game are as follows: Table 3 of this section.

Table 3
Figure 3: GAME NO. 236 – 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1.00	2,055,788	1:10.00
$2.00	1,397,891	1:14.71
$3.00	657,789	1:31.25
$9.00	164,477	1:124.99
$19.00	82,230	1:250.00
$49.00	24,462	1:840.39
[illegible]	[illegible]	[illegible]
$199.00	2,741	1:7,500.00
$900	74	1:118,146.55

*The number of actual winners may vary based on sales, distribution, and numb prizes claimed.

**The overall odds of winning a prize are 1 in 4.68. The individual odds of win particular prize level may vary based on sales, distribution, and number of prize 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. 236 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. 236, 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-200104200
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 20, 2001

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Instant Game No. 237 "Aces High"

1.0 Name and Style of Game.

A. The name of Instant Game No. 237 is "ACES HIGH". The play style is a "yours beats theirs with auto win" play style.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 237 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 237.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 2, 3, 4, 5, 6, 7, 8, 9, 10, J, Q, K, A, $1.00, $2.00, $3.00, $5.00, $10.00, $20.00, $50.00, $100, $500 and $2,500.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows: Table 1 of this section.

Table 1
Figure 1: GAME NO. 237 – 1.2D

PLAY SYMBOL	CAPTION
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
J	JCK
Q	QUN
K	KNG
A	ACE
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$2,500	TWF HUND

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are: Table 2 of this section.

Table 2
Figure 2: GAME NO. 237 – 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
THR	$3.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the

Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $5.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100, or $500.

I. High-Tier Prize - A prize of $2,500.

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 (237), a seven (7) digit pack number and a three (3) digit ticket number. Ticket numbers start with 000 and end with 074 within each pack. The format will be : 237-0000001-000.

L. Pack - A pack of "ACES HIGH" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five. Tickets 000 - 004 will be on the top page 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 "ACES HIGH" Instant Game No. 237 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 "ACES HIGH" Instant Game is determined once the latex on the ticket is scratched off to expose 12 (twelve) play symbols. If the player's YOUR CARD beats the DEALER'S CARD, the player wins the prize shown under PRIZE. If the player gets and Ace card symbol under YOUR CARD, the player wins the PRIZE for that game automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 12 (twelve) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 12 (twelve) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 12 (twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 12 (twelve) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning games on a ticket.

C. No duplicate non-winning prize symbols on a ticket.

D. The auto win symbol will appear only on intended winning tickets.

E. Non-winning prize symbols will not match a winning prize symbol on a ticket.

F. No ties in a game.

G. The auto win symbol will never appear more than once on a ticket.

H. An Ace card will not appear as the Dealer's Card.

2.3 Procedure for Claiming Prizes.

A. To claim a "ACES HIGH" Instant Game prize of $1.00, $2.00, $3.00, $5.00, $10.00, $20.00, $50.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "ACES HIGH" Instant Game prize of $2,500, 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 "ACES HIGH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "ACES HIGH" 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 "ACES HIGH" 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 20,150,000 tickets in the Instant Game No. 237. The approximate number and value of prizes in the game are as follows: Table 3 of this section Figure 3:16 TAC GAME NO. 237- 4.0

Table 3
Figure 3: GAME NO. 237 – 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1.00	2,256,534	1:8.93
$2.00	886,648	1:22.73
$3.00	564,450	1:35.70
$5.00	322,134	1:62.55
$10.00	120,909	1:166.65
$20.00	40,333	1:499.59
$50.00	40,311	1:499.86
$100	4,499	1:4,478.77
$500	168	1:119,940.48
$2,500	83	1:242,771.08

*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.76. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 237 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. 237, 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-200104201
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 20, 2001

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Texas Department of Mental Health and Mental Retardation

Notice of Joint Public Hearing on Reimbursement Rates for Services in Institutions for Mental Diseases (IMDs)

The Health and Human Services Commission and the Texas Department of Mental Health and Mental Retardation will conduct a joint public hearing to receive public comment on the extension of current reimbursement rates for Institutions for Mental Diseases (IMDs). The rates will be effective September 1, 2001, through January 31, 2002. The joint hearing will be held in compliance with Title 1, Texas Administrative Code, Chapter 355, Subchapter F, §355.702(h), which requires a public hearing on proposed reimbursement rate for medical assistance programs. Payment rates are proposed to be effective September 1, 2001, as follows:

$367.97 per day

Methodology and justification: The proposed rates were determined in accordance with the rate setting methodology codified as 1 Texas Administrative Code Chapter 355, Subchapter F (relating to Reimbursement Methodology for all medical assistance programs (IMDs)), §355.761(c)(3) and (4).

The public hearing will be held on Wednesday, August 22, 2001, at 9:00 a.m. in room 2-328, of TDMHMR Central Office building (Building 2) at 909 West 45th Street, Austin, Texas 78751.

Written comments may be submitted to the Reimbursement and Analysis Section, Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, or faxed to (512) 206-5693. Hand deliveries will be accepted at 909 West 45th Street, Building 4, Austin, Texas 78751. Comments must be received by 5:00 p.m. on Tuesday, August 21, 2001.

Persons requiring an interpreter for deaf or hearing impaired or other accommodation should contact Tom Wooldridge by calling (512) 206-5753 or the TDY phone number of Texas Relay, which is 1-800-735-2988, at least 72 hours prior to the hearing.

TRD-200104276

Charles Cooper

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Filed: July 24, 2001

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Texas Natural Resource Conservation Commission

Enforcement Orders

An agreed order was entered regarding KHALED OMAR, Docket No. 1998-1525-PST-E on July 16, 2001 assessing $3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting VICTOR SIMONDS, Staff Attorney at (512)239-6201, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AISHEH HABOUL DBA FUTURE FOOD MART AND FERAS ABDALLAH, Docket No. 1998-1525-PST-E on July 16, 2001 assessing $4,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting VICTOR SIMONDS, Staff Attorney at (512)239-6201, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An amended agreed order was entered regarding BILLMARK COMPANY, INC., Docket No. 1998-1417-IHW-E on July 17, 2001 assessing $31,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JOHN MCDONALD, Staff Attorney at (817)588-5888, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HILLTOP ESTATES WATER SUPPLY CORP. DBA HILLTOP ESTATES WATER SUPPLY, Docket No. 1999-0494-PWS-E on July 16, 2001 assessing $4,938 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JOHN SUMNER, Staff Attorney at (915)620-6118, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DENNIS DICKERSON INDIVIDUALLY & KAT SAV-MOR, INC., Docket No. 1999-0718-PST-E on July 16, 2001 assessing $10,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting LAURIE LINDSEY, Staff Attorney at (512)239-3693, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SATTAR INVESTMENTS INC, Docket No. 1999- 1404-PST-E on July 16, 2001 assessing $8,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting DARREN REAM, Staff Attorney at (817)588-5878, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PETROLEUM MARKET EQUIPMENT, INC.;DEAN PUMP, INC. AND DONALD PRESTON DEAN, Docket No. 1999-1246-PST-E on July 16, 2001 assessing $4,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting RICHARD O'CONNELL, Staff Attorney at (512)239-5528, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding PHOHAY RATSAMY DBA BOAT CLUB GROCERY, Docket No. 2000-0046-PST-E on July 16, 2001 assessing $3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting VICTOR SIMONDS, Staff Attorney at (512)239-6201, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BNP PETROLEUM CORPORATION, Docket No. 2000-1198-AIR-E on July 16, 2001 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting MICHAEL DE LA CRUZ, Enforcement Coordinator at (512)239-0259, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DELTON OSBORNE DBA GRUBS BAIT & GRILL, Docket No. 2001-0018-OSS-E on July 16, 2001 assessing $4,375 in administrative penalties with $875 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 NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 12, Docket No. 2000-1206-MWD-E on July 16, 2001 assessing $750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting FAYE LIU, Enforcement Coordinator at (713)767-3726, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RACETRAC PETROLEUM INC, Docket No. 1998- 1005-PST-E on July 16, 2001 assessing $7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting DARREN REAM, Staff Attorney at (817)588-5878, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GILBERT REYES, JR. DBA PARTY TIME RENTALS, Docket No. 2000-0783-AIR-E on July 16, 2001 assessing $1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting ROBERT HERNANDEZ, Staff Attorney at (512)239-5915, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding KAMAL KASSIRA DBA SANDY'S FOOD STORE, Docket No. 2000-0178-PST-E on July 16, 2001 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting LAURIE LINDSEY, Staff Attorney at (512)239-3693, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DUKE ENERGY FIELD SERVICES LP, Docket No. 2000-1309-AIR-E on July 16, 2001 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting THOMAS GREIMEL, Enforcement Coordinator at (512)239-5690, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AES DEEPWATER ,INC., Docket No. 2000-1434- AIR-E on July 16, 2001 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting KEVIN KEYSER, Enforcement Coordinator at (713)422-8938, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HILCORP ENERGY COMPANY, Docket No. 2000- 0934-AIR-E on July 16, 2001 assessing $28,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SHEILA SMITH, Enforcement Coordinator at (512)239-1670, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J&B HABLUETZEL TRUST, Docket No. 2000- 1026-MSW-E on July 16, 2001 assessing $1,100 in administrative penalties with $220 deferred.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512)239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KALYN/SIEBERT L.P., Docket No. 2000-1180- AIR-E on July 16, 2001 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting JAMES JACKSON, Enforcement Coordinator at (254)751-0335, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LONE STAR STEEL COMPANY, Docket No. 2000-0104-IWD-E on July 16, 2001 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting TERRY MURPHY, Enforcement Coordinator at (512)239-5025, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BANDERA RANCH RESORT L.C. DBA LOST VALLEY RESORT RANCH, Docket No. 2000-1079-PWS-E on July 16, 2001 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SHAWN STEWART, Enforcement Coordinator at (512)239-6684, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FRANK FLORES DBA LULL'S PUBLIC SCALES & SCALES DRIVE IN, Docket No. 2000-1371-AIR-E on July 16, 2001 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting BILL DAVIS, Enforcement Coordinator at (512)239-6793, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MADANCO CORPORATION DBA SHOPPERS MART, Docket No. 2000-1041-PST-E on July 16, 2001 assessing $900 in administrative penalties with $180 deferred.

Information concerning any aspect of this order may be obtained by contacting KENT HEATH, Enforcement Coordinator at (512)239-4575, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NORTHEAST TEXAS COMMUNITY COLLEGE, Docket No. 2000-1269-MWD-E on July 16, 2001 assessing $1,500 in administrative penalties with $300 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 NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 24, Docket No. 2000-1135-MWD-E on July 16, 2001 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting TERRY MURPHY, Enforcement Coordinator at (512)239-5025, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF PALMER, Docket No. 2000-1392-MWD- E on July 16, 2001 assessing $4,200 in administrative penalties with $840 deferred.

Information concerning any aspect of this order may be obtained by contacting MICHAEL DELACRUZ, Enforcement Coordinator at (512)239-0259, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PHILLIPS PETROLEUM COMPANY, Docket No. 2000-1310-AIR-E on July 16, 2001 assessing $25,000 in administrative penalties with $5,000 deferred.

Information concerning any aspect of this order may be obtained by contacting STACEY YOUNG, Enforcement Coordinator at (512)239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RENE HINOJOSA DBA RENE'S WATER SYSTEM, Docket No. 2000-1418-PWS-E on July 16, 2001 assessing $188 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TERRY THOMPSON, Enforcement Coordinator at (512)239-6095, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding THE SHERWIN WILLIAMS COMPANY, Docket No. 2001-0010-AIR-E on July 16, 2001 assessing $3,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting BILL DAVIS, Enforcement Coordinator at (512)239-6793, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHARLES S. TIMMS, Docket No. 2000-1020- MSW-E on July 16, 2001 assessing $3,200 in administrative penalties with $2,600 deferred.

Information concerning any aspect of this order may be obtained by contacting GARY SHIPP, Enforcement Coordinator at (816)796-7092, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TURKEY CREEK LANDFILL TX, LP, Docket No. 2000-1257-MSW-E on July 16, 2001 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting MERRILEE GERBERDING, Enforcement Coordinator at (512)239-4490, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default was entered regarding C&A JEFFREY, INC. & CURTIS JEFFREY INDIVIDUALLY, Docket No. 1999-0259-MWD-E on July 16, 2001 assessing $11,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting GITANJALI YADAV, Staff Attorney at (512)239-2029, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding JAMES LEROY DAKE, Docket No. 1999-1306-OSI- E on July 16, 2001 assessing $250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting KELLY MEGO, Staff Attorney at (713)422-8916, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding VANCE D. MILLER DBA MILLER MANUFACTURING CO., Docket No. 2000-0511-AIR-E on July 16, 2001 assessing $1,250 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 GOOD TIME STORES INC. DBA GOOD TIME STORE NO. 60, Docket No. 2001-0142-AIR-E on July 16, 2001 assessing $900 in administrative penalties with $180 deferred.

Information concerning any aspect of this order may be obtained by contacting DAVID VAN SOEST, Enforcement Coordinator at (512)239-0468, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding OASIS PIPE LINE COMPANY TEXAS L.P., Docket No. 2000-1386-AIR-E on July 16, 2001 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting MALCOLM FERRIS, Enforcement Coordinator at (210)403-4061,Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200104273
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: July 24, 2001

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Notice of Application for Industrial Hazardous Waste Permits/Compliance Plans

For the period of July 24, 2001.

APPLICATION Shell Chemical LP and Equilon Enterprises, LLC has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal/major amendment to authorize the continued operation of one existing tank for the storage of hazardous waste. The facility is located 3333 Highway 6 South, 20 miles west of downtown Houston, Harris County, Texas. This application was received by the TNRCC on May 22, 2000. The TNRCC executive director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, executive director's preliminary decision, and draft permit are available for viewing and copying at the City of Houston Public Library (Alief Branch) 7979 South Kirkwood, Houston, Texas.

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 U. S. Air Force - Laughlin Air Force Base at the address stated above or by calling Mr. Maurice Cooper at (830) 298-5457.

TRD-200104271
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: July 24, 2001

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

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 3, 2001**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 3, 2001**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: Evelyn Freeman Farhood dba Abrazas Utilities; DOCKET NUMBER: 2001- 0618-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 1840034 and Certificate of Convenience and Necessity Number 11596; LOCATION: near Smithfield, Parker County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §291.21(c)(7), §291.93(2)(A), and the Code, §13.136(a), by failing to ensure that the facility's tariff includes an approved drought contingency plan; and 30 TAC §288.30(3)(B) and the Code, §13.132(a)(1), by failing to make the facility's adopted drought contingency plan available for inspection; PENALTY: $125; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(2) COMPANY: Air & Sea Environmental, Inc. dba Ameritech Environmental; DOCKET NUMBER: 2001-0014-MSW-E; IDENTIFIER: Medical Waste Transporter Number 50067; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: medical waste transport; RULE VIOLATED: 30 TAC §330.1005(g)(1)(C), (h), (i), and (o), by failing to maintain a complete spill kit, provide a description of the disinfection process, segregate medical waste from other waste materials, and transport untreated medical waste packaged with the proper identification requirements; 30 TAC §330.1006, by allowing the unauthorized transfer of medical waste from one vehicle to another; and 30 TAC §330.1009(d), by failing to store medical waste at a temperature of 45 degrees Fahrenheit or less for waste held over 72 hours; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Catherine Sherman, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Alcoa World Alumina Atlantic, L.L.C.; DOCKET NUMBER: 2000-0814-AIR- E; IDENTIFIER: Air Account Number CB-0003-M; LOCATION: Point Comfort, Calhoun County, Texas; TYPE OF FACILITY: bauxite refining plant; RULE VIOLATED: 30 TAC §101.20(1), §116.115(c), 40 Code of Federal Regulations (CFR) Part 60, Subpart Db §60.46b(e)(1) and §60.48b(g), Air Permit Number 8166, and the Act, §382.085(b), by failing to equip boiler number six with a continuous emissions monitoring system or to obtain authorization and meet requirements to install a predictive emissions monitoring system and monitor for nitrogen oxides (NOx); the Act, §382.085(a), by failing to prevent the emission of hydrogen fluoride into the atmosphere; 30 TAC §116.115(c), Air Permit Number 8166, 40 CFR §60.736(a), and the Act, §382.085(b), by failing to maintain particulate emissions at or below the permitted allowable limits of 33.94 pounds per hour, 0.088 grains per dry standard cubic foot, and 15% opacity, notify the agency 45 days prior to conducting performance testing, control emissions of NOx, maintain emissions of particulate, control emissions of particulate and carbon monoxide, and control emissions of volatile organic compounds (VOCs); PENALTY: $181,400; ENFORCEMENT COORDINATOR: Gary McDonald, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(4) COMPANY: Amcor Financial Corporation dba Lake Valley Water Company; DOCKET NUMBER: 2001-0259-MLM-E; IDENTIFIER: PWS Number 2470020 and Water Quality Permit Number None; LOCATION: La Vernia, Wilson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §317.1(a)(2), by failing to obtain authorization prior to construction of a sewage collection system; 30 TAC §325.3(i) (now 30 TAC §325.408(i)), by failing to employ at least one wastewater collection system operator who holds a certificate of competency for operation of a Class I system;

30 TAC §290.29(j), by failing to provide notification prior to construction of a new filter system; 30 TAC §290.41(c)(1)(F) and (3)(K), (M), and (O), by failing to secure a sanitary easement, provide the two wells with screened casing vents, provide a suitable tap on each well discharge, and provide well units with intruder-resistant fences; and 30 TAC §290.43(e), by failing to provide potable water storage facilities with intruder-resistant fences with lockable gates; PENALTY: $4,455; ENFORCEMENT COORDINATOR: Malcolm Ferris, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Ashland, Inc.; DOCKET NUMBER: 2001-0038-AIR-E; IDENTIFIER: Air Account Number HG-0046-P; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: chemical and solvent distribution, storage, packaging, and blending; RULE VIOLATED: 30 TAC §115.126(a)(2) and (3), and the Code, §382.085(b), by failing to keep records having adequate data or test results; 30 TAC §116.115(b)(2)(F)(i) and (c), Air Permit Number 457, and the Code, §382.085(b), by failing to limit the methylene chloride, bulk loading, short-term throughput to 2,000 gallons per hour and keep monthly VOC emissions records; and 30 TAC §121.121, §122.130(b)(1), and the Code, §382.054 and §382.085(b), by failing to submit an initial operating permit application; PENALTY: $6,625; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Baxter Oil Service, Inc.; DOCKET NUMBER: 2000-1305-MLM-E; IDENTIFIER: Used Oil Facility Identification Number A85361; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: used oil processing; RULE VIOLATED: 30 TAC §324.4(2)(C)(i), by allegedly having received non-hazardous spent parts-cleaning solvent and blended it with used oil; PENALTY: $5,400; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 7703-1892, (409) 898-3838.

(7) COMPANY: Citgo Refining and Chemicals Company, L.P.; DOCKET NUMBER: 2000- 1061-AIR-E; IDENTIFIER: Air Account Number NE-0123-B; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: petrochemical storage site; RULE VIOLATED: 30 TAC §116.116(a), Permit Number 4769B, and the Code, §382.085(b), by failing to operate storage tank numbers 9823 and 9824 in accordance with throughputs parameters; 30 TAC §116.110(a), Standard Exemption 102, and the Code, §382.085(b), by failing to verify the integrity of the primary seal on the external roof; 30 TAC §122.121, §122.130, and the Code, §382.054 and §382.085(b), by failing to obtain a federal operating permit for the hydrocarbon waste storage tank; and 30 TAC §122.146(1) and (2), and the Code, §382.085(b), by failing to submit annual Title V compliance certifications; PENALTY: $22,800; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(8) COMPANY: Coal City Cob Company, Inc.; DOCKET NUMBER: 2001-0445-MSW-E; IDENTIFIER: Used Oil Handler Registration Number A85401; LOCATION: Avalon, Ellis County, Texas; TYPE OF FACILITY: used oil transporting; RULE VIOLATED: 30 TAC §324.22, by failing to provide financial assurance for the active area of the facility; PENALTY: $180; ENFORCEMENT COORDINATOR: Michael De La Cruz, (512) 239-0259; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(9) COMPANY: Corpus Christi Housing Authority; DOCKET NUMBER: 2001-0181-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 65115; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: maintenance; RULE VIOLATED: 30 TAC §334.48(c), by failing to conduct inventory control procedures; and 30 TAC §334.93 (now 30 TAC §37.815)), by failing to demonstrate the required financial responsibility for taking corrective action; PENALTY: $2,520; ENFORCEMENT COORDINATOR: Audra Baumgartner, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(10) COMPANY: CWS Communities Trust dba Creekside Manufactured Home Community; DOCKET NUMBER: 2001-0153-PWS-E; IDENTIFIER: PWS Number 0610191 and Certificate of Convenience and Necessity Number 12032; LOCATION: Dallas, Denton County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(a) and (e)(6), §290.103(5), (now 30 TAC §290.109(c) and (g) and §290.122), and the Code, §341.033(d), by failing to collect and submit the routine monthly water samples for bacteriological analysis and provide public notice; 30 TAC §291.21(c)(7), §291.93(2)(A), and the Code, §13.136(a), by failing to ensure that the tariff included an approved drought contingency plan; and 30 TAC §288.30(3)(B) and the Code, §13.132(a)(1), by failing to make available for inspection the drought contingency plan; PENALTY: $2,498; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(11) COMPANY: City of Detroit; DOCKET NUMBER: 2000-1339-PWS-E; IDENTIFIER: PWS Number 1940003; LOCATION: Detroit, Red River County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F) and (3)(M), by failing to provide a sanitary easement and provide a suitable sampling tap on the well discharge; 30 TAC §290.45(b)(1)(D)(i), by failing to meet the agency's minimum water system capacity requirements for two or more wells; 30 TAC §290.46(f)(2), (3)(A)(iv), (j), and (m), and by failing to record daily chlorine residual tests, implement and maintain copies of properly complete customer service inspection certifications, initiate a maintenance program, and compile and maintain monthly records of flushing dead-end mains; 30 TAC §290.43(c)(8), by failing to maintain the elevated storage tank; and 30 TAC §290.118(b), by failing to meet the commission's minimum standards for drinking water; PENALTY: $1,203; ENFORCEMENT COORDINATOR: Elnora Moses, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(12) COMPANY: Ellinger Sewer and Water Supply Corporation; DOCKET NUMBER: 2000- 1209-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10945-001; LOCATION: Ellinger, Fayette County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5), TPDES Permit Number 10945-001, and the Code, §26.121, by failing to meet permit limits for 30-day average concentration of five- day biochemical oxygen demand and to report in writing any effluent violation which deviated from the permitted values by more than 40%; PENALTY: $3,200; ENFORCEMENT COORDINATOR: Sherry Smith, (512) 239-0572; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(13) COMPANY: Equistar Chemicals, L.P.; DOCKET NUMBER: 2001-0241-AIR-E; IDENTIFIER: Air Account Number JE-0011-M; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: polyethylene manufacturing; RULE VIOLATED: 30 TAC §116.115(b)(2)(G) and (c), Air Permit Number 673B, and the Code, §382.085(b), by failing to limit VOC emissions; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838;

REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: Garcia Grain Trading Corporation; DOCKET NUMBER: 2000-0812-AIR-E; IDENTIFIER: Air Account Number HN-0453-S; LOCATION: Weslaco, Hidalgo County, Texas; TYPE OF FACILITY: grain transfer; RULE VIOLATED: 30 TAC §116.110(a) and the Code, §382.0518(a) and §382.085(b), by failing to obtain authorization before construction or operation began; PENALTY: $1,440; ENFORCEMENT COORDINATOR: Sandra Hernandez-Alanis, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5347, (956) 425-6010.

(15) COMPANY: Lee Gardner; DOCKET NUMBER: 2001-0157-SLG-E; IDENTIFIER: Sludge Transporter Registration Number 20689; LOCATION: Pooleville, Parker County, Texas; TYPE OF FACILITY: septic tank waste; RULE VIOLATED: 30 TAC §312.44(i)(1), by failing to uniformly apply sludge over the surface of the land application site; 30 TAC §312.82(c)(2), by failing to lime stabilize the waste; and 30 TAC §312.144(e), by failing to maintain records of pathogen and/or vector attraction reduction on the transporting vehicle; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(16) COMPANY: Mr. Kenneth Haddad and Mr. Maynard Haddad dba H&H Car Wash; DOCKET NUMBER: 2001-0094-AIR-E; IDENTIFIER: Air Account Number EE-1091-H; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: car wash; RULE VIOLATED: 30 TAC §114.100(a) and the Code, §382.085(b), by failing to meet the minimum oxygen content of 2.7% by weight; PENALTY: $1,440; ENFORCEMENT COORDINATOR: Merrilee Gerberding, (512) 239-4490; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(17) COMPANY: Ray Hill dba Hill's Can-Do; DOCKET NUMBER: 2001-0053-OSI-E; IDENTIFIER: On-Site Sewage Installer Number 3847; LOCATION: near Mabank, Van Zandt County, Texas; TYPE OF FACILITY: on-site sewage; RULE VIOLATED: 30 TAC §§285.30(b)(5), 285.33(a)(1)(B), 285.58(a)(6) and (7), and the Code, §366.004, by failing to construct an on-site sewage facility that complies with Chapter 285 and use proper materials in the installation; PENALTY: $200; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239-6673; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(18) COMPANY: Island Business, Inc.; DOCKET NUMBER: 2000-1356-MWD-E; IDENTIFIER: PST Registration Number 0033839; LOCATION: Galveston, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3)(A) and the Code, §382.085(b), by failing to equip the Stage II vapor recovery system with a cap on the system poppit; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: K & K Construction, Inc.; DOCKET NUMBER: 2001-0090-AIR-E; IDENTIFIER: Air Account Number MQ-0591-P; LOCATION: Willis, Montgomery County, Texas; TYPE OF FACILITY: construction company; RULE VIOLATED: 30 TAC §111.201 and the Code, §382.085(b), by failing to adhere to outdoor burning requirements; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Trina Lewison, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Navarro Mills Water Supply Corporation; DOCKET NUMBER: 2000-1336- PWS-E; IDENTIFIER: PWS Number 1750024 and Certificate of Convenience and Necessity (CCN) Number 10779; LOCATION: Purdon, Navarro County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(ii) and (iii), by failing to provide a total storage capacity of 200 gallons per connection and provide two or more pumps that have a total capacity of two gallons per minute (gpm) per connection; 30 TAC §290.43(c)(2), by failing to keep the roof hatch on the ground storage tank; 30 TAC §290.44(d)(6), by failing to provide the water system with acceptable flush valves and discharge piping on the dead-end mains; 30 TAC §291.85(a)(2) and (b), and the Code, §13.139(a), by failing to serve each qualified applicant with their CCN, accept written applications from service residents, and provide service to qualified applicants; PENALTY: $535; ENFORCEMENT COORDINATOR: Wendy Cooper, (817) 588-5800; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(21) COMPANY: The City of Palmer; DOCKET NUMBER: 2001-0279-PWS-E; IDENTIFIER: PWS Number 0700007; LOCATION: Palmer, Ellis County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(i) and (iii), by failing to meet the minimum production and service pump capacity for pressure plane one and two; 30 TAC §290.106(b) and §290.118(b), by failing to meet the minimum public drinking water quality standards for inorganic contaminants and secondary constituent levels; 30 TAC §290.46(f)(3)(A)(iv) and (j), by failing to compile and maintain customer complaint logs, properly complete monthly operating reports, and maintain records of customer service inspection certificates; 30 TAC §290.44(h)(1)(A) and (B)(i), by failing to establish an adequate cross-connection control program; and 30 TAC §290.42(e)(3)(D), by failing to provide scales for the chlorine cylinders; PENALTY: $1,300; ENFORCEMENT COORDINATOR: Judy Fox, (817) 588-5800; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(22) COMPANY: Pinnacle Gas Treating, Inc.; DOCKET NUMBER: 2001-0290-AIR-E; IDENTIFIER: Air Account Number AA-0096-B; LOCATION: Bethel, Anderson County, Texas; TYPE OF FACILITY: gas treating plant; RULE VIOLATED: 30 TAC §101.20(3), §116.115(c), 40 CFR §52.21, Air Permit Number 33486 and PSD-TX-872, and the Code, §382.085(b), by failing to comply with permit conditions by not achieving minimum sulfur recovery efficiency and comply with permit limitations by emitting more than 74.42 pounds per hour of sulfur dioxide; PENALTY: $17,500; ENFORCEMENT COORDINATOR: Elnora Moses, (903) 535- 5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(23) COMPANY: City of Roma; DOCKET NUMBER: 2001-0104-PWS-E; IDENTIFIER: PWS Number 2140007; LOCATION: Roma, Starr County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(r), by failing to operate the system to maintain a minimum pressure of 35 pounds per square inch throughout the distribution system; the Code, §26.121, by allowing an unauthorized discharge of sludge decant water; 30 TAC §290.43(c)(3) and (6), by failing to provide the storage tank with a weighted overflow cover and maintain the steel storage tank tight against leakage; 30 TAC §290.42(d)(5) and (6)(E), and (e)(3)(D), by failing to provide a flow measuring device, provide the ammonia sulfate bulk storage tank with provisions to minimize the possibility of leaks and spills, and provide facilities to determine the amount of disinfectant remaining for use; and 30 TAC §290.51, by failing to pay all outstanding public health service fees; PENALTY: $13,013; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(24) COMPANY: Mr. Louis Manzone dba The Ranch Mobile Home Park; DOCKET NUMBER: 2001-0137-PWS-E; IDENTIFIER: PWS Number 0610162; LOCATION: Roanoke, Denton County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(d), (e), and (f)(1)(B), by failing to compile monthly operating reports, provide a certified waterworks operator, and conduct and record the weekly chlorine residual test; 30 TAC §290.43(c)(6) and (e), by failing to ensure that the ground storage tank was in a water tight condition and provide an intruder-resistant fence; 30 TAC §290.41(c)(3)(B) and (J), by failing to extend the well casing and properly extend the concrete sealing block; and 30 TAC §290.45(b)(1)(C), by failing to provide a pressure tank capacity of 20 gallons per connection and a well capacity of 0.6 gpm per connection; PENALTY: $4,063; ENFORCEMENT COORDINATOR: Melinda Houlihan, (817) 588-5800; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(25) COMPANY: Tige Boat Inc.; DOCKET NUMBER: 2001-0307-IHW-E; IDENTIFIER: Solid Waste Registration Number 85770; LOCATION: Abilene, Taylor County, Texas; TYPE OF FACILITY: boat manufacturing; RULE VIOLATED: 30 TAC §335.4, by failing to dispose of industrial solid waste at an authorized facility; PENALTY: $800; ENFORCEMENT COORDINATOR: George Ortiz, (915) 698-9674; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

TRD-200104262
Paul Sarahan
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: July 24, 2001

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

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 3, 2001**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Comments about the AOs should be sent to the attorney designated for the AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 3, 2001**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: Barbara Shane dba Village Trace Water Company; DOCKET NUMBER: 1999-1430-MWD-E; TNRCC ID NUMBERS: 12822-001 and TX00094226; LOCATION: approximately 2,500 feet east of County Road (CR) 143 and approximately 2,300 feet south of CR 128, Alvin, Brazoria County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: §305.125(1), TWC, §26.121, and National Pollutant Discharge Elimination System (NPDES) Permit Number TX00094226 (effluent limitations), by failing to comply with the 30-day average concentration limit of 12 mg/L for total suspended solids (TSS); §305.125(1), TWC, §26.121, and NPDES Permit Number TX00094226 (effluent limitations), by failing to comply with the 30-day average concentration limit of 5 mg/L for carbonaceous biochemical oxygen demand; §302.125(1), TWC, §26.121, and NPDES Permit Number TX00094226, by failing to comply with the daily maximum concentration limit of 35 mg/L for TSS; PENALTY: $3,000; STAFF ATTORNEY: Victor Simonds, Litigation Division, MC 175, (512) 239-6201; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Ste. H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Brazosport Equipment & Rental, Inc.; DOCKET NUMBER: 1999-1482-MSW-E; TNRCC ID NUMBERS: 455120017; LOCATION: 0.9 miles southeast of intersection Farm-to-Market Road (FM) 523 and State Highway 332, Oyster Creek, Brazoria County, Texas; TYPE OF FACILITY: unauthorized municipal solid waste site; RULES VIOLATED: §330.5(c), by failing to obtain authorization for disposing of municipal solid waste; PENALTY: $5,500; STAFF ATTORNEY: James Biggins, Litigation Division, MC R-13, (210) 403-4017; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Ste. H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Citgo Refining and Chemicals Co., L.P.; DOCKET NUMBERS: 1997-0151-IHW-E and 1998-0579-IHW-E; TNRCC ID NUMBERS: 30532 and 32501; LOCATION: 1801 Nueces Bay Blvd., Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: §335.2 and §.43, by storing, processing, and disposing of hazardous waste in a surface impoundment without a permit or other authorization from the TNRCC; §101.4 and §112.31, THSC, §382.085, by discharging one or more air contaminants including unauthorized emissions of hydrogen fluoride and volatile organic compounds, ground level concentrations of hydrogen sulfide greater than 0.8 parts per million over a period of 30 minutes, and nuisance odors; §116.115, by failing to install, calibrate, test, and maintain certification of nitrogen oxide analyzer on E Boiler within 180 days after their initial start-up; §116.115, by failing to conduct performance testing and submit a complete compliance report on E Boiler within 180 days; §335.4, and TWC, §26.121, by causing, suffering, allowing or permitting the unauthorized discharge of industrial waste into or adjacent to the waters of the State of Texas; PENALTY: $650,000; STAFF ATTORNEY: David Speaker, Litigation Division, MC 175, (512) 239-2548; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Dr., Ste. 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(4) COMPANY: The City of O'Brien; DOCKET NUMBER: 2000-1255-PWS-E; TNRCC ID NUMBERS: 104005; LOCATION: FM 2229 and Highway 6, Haskell County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: §290.109(f)(3), by exceeding the commission's Maximum Contaminant Level (MCL) for total coliform bacteria; §290.109(c)(3), by failing to take the appropriate number of repeat bacteriological samples following total coliform-positive sample results; §290.190(c)(2)(F), by failing to

collect and submit the appropriate number of additional routine bacteriological samples following a total coliform-positive same result; §290.109(g)(3) and §290.122, by failing to provide public notice of an MCL exceedance; §290.109(g)(3) and §290.122, by failing to provide public notice related to its failure to collect and submit the appropriate number of repeat and additional routine bacteriological samples; PENALTY: $1,875; STAFF ATTORNEY: David Speaker, Litigation Division, MC 175, (512) 239-2548; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Blvd., Abilene, Texas 79602-7833, (915) 698-9674.

TRD-200104263
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: July 24, 2001

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Notice of Water Quality Applications

The following notices were issued during the period of July 16, 2001 through July 20, 2001.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711- 3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

A & D CORLEY ENTERPRISES has applied for a renewal of Permit No. 13401-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day via surface irrigation of 3.5 acres of non-public access land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located at 294 Country Club Road, approximately 1.25 miles northeast of the intersection of U.S. Highway 377 and Country Club Road in Denton County, Texas.

ACME BRICK COMPANY which operates the Highsmith Clay Mine has applied for a renewal of TNRCC Permit No. 03887, which authorizes the discharge of mine pit water commingled with storm water on an intermittent and flow variable basis via Outfall 001. The facility is located on the north side of Interstate Highway 10, approximately 4.2 miles west of the intersection of Interstate Highway 10 and State Highway 80 and approximately 5.5 miles southwest of the City of Luling, Guadalupe County, Texas.

CALKAF, INC. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14262-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 99,000 gallons per day. The facility is located 2,000 feet north of the intersection of Farm-to-Market Road 565 and Harmon Road in Chambers County, Texas.

CITY OF CELINA has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14246-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located on Florida Drive approximately 2500 feet north of the intersection of Florida Drive and Farm-to-Market Road 455 in Collin County, Texas.

DELTA HOUSING INVESTMENT, INC. has applied for a renewal of TPDES Permit No. 14023-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 22,500 gallons per day. The facility is located approximatley 0.6 mile east southeast of the intersection of Interstate Highway 20 and Farm-to-Market Road 450 and 6,000 feet north of Farm-to-Market Road 968 in Harrison County, Texas.

ERGON ASPHALT AND EMULSIONS, INC. which operates a facility producing asphalt emulsions, has applied for a renewal of TPDES Permit No. 03209, which authorizes the intermittent discharge of stormwater and boiler blowdown at a daily maximum flow not to exceed 72,000 gallons per day via Outfall 001.The facility is located at 1820 State Highway 6 East in the City of Waco, McLennan County, Texas.

EVADALE INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. 13933-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The facility is located on the east bank of the Neches River and north of the athletic field on the Evadale Independent School District Campus approximately 3500 feet southwest of the intersection of U.S. Highway 96 and Farm-to-Market Road 2246 in Jasper County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 217 has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14275- 001, to authorize the discharge of filter backwash water at a daily average flow not to exceed 10,000 gallons per day. The facility is located approximately 1,200 feet east of the intersection of Walters and Spears Roads, and 2.5 miles west of the intersection of Interstate Highway 45 and Rankin Road in Harris County, Texas.

HARRIS-FORT BEND COUNTIES MUNICIPAL UTILITY DISTRICT NO. 5 has applied for a major amendment to TNRCC Permit No. 13775-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 250,000 gallons per day to a daily average flow not to exceed 700,000 gallons per day. The facility is located approximately 6000 feet southeast of the intersection of Katy-Fort Bend and Roesner Roads, approximately 2 miles southeast of Katy in Fort Bend County, Texas.

INDIVIDUAL CARE OF TEXAS, INC. has applied for a new permit, Proposed Permit No. 14236-001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day via drip irrigation of 4.7 acres of land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located on Farm-to-Market Road 36, approximately 2 miles north on the intersection of Farm-to- Market Road 36 and State Highway 276, approximately 2.4 miles west of the intersection of State Highway 34 and State Highway 276 in Hunt County, Texas.

LIBERTY CITY WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. 11179-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 180,000 gallons per day. The facility is located immediately west of State Highway 135 on the south bank of Rocky Creek in Gregg County, Texas. The treated effluent is discharged to Rocky Creek; thence to Prairie Creek; thence to the Savine River Above Toledo Bend Reservoir in Segment No. 0505 of the Sabine River Basin.

THE LUBRIZOL CORPORATION has applied for a major amendment to TNRCC Permit No. 00639 to authorize an increase in the mass loading and single grab limitations for biochemical oxygen demand (5-day) at Outfall 001. The current permit authorizes the discharge of treated process wastewater, treated storm water, and boiler/cooling wastewater at a daily average flow not to exceed 1,000,000 gallons per day via Outfall 001, which will remain the same; storm water runoff and natural groundwater flow on an intermittent and flow variable basis via Outfall 002, which will remain the same; storm water runoff on an intermittent and flow variable basis via Outfalls 003, 004, 006, and

007, which will remain the same; and storm water runoff and process wastewater by-pass on an intermittent and flow variable basis via Outfall 005. The draft permit removes the authorization for discharge of process wastewater by-pass via Outfall 005. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit No. TX0007048 issued on December 15, 1989 and TNRCC Permit No. 00639, issued on April 25, 1997. The applicant operates a chemical plant which manufactures specialty chemicals for use as additives in lube oils, gear oils, and fuels; and chemical monomers for the polymer chemical industry. The plant site is located at 41 Tidal Road, north of State Highway 225, south of the Port Terminal Railroad, east of Patrick Bayou, and west of the East Fork of Patrick Bayou, in the City of Deer Park, Harris County, Texas.

MILK TRANSPORT SERVICES, L.P. which proposes to operate the Stephenville Milk Transport Services Terminal, a bulk milk transport services terminal, has applied for a new permit, Proposed Permit No. 04314 to authorize the disposal of process wastewaters (wash/rinse waters) at a daily average flow not to exceed 2,000 gallons per day (gpd) and a daily maximum flow not to exceed 4,000 gpd via irrigation of 3.5 acres. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal area are located at 771 County Road 176 (Smith Springs Road), approximately 0.25 mile northwest of the intersection of U.S. Highway 281 and County Road 176, north of the City of Stephenville, Erath County, Texas.

ORANGE COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a renewal of TNRCC Permit No. 10875-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located approximately 300 feet northwest of the intersection of Oak Lane and Ferndale Street in the City of Vidor in Orange County, Texas.

SAVANNAH DEVELOPMENT, LTD. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14222-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located approximately 2 miles northeast of the intersection of State Highway 6 and Farm-to-Market Road 521 in Hunt County, Texas.

SOUTH HAMPTON REFINING CO. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 01403, which authorizes the discharge of treated wastewaters consisting of process wastewater commingled with cooling tower blowdown, boiler blowdown, and storm water runoff at a daily average flow not to exceed 114,000 gallons per day via Outfall 001; and storm water on an intermittent and flow variable basis via Outfalls 002, 003, and 004. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit No. TX0003204, issued on June 15, 1990 and TNRCC Permit No. 01403, issued on April 15, 1994. The applicant operates a bulk organic chemicals manufacturing plant and a products storage and shipping facility. The manufacturing plant is located on Farm-to-Market Road 418 West, approximately 1,000 feet north of the intersection of Farm-to-Market Road 418 and Farm-to-Market Road 1122, and 3.5 miles northwest of the City of Silsbee, Hardin County, Texas.

UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE has applied for a major amendment to TPDES Permit No. 12263-005 to authorize an extension of the expiration date in the final phase from July 31, 2001 to July 31, 2003 for the final phase operation. In accordance with 30 TAC 307.2 (f), the expiration date of the final phase can be extended to November 3, 2002. The facility is located in the Angelina National Forest, approximately 5.8 miles southeast of the intersection of State Highway 63 and Farm-to-Market Road 2743 near the Caney Creek Recreation Area, on the north side of Forest Service Road 336 and approximately 1,000 feet from Sam Rayburn Reservoir in Angelina County, Texas.

CITY OF WHITE DEER has applied for a renewal of Permit No. 10672-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day via evaporation. The facility and disposal site are located approximately 1.5 miles southeast of the intersection of U.S. Highway 60 and Farm-to-Market Road 294 in the City of White Deer in Carson County, Texas.

Concentrated Animal Feeding Operation

Written comments and requests for a public meeting may be submitted to the Office of the Chief Clerk, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

ROY CARRELL has applied for a new Registration No. 4263 to authorize the applicant to operate an existing dairy at a maximum capacity of 500 head in Johnson County, Texas. No discharge of pollutants into the waters in the state is authorized by this Registration except under chronic or catastrophic rainfall conditions. The existing facility is located on the east side of County Road 1001, immediately north of the intersection of County Road 1001 and County Road 913, in Johnson County, Texas.

MARK HANNAN has applied for a new TPDES Registration No. 4308 to authorize the applicant to expand an existing dairy facility from a maximum capacity of 1600 to 2400 head in Van Zandt County, Texas. No discharge of pollutants into the waters in the state is authorized by this registration except under chronic or catastrophic rainfall conditions. The existing facility is located on the east side of Farm-to-Market Road 1861, 1 mile South of the intersection of Farm-to-Market Road 858 and Farm-to-Market Road 1861, in Martin Mills, Van Zandt County, Texas.

TRD-200104272
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: July 24, 2001

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Notice of Water Right Application

Amendment to Certificate of Adjudication No. 12-4031; Palo Pinto County Municipal Water District No. 1, P.O. Box 98, Mineral Wells, Texas 76068, applicant seeks to amend Certificate of Adjudication No. 12-4031 pursuant to Texas Water Code 11.122 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. Notice should be mailed pursuant to 30 TAC 295.153 (b) (3) and 295.158 (c) (2) (e) to the owners of the water rights with diversion points found in the Brazos River watershed between the proposed diversion point and Lake Granbury. Applicant owns Certificate of Adjudication No. 12-4031 which authorizes owner to maintain two existing on-channel reservoirs: Reservoir 1, Lake Palo Pinto, impounds 44,100 acre-feet of water and Reservoir 2 impounds 24 acre-feet of water. Both reservoirs are located on Palo Pinto Creek, tributary of Brazos River, in the Brazos River Basin. Certificate of Adjudication No. 12-4031 also authorizes the owner to divert and use not to exceed 12,500 acre-feet of water per annum for municipal use and 6,000 acre-feet of water per annum for industrial purposes from the perimeter of the reservoirs at a maximum combined rate of 85.00 cfs (38,250 gpm). The time priority is July 3, 1962 for the storage of 34,250 acre-feet of water in Lake Palo Pinto, the diversion of 10,000 acre-feet of water for municipal use and 6,000 acre-feet of water for industrial use at a maximum diversion rate of 85

cfs (38,250 gpm). The time priority is September 8, 1964 for the storage of an additional 9,850 acre-feet of water in the Lake Palo Pinto, the storage of 24 acre-feet of water in the small reservoir, and the diversion of an additional 2,500 acre-feet of water for municipal purposes. Applicant seeks to amend Certificate of Adjudication No.12-4031 to add a diversion point approximately 2,500 feet downstream of the existing diversion points and reservoirs authorized in the Certificate. The proposed diversion point is located 12.5 miles in a southwest direction from the City of Palo Pinto and .5 miles in a southeast direction from the City of Brazos, in Palo Pinto County. The diversion point is at 32.654 degrees N Latitude and 98.125 degrees W Longitude, also being the southeast corner of the T&P RR Survey # 38 West of Brazos, Abstract No. 1112, Palo Pinto County, Texas. The purpose of this request is to allow for the diversion of creek water or water backed up from the Brazos River to provide an additional raw water source during drought conditions. Water will only be taken from this diversion point when the storage at Lake Palo Pinto falls below 50 percent of it's capacity. The applicant is not requesting an increase in the amount of water authorized or an increase in diversion rate. The applicant was received on October 5, 2000. Additional information was received on October 12, 2000 and December 17, 2000. The application was determined to be administratively complete on July 5, 2001. 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 by August 9, 2001. The TNRCC may grant a contested case hearing on this application if a written hearing request is filed by August 9, 2001. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed.

Application No. 5738; Texas Municipal Power Agency, P.O. Box 7000, Bryan, TX, 77805 and Janet Leigh Moody Lamb; Michael D. Moody; Janet Leigh Moody Lamb, as Custodian for Laura Kaye Moody; John Harrison Moody; and Nancy Elizabeth Moody Johnson, applicants, seek a permit pursuant to Texas Water Code (TWC) 11.121, and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. Public notice of the application is given pursuant to 30 TAC 295.152. Notice should be mailed pursuant to 30 TAC 295.153 (a) and (b) to the water right holders in the Brazos River Basin. Texas Municipal Power Agency, et al seek to maintain an on-channel incised reservoir, known as Pond B1P-5, resulting from mining operations at the Gibbons Creek Lignite Mine in Grimes County for in-place recreational use as part of reclamation plans approved under Railroad Commission Permit 26C. This reservoir will remain a permanent feature of the Heifer Creek Watershed as part of the post-mine reclamation activities. The reservoir is located on an unnamed tributary known as Heifer Creek, tributary of the Navasota River, tributary of the Brazos River, Brazos River Basin, 9.5 miles northwesterly of Anderson and 17 miles southeasterly of Bryan, Texas. Station 0 + 00 on the centerline of the dam is S41 degrees W, 1,190 feet from the Northeast corner of the George Mason Original Survey, Abstract No. 343, Grimes County, also being Latitude 30.557 degrees N and Longitude 96.123 degrees W. Pond B1P-5 has a capacity of 207.95 acre-feet of water and a surface area of 22.31 acres. The application was received on March 31, 1998. The Executive Director reviewed the application and determined it to be administratively complete on February 5, 2001. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

Application No. 5741; Texas Municipal Power Agency, P.O. Box 7000, Bryan, TX, 77805, applicant, seeks a permit pursuant to Texas Water Code (TWC) 11.121, and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. Public notice of the application is given pursuant to 30 TAC 295.152. Notice should be mailed pursuant to 30 TAC 295.153 (a) and (b) to the water right holders in the Brazos River Basin. Texas Municipal Power Agency seeks to maintain two on-channel incised reservoirs, known as Pond A1P-1 and B1P-6, resulting from mining operations at the Gibbons Creek Lignite Mine in Grimes County for in- place recreational use as part of reclamation plans approved under Railroad Commission Permit 26C. Pond A1P-1 is located on an unnamed tributary known as Heifer Creek, tributary of the Navasota River, tributary of the Brazos River, Brazos River Basin, 8.8 miles northwest of Anderson and 18 miles southeast of Bryan, Texas. Station 0 + 00 on the centerline of the dam is N80 degrees E, 2,960 feet from the Southwest corner of Samuel Millet Original Survey, Abstract No. 350, Grimes County, also being Latitude 30.529 degrees N and Longitude 96.123 degrees W. Pond A1P-1 has a capacity of 631.2 acre-feet of water and a surface area of 33.4 acres. Pond B1P-6 is located on an unnamed tributary of an unnamed tributary known as Heifer Creek, tributary of the Navasota River, tributary of the Brazos River, Brazos River Basin, 9.5 miles northwest of Anderson and 17 miles southeast of Bryan, Texas. Station 0 + 00 on the centerline of the dam is S40 degrees E, 1,270 feet from the Northwest corner of the George Mason Original Survey, Abstract No. 344, Grimes County, also being Latitude 30.564 degrees N and Longitude 96.118 degrees W. Pond B1P-6 has a capacity of 571.3 acre-feet of water and a surface area of 33.76 acres. Both reservoirs will remain a permanent feature of the Heifer Creek Watershed as part of the post-mine reclamation activities. The application was received on March 31, 1998. The Executive Director reviewed the application and determined it to be administratively complete on May 24, 2001. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

Application No. 5725; Univision Television Group - KWEX TV, 411 East Durango, San Antonio, Texas, 78204, applicant, seeks a permit pursuant to Texas Water Code (TWC) 11.121, and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. Public notice of the application is given pursuant to 30 TAC 295.152. Notice should be mailed pursuant to 30 TAC 295.153 (a) and (b) to the water right holders in the San Antonio River Basin. The applicant seeks to divert and use not to exceed 11.25 acre-feet of water per annum from the San Antonio River, San Antonio River Basin for irrigation of 2.545 acres out of a 5.3 acre tract of land being Lots 5, 6, 7, 8, 9, and 18, New City Block 179, Sumner Suites, in the City of San Antonio, Bexar County, evidenced by a Special Warranty Deed under Volume 8209, Page 685, dated November 15, 1999; Special Warranty Deed under Volume 2480, Page 1324 dated November 11, 1981; Warranty Deed under Volume 2504, Page 2009, dated January 19, 1982; Permanent Easement under Volume 2480, Page 1321, dated December 11, 1981, all in the Deed and Plat Records, Bexar County; Certificate of Merger dated December 16, 1992; and a Certificate of Merger dated March 21, 1988. The water will be diverted from the west, left bank of the San Antonio River at a maximum diversion rate of 0.10 cfs (45 gpm) at a point approximately 3/10 miles east of the Bexar County Courthouse, Bexar County. Said point bearing N23.279 degrees E, 40 feet from the western corner of lot 18, NCB 179, also being Latitude 29.418

degrees N and Longitude 98.491 degrees W. The application was received on December 11, 2000. The Executive Director reviewed the application and determined it to be administratively complete on February 23, 2001. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

Application No. 5665; Paul Weinman, 1707 Calveryman Lane, Katy, Texas 77449, seeks a Water Use Permit pursuant to 11.121, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. Pursuant to 30 TAC 295.153 (b), this notice is being published in a newspaper and being mailed to the water right holders, of record in the Brazos River Basin. Applicant seeks authorization to divert 2,448 acre-feet of water per annum from the Brazos River, Brazos River Basin at a maximum diversion rate of 4.46 cfs (2000 gpm), to be used to inundate 612 acres of land for a wetlands area that includes a naturally low- lying off-channel reservoir complex which will be maintained at an average depth of 3 feet. The 612 acre wetlands area will be located in the Juan A. Padillo Survey, Abstract No. A 48, Waller County, Texas. Diversion will be directly from the Brazos River from to points in the aforesaid survey. Diversion point number one will be at Latitude 29.887 degrees N and Longitude 96.092 degrees W, and bearing North 30 degrees W, 990 feet from the southwest corner of the aforesaid survey. Diversion point number two will be at Latitude 29.885 degrees N and Longitude 96.088 degrees W and bearing North 119 degrees E, 3,330 feet from the southwest corner of the aforesaid survey. The application was received on November 16, 1999. Additional information was received on September 6, 2000. The information was found to be sufficient for administrative purposes, and declared administratively complete on June 21, 2001. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

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-200104270
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: July 24, 2001

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Texas Department of Public Safety

Notice of Public Hearing

The Texas Department of Public Safety in accordance with the Administrative Procedure and Texas Register Act, Texas Government Code, §2001 et seq., and Texas Transportation Code 548, is holding a public hearing on Wednesday, August 15, 2001, at 9:00 a.m. in the Criminal Law Enforcement Auditorium of the Texas Department of Public Safety, 6100 Guadalupe Street, Austin, Texas.

The purpose of this hearing is to receive comments from all interested persons regarding the adoption of Administrative Rule §23.80 regarding Out-of-State Vehicle Identification Number Verification, and adoption of amendments to §23.52 and §23.101 regarding vehicle inspection fees charged to out-of-state registered vehicles and commercial vehicle inspections, proposed for adoption under the authority of Texas Transportation Code, Chapter 548. The proposed rules will be published in the August 3, 2001 issue of the *Texas Register*.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Letters should be addressed to E. Eugene Summerford, Attorney, Vehicle Emissions, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0543.

Individual comments may be limited to five minutes in duration, depending on the number of attendees.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters or persons who are dear or hearing impaired, readers, or large print, Braille, are requested to contact E. Eugene Summerford at (512) 424-2777, three days prior to the meeting so that appropriate arrangements can be made.

TRD-200104241
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Filed: July 23, 2001

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Public Utility Commission of Texas

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

On July 19, 2001, Texas UM, Inc. 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 60358. Applicant intends to relinquish its certificate.

The Application: Application of Texas UM, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 24269.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 no later than August 8, 2001. You may contact the commission's Customer Protection Division at (512) 936-7120. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24269.

TRD-200104223
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 23, 2001

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

On July 20, 2001, OnSite Access Local, LLC 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 60360. Applicant intends to relinquish its certificate.

The Application: Application of OnSite Access Local, LLC for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 24412.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 no later than August 8, 2001. You may contact the commission's Customer Protection Division at (512) 936-7120. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24412.

TRD-200104252
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 23, 2001

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on July 18, 2001, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of KMC Data, LLC for a Service Provider Certificate of Operating Authority, Docket Number 24394 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ISDN, T1-Private Line, and long distance services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than August 8, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200104184
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 20, 2001

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on July 20, 2001, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of I-Link Communications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 24398 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, Optical Services, T1-Private Line, Frame Relay, Long Distance, and Enhanced Services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than August 8, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200104224
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 23, 2001

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Notice of Contract Award

The Public Utility Commission of Texas announces that it has entered into a major consulting service contract with Dr. Shmuel Oren, an individual whose address is 1293 Alvarado Road, Berkeley, California 94705. This notice is being published pursuant to the provisions of the Texas Government Code Annotated, §2254.030.

The purpose of the contract is to provide services regarding market oversight and monitoring activities for implementation of electric restructuring in Texas. The total contract amount including travel expenses is not to exceed $14,500 for work performed in Fiscal Year 2001 and $41,500 for work performed in Fiscal Year 2002. The contract term is from July 10, 2001 until June 2002.

TRD-200104282
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 24, 2001

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Notice of Joint Application of Verizon Southwest, Inc., and Southwestern Bell Telephone Company, for Extended Area Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a joint agreement on June 29, 2001, seeking approval of two-way, mandatory, Extended Area Service (EAS), between the exchange of Kilgore and the exchanges of Tyler and Longview, pursuant to P.U.C. Substantive Rule §26.217(b)(8).

Project Title and Number: Joint Application of Verizon Southwest, Inc., and Southwestern Bell Telephone Company, for Two-Way, Mandatory, Extended Area Service (EAS) between the Exchange of Kilgore and the Exchanges of Tyler and Longview, Pursuant to P.U.C. Substantive Rule §26.217(b)(8), Project Number 24327.

The Joint Petition and Agreement: The proposed plan is a two-way, mandatory, extended area service offering to which Verizon Southwest, Inc.'s residence and business local exchange customers within the Kilgore Exchange will be able to call within the designated calling area for a monthly, flat rate.

The joint applicants have requested that the joint agreement filing be processed administratively pursuant to P.U.C. Substantive Rule §26.217(b)(8). Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than October 15, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200104222
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 23, 2001

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Notice of Remand of Docket Number 14454

On June 7, 2001, the commission initiated Docket Number 24229, *Remand of Docket Number 14454 (Petition of Lamb County Electric Cooperative, Inc. for a Cease and Desist Order Against Southwestern Public Service Company)*, as a result of a mandate by the Third Court of Appeals returning Docket Number 14454 for proceedings not inconsistent with its opinion.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas at P.O. Box 13326, Austin, Texas 78711-3326. The intervention deadline is August 15, 2001. You may contact the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24229.

TRD-200104179
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 19, 2001

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Public Notice of Amendment to Interconnection Agreement

On July 18, 2001, Southwestern Bell Telephone Company and DSLnet Communications, LLC, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24393. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 24393. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 20, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact

the commission at (512) 936-7136. All correspondence should refer to Docket Number 24393.

TRD-200104180
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 19, 2001

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Public Notice of Amendment to Interconnection Agreement

On July 20, 2001, Southwestern Bell Telephone Company and Supra Telecommunications and Information Systems, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24409. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 24409. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 21, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24409.

TRD-200104286
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 25, 2001

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Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215.

Docket Title and Number. Southwestern Bell Telephone Company's Application for Approval of LRIC Study for Texas Directory Listings Incremental Cost Study Pursuant to P.U.C. Substantive Rule §26.215 on July 30, 2001, Docket Number 24396.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 24396. Written comments or recommendations should be filed no later than 45 days after the date of sufficiency and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200104192
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 20, 2001

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Public Notice of Interconnection Agreement

On July 23, 2001, Southwestern Bell Telephone Company and Stonebridge Communications, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24414. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 24414. As a part of

the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 21, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24414.

TRD-200104287
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 25, 2001

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Public Notice of Workshop Regarding Establishment of CLEC-to-CLEC Conversion Guidelines

The Public Utility Commission of Texas (commission) will hold a workshop regarding establishment of CLEC-to-CLEC conversion guidelines on Tuesday, August 14, 2001, at 9:30 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 24389, *CLEC-to-CLEC Conversion Guidelines* has been established for this proceeding. The commission, with the help of the telecommunications industry, hopes to develop guidelines for the conversion of telecommunications service from one CLEC to another. This notice is not a formal notice of proposed rulemaking; however, the workshop will assist the commission in developing policy, and it may lead to the drafting of a rule for publication and comment. The following agenda shall apply:

I. Report on status of User Forums and Industry Standard-Making Groups in Texas and other states

II. Process flow in each of the following CLEC-to-CLEC conversions on Southwestern Bell Telephone Company's (SWBTs) network

A. Bundled to Bundled Scenarios

1. Resale to resale

2. Resale to UNEP or UNEC

3. UNEP or UNEC to resale

4. UNEP to UNEP

5. UNEC to UNEC

B. Bundled to Unbundled Scenarios

1. UNEP or UNEC to UNE-Loop

2. UNEP or UNEC to Full facilities based service

3. Resale to UNE-Loop

4. Resale to Full facilities based service

C. Unbundled to Bundled Scenarios

1. UNE-Loop to resale

2. UNE-Loop to UNEP or UNEC

3. Facilities based to resale

4. Facilities based to UNEP or UNEC

D. Unbundled to Unbundled

1. UNE-Loop to UNE-Loop

2. UNE-Loop to Full facilities based

3. Full facilities based to Full facilities based

4. Full facilities based on UNE-Loop

III. Process flow in each of the following CLEC-to-CLEC conversions on Verizon's network

A. Bundled to Bundled Scenarios

1. Resale to resale

2. Resale to UNEP or UNEC

3. UNEP or UNEC to resale

4. UNEP to UNEP

5. UNEC to UNEC

B. Bundled to Unbundled Scenarios

1. UNEP or UNEC to UNE-Loop

2. UNEP or UNEC to Full facilities based service

3. Resale to UNE-Loop

4. Resale to Full facilities based service

C. Unbundled to Bundled Scenarios

1. UNE-Loop to resale

2. UNE-Loop to UNEP or UNEC

3. Facilities based to resale

4. Facilities based to UNEP or UNEC

D. Unbundled to Unbundled

1. UNE-Loop to UNE-Loop

2. UNE-Loop to Full facilities based

3. Full facilities based to Full facilities based

4. Full facilities based on UNE-Loop

IV. Discussion of future workshops

Questions concerning the workshop or this notice should be referred to Donna Geiger, Legal Division, (512) 936-7293. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200104281
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 24, 2001

♦ ♦ ♦

Texas Department of Transportation

Public Notice - Statewide Transportation Improvement Program

Public Notice - Statewide Transportation Improvement Program: In accordance with 43 TAC §15.8(d), the Texas Department of Transportation (TxDOT) will hold a public hearing on Friday, August 17, 2001, starting at 10:00 a.m. at 200 East Riverside Drive, Room 1A-1, in Austin, to receive public comments on the Statewide Transportation Improvement Program (STIP) for FY 2002-2004. The STIP reflects the federally funded transportation projects in the FY 2002-2004 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP will include both state and federally funded projects for the nonattainment areas of Beaumont, Dallas-Fort Worth, El Paso, and Houston. The STIP also contains information on federally funded projects in those areas of the state that are not included in any MPO area, and other statewide programs.

Title 23, United States Code, §134 and §135, as amended by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the Twenty-first (21st) Century (TEA-21), require each designated MPO and the state, respectively, to develop a TIP as a condition to securing federal funds for the next three years for transportation projects under Title 23 or the Federal Transit Act (49 USC 5301, et seq.).

Section 134(h) requires an MPO: to develop its TIP in cooperation with the state and affected public transit operators; to provide citizens, affected public agencies, representatives of transportation agency employees, other affected employee representatives, private providers of transportation, and other interested parties with a reasonable opportunity to comment on the proposed TIP; and further requires the TIP to be updated at least once every two years and to be approved by the MPO and the Governor. Section 135(f) requires the state to develop a STIP for all areas of the state in cooperation with those designated MPO's, and further requires that citizens, affected public agencies, representatives of transportation agency employees, other affected transportation employee representatives, private providers of transportation, and other interested parties, be provided with a reasonable opportunity to comment on the proposed STIP.

A public hearing will be held to secure public comment on the STIP. A file copy of the FY 2002-2004 STIP will be available for review on and after August 6, 2001, at TxDOT's central Austin office of the Transportation Planning and Programming Division, Building 118, second floor, 118 East Riverside Drive, Austin, Texas, and in each TxDOT district office throughout the state. Persons wishing to review the STIP may secure the address and telephone number of the nearest district office from the Transportation Planning and Programming Division at (512) 486-5023.

Persons wishing to speak may register in advance of the hearing by notifying Ms. Michelle Conkle, Transportation Planning and Programming Division, at (512) 486-5023 not later than Wednesday, August 15, 2001, or they may register at the hearing location between 9:00 a.m. and 9:45 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact Randall Dillard, Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8613. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Further information on the FY 2002-2004 STIP may be obtained from Ms. Michelle Conkle of the Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas, 78704, (512) 486-5023. Interested parties who are unable to attend the hearing may submit comments to Alvin R. Luedecke, Jr., P.E., Transportation Planning and Programming Division, P.O. Box 149217, Austin, Texas, 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office at 118 East Riverside Drive no later than August 27, 2001, at 4:00 p.m.

TRD-200104264
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: July 24, 2001

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Texas A&M University, Board of Regents

Request for Proposal

Texas A&M University seeks proposals from consulting firms to assist in the preparation in the development of a Program of Requirements for the proposed café at the Bush Presidential Library Complex.

Information can be obtained by contacting Mary Sue Goldwater, Associate Director of Purchasing Services, Texas A&M University, P.O. Box 30013, College Station, Texas 77842-0013 or e-mail at ms-goldwater@tamu.edu.

Selection criteria will include demonstrated competence, experience knowledge, qualification and reasonableness of price. Historically Underutilized Businesses are encouraged to participate in this request for proposal. All things being equal, a preference will be given to a consultant firm whose principal place of business is within the State of Texas. Proposals must be received on or before 2:00 p.m., August 13, 2001.

TRD-200104183
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University, Board of Regents
Filed: July 20, 2001

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Texas Workers' Compensation Commission

Extension of Period for Public Comment

The Texas Workers' Compensation Commission at its public meeting on July 19, 2001, extended the period for submitting public comments on the following proposed rules published in the July 13, 2001, issue of the *Texas Register* (26 TexReg 5198). Public comments on these rules must be received by 5:00 p.m. on September 19, 2001.

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

§134.1. Use of the Fee Guidelines.

§134.202. Applicability.

§134.203. Professional Services Codes.

§134.204. Relative Value Units.

§134.205. Conversion Factors.

§134.206. Methodology.

§134.207. Ground Rules.

§134.208. Severability.

You may comment via the Internet by accessing the commission's website at *www.twcc.state.ts.us* and then clicking on "Proposed Rule" This medium for commenting will help you organize your comments. You may also comment by e-mailing your comments to *RuleComments@.twcc.state.tx.us* or by mailing or delivering your comments to Nell Cheslock at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

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

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

A public hearing on these proposed rules will be held beginning at 10:30 a.m. on September 19, 2001, at the Austin central office of the commission (Southfield Building, 4000 South IH-35, Austin, Texas). Those persons interested in attending the public hearing should contact the Commission's Office of Executive Communication at (512) 440-5690 to confirm the date, time, and location of the public hearing for these proposed rules. The public hearing schedule will also be available on the commission's website at *www.twcc.state.tx.us.*

TRD-200104277
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: July 24, 2001

♦ ♦ ♦

How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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