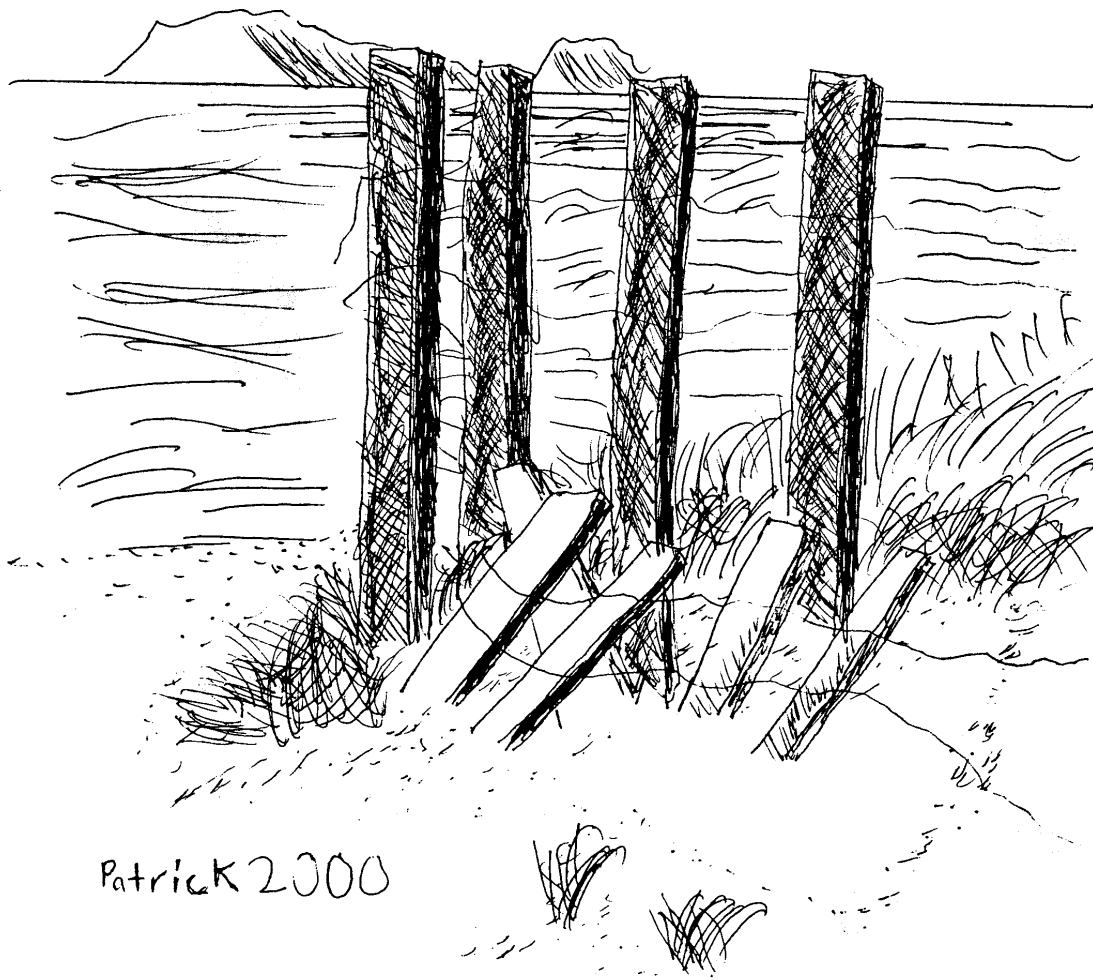


TEXAS REGISTER

Volume 26 Number 33 August 17, 2001

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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.

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Open Meetings

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

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

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

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

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



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

THE GOVERNOR

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

Appointments

Appointments for August 2, 2001

Appointed to the Governing Board of the Texas School for the Blind and Visually Impaired for terms to expire January 31, 2005: Otilio "Toby" Galindo of San Angelo (replacing Roseanna Davidson of Lubbock whose term expired); Deborah Louder of San Angelo (replacing Kerry Goodwin of Dallas whose term expired); Mary Sue Welch (formerly Staples) of Dallas (reappointed).

Appointed to the Governing Board of the Texas School for the Blind and Visually Impaired for terms to expire January 31, 2007: Jesus H. Bautista of El Paso (replacing Fidel Manchaca of McAllen whose term expired); Frankie Swift of Nacogdoches (reappointed).

TRD-200104551

Rick Perry
Governor



Appointments for August 3, 2001

Appointed to the State Board of Barber Examiners for term to expire January 31, 2005: Taren Eugene Hollister of Houston (replacing Victoria Buchanan of Houston who resigned).

Appointed to the State Board of Dental Examiners for terms to expire February 1, 2007: Tammy Lynne Allen of Fort Worth (replacing Tammy Fisher of Hurts whose term expired); Oscar X. Garcia of Brownsville (replacing Michael Nogueira of Brownsville whose term expired); Gary W. McDonald, DDS of Kingwood (replacing Ronald Smith of Lubbock whose term expired); Phyllis A. Stine of Midland (replacing Patricia Blackwell of Midland whose term expired); Paul E. Stubbs, DDS of Austin (replacing Joe Zayas of Brownsville whose term expired); Juan D. Villarreal, DDS of Harlingen (replacing David Olson of Bridge City whose term expired).

TRD-200104552

Rick Perry
Governor



OFFICE OF THE ATTORNEY GENERAL

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

Opinions

Opinion No. JC-0399.

The Honorable Jeff Wentworth, Chair, Redistricting Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2548, regarding, whether the Llano County Commissioners Court may delegate its authority over county school lands to the Board of Trustees of the Llano Independent School District (RQ-0350-JC).

S U M M A R Y.

Pursuant to article VII, section 6 of the Texas Constitution, the Llano County Commissioners Court is trustee of the county school lands granted by the state to Llano County for educational purposes, and it has a nondelegable duty under the constitution to sell or otherwise dispose of the school lands. The commissioners court may not delegate its authority to sell, lease, or otherwise dispose of the county school lands to the Llano Independent School District. Provisions of the Texas Trust Code that are inconsistent with the constitutionally-mandated role of the commissioners court as trustee of the county school lands do not apply to the trust in these lands and their proceeds.

Opinion No. JC-0400.

The Honorable Ori T. White, District Attorney, 112th Judicial District, P.O. Drawer 160, 107 East 4th Street, Fort Stockton, Texas 79735, regarding whether the Industrial Development Corporation of the City of Sonora may expend sales and use tax proceeds to fund a "nature/birding center" or a public park that was not specifically approved by the voters (RQ-0355-JC).

S U M M A R Y.

The Industrial Development Corporation of the City of Sonora, Texas is not precluded, as a matter of law, from using sales and use tax proceeds for a "nature/birding center" or a public park project that was not specifically approved by the voters when they authorized collection of the tax because it was within the scope of the purposes for which the voters approved the sales and use tax: The particular tax election ballot language submitted to the voters indicated that the tax proceeds would be used for projects authorized by section 4B of the Development Corporation Act of 1979; and, on the date of the tax election, the statute authorized public park projects. Additionally, the city published notice

of the proposed project as required by section 4B, and no subsequent voter petition requesting an election on the project was submitted.

Opinion No. JC-0401.

The Honorable J.E. "Buster" Brown, Chair, Natural Resources Committee, Texas State Senate, P. O. Box 12068, Austin, Texas 78711-2068, regarding whether a property owner may, by filing an acknowledged exclusion statement, exclude the owner's property from the operation of subdivision deed restrictions modified under chapter 204 of the Property Code (RQ-0358-JC).

S U M M A R Y.

A property owner may not exclude the owner's property from the operation of subdivision deed restrictions added or modified by a petition initiated by a property owners' association under chapter 204 of the Property Code by filing an acknowledged exclusion statement provided for under chapter 201 of the Property Code.

Opinion No. JC-0402.

Mr. Robert J. Huston Chair, Texas Natural Resource Conservation Commission, P.O. Box 13087 Austin, Texas 78711-3087, regarding whether section 26.179 of the Water Code as amended in 1999 is constitutional (RQ-0363-JC).

S U M M A R Y.

In *FM Properties Operating Co. v. City of Austin*, 22 S.W.3d 868 (Tex. 2000), the Texas Supreme Court held that section 26.179 of the Texas Water Code, as it was enacted in 1995, violated article III, section 1 of the Texas Constitution because it impermissibly delegated legislative authority to private landowners. The 1999 amendments to section 26.179 do not affect the Texas Supreme Court's conclusion that the statute is unconstitutional.

Opinion No. JC-0403.

The Honorable Juan J. Hinojosa Chair, Criminal Jurisprudence Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, regarding whether the office of consolidated school district trustee is an "office of profit or trust" within the meaning of article XI, section 11 of the Texas Constitution and related question (RQ-0366-JC).

S U M M A R Y.

The office of trustee of the board of a consolidated school district is an "office of profit or trust" within the meaning of article XI, section 11 of the Texas Constitution. Thus, a city commissioner who, with more than one year remaining in a term in excess of two years, announces his or her candidacy or in fact becomes a candidate for the office of trustee of a consolidated school district automatically resigns by operation of that article XI, section 11. The city official charged with initiating special elections may act to hold an election to fill the vacancy immediately upon the first act of the commissioner that would constitute an automatic resignation under article XI, section 11, but must do so in time to ensure that the vacancy is filled within 120 days.

For further information, please call the Opinion Committee at (512) 463-2110.

TRD-200104537
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: August 8, 2001



Request for Opinions

RQ-0405-JC.

The Honorable Yolanda de Leon, Cameron County District Attorney, Cameron County Courthouse, 974 E. Harrison Street, Brownsville, Texas 78520, regarding authority of a commissioners court to select a depository that is not yet operational in the county as of the date of selection (Request No. 0405-JC).

Briefs requested by September 2, 2001.

RQ-0406-JC.

Mr. Robert L. Maxwell, Administrator, Texas State Board of Plumbing Examiners, 929 East 41st Street, Austin, Texas 78765, regarding plumbing codes applicable to residential dwellings under amendments to article 6243-101, the Plumbing License Law, and related questions (Request No. 0406-JC).

Briefs requested by September 2, 2001.

RQ-0407-JC.

The Honorable Patrick B. Haggerty, Chair, House Corrections Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910 regarding whether a public hospital may contract exclusively with one medical insurance provider (Request No.0407-JC).

For further information, please call the Opinion Committee at (512) 463-2110.

TRD-200104536
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: August 8, 2001



EMERGENCY RULES

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

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

TITLE 22. EXAMINING BOARDS

PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 223. FEES

22 TAC §223.1

The Board of Nurse Examiners adopts on an emergency basis amendment to §223.1, concerning Fees. The board met July 20, 2001 and approved to increase fees to fund the board's appropriation. The 77th Legislature in Rider 2 of the Fiscal Year 2002-2003 Appropriations Act approved budget appropriations for the board contingent on those appropriations being paid through board fee collections. The new fees are adopted on an emergency basis and will be applied beginning September 1, 2001 in order to comply with the legislative mandate to cover all appropriations through fees.

Katherine A. Thomas, MN, RN, executive director, has determined that the rule change is necessary to cover \$819,421.00 estimated shortfall in revenue from the new legislative appropriation and that the fee change is projected to cover the new cost. Other than the increase in revenues, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. The rule will affect all applicants applying for initial licensure or endorsement; all currently licensed registered nurses who renew their license. The rule will affect initial approval fees for Advanced Practice Nurses; and all new licensure requests which will require a declaratory orders or licensure eligibility determination.

There will be no effect on local government nor businesses to comply with the rule.

Ms. Thomas has determined that for each year of the first five years the rule as proposed will be in effect the public benefit anticipated as a result of enforcing the rule will be greater protection for the people of Texas.

Written comments on the proposal may be submitted to Katherine A. Thomas, M.N., R.N., Executive Director, Board of Nurse Examiners, P.O. Box 430, Austin, Texas 78767-0430.

The amendment is proposed under §301.151 of the Texas Occupations Code which provide the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

There are no other rules, codes or statutes that will be affected by this proposal.

§223.1. Fees.

(a) The Board of Nurse Examiners has established reasonable and necessary fees for the administration of its functions.

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

(5) endorsement--~~\$125.00~~[\$100.00];

(6) licensure (each biennium)--~~\$45.00~~[\$42.00];

(7) - (13) (No change.)

(14) advanced practice nurse--initial credentials--~~\$75.00~~[\$50.00];

(15) declaratory order of eligibility--~~\$150.00~~[\$100.00];

(16) eligibility determination--~~\$150.00~~[\$100.00];

(17) - (22) (No change.)

(b) all fees are non-refundable.

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

Filed with the Office of the Secretary of State, on August 6, 2001.

TRD-200104474

Katherine A. Thomas, MN, RN

Executive Director

Board of Nurse Examiners

Effective Date: August 6, 2001

Expiration Date: December 4, 2001

For further information, please call: (512) 305-6811



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 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 102. HEALTH SPAS

SUBCHAPTER B. REGISTRATION PROCEDURES

1 TAC §102.17

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

The Office of the Secretary of State proposes the repeal of §102.17 concerning the procedure for the registration of certain health facilities. The purpose of the repeal is to conform to procedures specified in §702.201 and §702.202 of the Texas Occupations Code for establishing an exemption from the security requirements of Subchapter D of the Occupations Code.

Guy Joyner, Chief, Legal Support Unit, Statutory Documents Section has determined that there will be no fiscal implications for state or local government or small business as a result of the repeal of §102.17.

Mr. Joyner also has determined the public benefit anticipated will be the clarification of the procedure for applying and qualifying for an exemption from the security requirements of Subchapter D of the Texas Occupations Code. There will be no effect on large businesses, small businesses or micro-businesses. There will be no additional economic cost to individuals. There is no anticipated impact on local employment.

Comments on the proposed repeal may be submitted to Guy Joyner, Chief, Legal Support Unit, Statutory Documents Section, P.O. Box 12887, Austin, Texas 78711-2887.

The repeal is proposed under the Texas Government Code, §2001.004(1) and the Health Spa Act, Texas Occupations Code,

§702.051 which provide the Secretary of State with the authority to prescribe and adopt rules. No other statutes, articles or codes are affected by this repeal.

§102.17. *Procedure for the Registration of Certain Exercise 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 August 1, 2001.

TRD-200104437

Geoffrey S. Connor

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: September 16, 2001

For further information, please call: (512) 475-0775



1 TAC §102.18

The Office of the Secretary of State proposes new rule §102.18 concerning the filing of an application for an exemption from the security requirements of Subchapter D of the Texas Occupations Code. This rule is proposed in order to clarify the procedure for applying for an exemption from the security requirements specified in §702.151 of the Texas Occupations Code.

Guy Joyner, Chief, Legal Support Unit, Statutory Documents Section has determined that for the first five year period that the proposed amendment is in effect there will be no fiscal implications for state or local government or small business as a result of enforcing the amendment.

Mr. Joyner also has determined that for each year of the first five years that the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be the clarification of the procedure for applying and qualifying for an exemption from the security requirements of Subchapter D of the Texas Occupations Code. There will be no effect on large businesses, small businesses or micro-businesses. There will be no

additional economic cost to individuals. There is no anticipated impact on local employment.

Comments on the proposed rule may be submitted to Guy Joyner, Chief, Legal Support Unit, Statutory Documents Section, P.O. Box 12887, Austin, Texas 78711-2887.

The amendment is proposed under the Texas Government Code, §2001.004(1) and the Health Spa Act, Texas Occupations Code, §702.051 which provide the Secretary of State with the authority to prescribe and adopt rules. The amendment affects the Texas Occupations Code, §§702.201, 702.202 and 702.205.

§102.18. Application for Exemption from the Security Requirements.

(a) A registrant applying for an exemption from the security requirements of Subchapter D of the Texas Occupations Code must use the application form prescribed by the secretary of state.

(b) The application form may be obtained from the Statutory Documents Section of the Office of the Secretary of State, P.O. Box 12887, Austin, Texas 78711-2887, (512) 463-6906. It is also available on the Internet at <http://www.sos.state.tx.us/statdoc/forms/3006.doc>

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

Filed with the Office of the Secretary of State, on August 1, 2001.

TRD-200104431

Geoffrey S. Connor

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: September 16, 2001

For further information, please call: (512) 475-0775



SUBCHAPTER D. SECURITY

1 TAC §102.35

The Office of the Secretary of State proposes an amendment to §102.35 concerning the adjudication of member's claims when a health spa has ceased operations. The purpose of the amendment is to conform §102.35 to amendments to Chapter 702 of the Occupations Code that were made by the 77th Texas Legislature in Senate Bill 1318.

Guy Joyner, Chief, Legal Support Unit, Statutory Documents Section has determined that for the first five year period that the proposed amendments are in effect there will be no fiscal implications for state or local governments as a result of enforcing the amendment. Health spa registrants that close health spa facilities may see reduced costs in providing notice of the closing to members. There is no other effect on large businesses, small businesses or micro-businesses. There is no anticipated additional economic cost to individuals who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Mr. Joyner also has determined that for each year of the first five years that the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be the establishment of a cost effective method of informing the members of a closed health spa of the procedure for filing a claim with the Office of the Secretary of State.

Comments on the proposed amendment may be submitted to Guy Joyner, Chief, Legal Support Unit, Statutory Documents Section, P.O. Box 12887, Austin, Texas 78711-2887.

The amendment is proposed under the Texas Government Code, §2001.004(1) and the Health Spa Act, Texas Occupations Code, §702.051 which provide the Secretary of State with the authority to prescribe and adopt rules. The amendment affects the Texas Occupations Code, §§702.253, 702.254 and 702.452.

§102.35. Adjudication of Claims.

(a) Within 10 [~~20~~] days of receiving notice that a health spa which has posted a security with the secretary has ceased operations [~~or is insolvent~~], the secretary shall [~~make a preliminary determination regarding whether any of the spa's members have suffered financial loss within the meaning of the Act and these rules. If the secretary determines that financial losses have in fact occurred, he shall within 20 days of making the determination~~] notify the surety or obligor that:

- (1) the health spa has ceased operations [~~or is insolvent~~];
- (2) members of the health spa may have suffered financial losses within the meaning of the Act and these rules; and
- (3) the secretary intends to:

~~[(A)]~~ inform the registrant that the registrant must post a notice at the health spa location [publish a display advertisement in a newspaper of general circulation in the county or nearest county in which the health spa is located] notifying the public of the fact that the health spa is closed and that a health spa member has 90 days from the date the notice is first posted [of the first notice] to perfect a claim under the security posted.; ~~;~~ ~~or~~

~~[(B)]~~ use any other reasonable method, to include regular mail, deemed by the secretary to provide sufficient notice to members of the health spa of the fact that the health spa is closed and that a member has 90 days from the date of the notice to perfect a claim under the security posted.;

~~[(4)]~~ the secretary intends to perfect a claim against the bond or other security for the reasonable expenses incurred in providing notice to the members. The maximum amount of such expenses shall not exceed \$3,000.]

~~[(b)]~~ Unless the surety or obligor, as the case may be, timely contests the preliminary determination of the secretary pursuant to the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a (Vernon Supp. 1992)), the secretary shall proceed to publish the notice.]

~~[(c)]~~ Within 45 days from the date the secretary first discovers that a health spa has closed, the secretary shall initiate the notice process.]

~~[(1)]~~ If it is decided to publish in a newspaper, the secretary shall publish a display advertisement in a newspaper of general circulation in the county or nearest county in which the health spa is located notifying the public of the fact that the health spa is closed and the member has 90 days from the date of the first notice to perfect a claim under the security posted pursuant to this Act, §10. The notice shall be published for two consecutive Saturdays and Sundays and shall inform those affected of the procedures for perfecting a claim against the security. The secretary shall have a claim against the security for reasonable expenses incurred in publishing the notice which shall not exceed \$3,000.]

(b) The notice must be:

- (1) at least 8 1/2 by 11 inches in size;

(2) posted in a place that is readily accessible to the general public during the former operating hours of the health spa; and

(3) posted continuously for at least 14 days.

(c) If, no later than 10 days from the date the secretary discovers a health spa is closed, the secretary determines that the registrant has not posted the required notice, the secretary will take action to post the notice.

(d) ~~[(2)]~~ Regardless of the method utilized for notice to the members, all claims received by the secretary after 90 days following the date of the first notice are barred and shall not be considered by the secretary. If the total of claims evidencing actual financial loss exceed the amount of the security, the secretary shall adjudicate the claims on a pro rata basis by dividing the amount of the security, after first deducting the actual costs for publication of the notice, by the total amount of the claims in order to ascertain a percentage to be applied to each claim.

(e) ~~[(4)]~~ In order to perfect a claim, a claimant must submit a copy of the contract that forms a basis of the claim together with documentation or a sworn affidavit indicating the total of payments made pursuant to the contract. In the event the claimant does not submit adequate documentation, the secretary shall promptly inform the claimant of this fact together with notice that adequate documentation must be received by the bar date in order for the claim to be considered.

(f) ~~[(6)]~~ The secretary shall timely present claims together with an administrative order supporting documentation] for [the approval of] payment by the surety or obligor.

(g) ~~[(7)]~~ Actual financial loss shall mean and be limited to those sums which have been paid under a health spa contract to a registrant or a registrant's assignee and which at the time the health spa is closed are unearned. Actual financial losses shall be calculated by multiplying the gross monthly payment by the total of months or partial months remaining on a contract at the time of closing minus any payments not made. For the purposes of this section the following terms shall have the following meanings.

(1) Closed--The condition wherein the facilities of a health spa are no longer available to its members and equivalent facilities within 10 miles of the closed facility have not been made available to the members of the closed facilities; or where a registrant has sold a registered location and the security required in section of the Act has not been transferred to the new owner or the new owner has neither adopted nor honored the contracts of existing members.

(2) Gross monthly payment--The gross monthly payment shall be calculated by determining the total of payments, including down payments and initiation fees required by the contract, divided by the total number of months in the term of the contract.

(3) Calculation of dates--The date of closing and the date of the contract expiration shall be rounded to the nearest full month. The total months remaining on the contract shall be calculated by subtracting the date of closing from the expiration date of the contract. The result will be expressed in whole months.

(h) ~~[(8)]~~ If the members' claims do not exceed the amount of the security, the registrant shall arrange for the direct payment of the claims to the members.

(i) ~~[(9)]~~ The surety or obligor shall provide the secretary proof of payment of the members' claims.

(j) ~~[(10)]~~ In the event the total of claims exceed the amount of the security, the claims shall be paid on a pro rata basis by dividing the amount of the security[; after first deducting the secretary's cost

of publication of the notice,] by the total amount of the claims. This percentage shall be applied to each claim.

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

Filed with the Office of the Secretary of State, on August 1, 2001.

TRD-200104438

Geoffrey S. Connor

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: September 16, 2001

For further information, please call: (512) 475-0775

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PART 5. GENERAL SERVICES COMMISSION

CHAPTER 125. SUPPORT SERVICES

DIVISION--TRAVEL AND VEHICLE

SUBCHAPTER A. TRAVEL MANAGEMENT SERVICES

1 TAC §125.28, §125.29

The General Services Commission (GSC) proposes a new rule to Title 1, T.A.C., Chapter 125, Subchapter A, §125.28 concerning Travel Agency Transaction Fees, and proposed amendments to §125.29 concerning Texas Counties Use of Contract Airline Fares and/or Travel Agency Services.

It is the intent of the General Services Commission in the proposed new §125.28 to change the method for compensating travel agencies. The commission is proposing implementing transaction fees on ticketed airline reservations based on the following changes in the travel industry: the airlines initiated the reduction of commission payments at different percentage levels to travel agencies for ticketed reservations; the airlines paid a ten percent (10%) commission without caps to contract travel agencies for ticketed airline reservations; contract travel agencies were issuing paper tickets and providing ticket delivery services to the state without a charge; electronic ticketing is more efficient and cost effective for the airlines, passengers, and travel agencies; and the contract travel agency rebate program to the state was eliminated.

The proposed amendments to §125.29 are made in accordance with H.B. 3150, 77th Leg. (effective June 11, 2001) relating to authorizing county officers and employees to receive reduced travel agent fees for travel arrangements for official county business.

Mr. Frank H. Mays, Director of Support Services Division, has determined for the first five year period the new rule §125.28 is in effect, there will be fiscal implications for state government. state agencies that are participating in the travel agency contract portion of the Commission's Travel Program will incur a transaction fee based on a specific service level for each ticketed airline reservation. The annual cost to the state to implement transaction fees using the Full Travel Agency Service is estimated to be approximately \$515,000.00. This approximate cost will remain the same for all five years. The actual cost cannot be determined at this time since each individual state agency will determine the

level of service to be used by its travelers. If state agencies use any combination of the service levels, the fiscal impact will be a lower cost to the state.

The amendments to §125.29 will provide for counties participating in using the travel agency portion of the program to be charged a portion of the administration costs incurred by the state in extending this program to counties.

Assuming 30 counties also participate in the travel agency portion of the program with an approximate savings of \$3,765 each, Texas counties could expect to save \$112,950 per year based on the reduced average transaction fees paid by counties.

There will be positive fiscal implications for local governments as a result of the simultaneous adoption of proposed new rule §125.28 and the proposed amendments to §125.29.

Mr. Frank H. Mays, Director of Support Services Division, further determines that for each year of the first five-year period the new rule §125.28 is in effect, the public benefit anticipated as a result of enforcing these rules will be the possibility of additional travel agencies contracting with the State of Texas; The enforcement of these rules will allow the contract travel agencies to charge a transaction fee on a ticketed airline reservation, thereby compensating travel agencies for some of the cost of doing business with the state.

The public benefit anticipated as a result of enforcing proposed amendments to §125.29 for each year of the first five year period the rule is in effect is reduced travel agent fees for making travel arrangements for county officers and employees who travel on official county business.

There will be no effect on large, small or micro-businesses. There is no anticipated economic costs to persons who are required to comply with these rules and there is no impact on local employment.

Comments on the proposals may be submitted to Cynthia J. Hill, Acting General Counsel, General Services Commission, P.O. Box 13047, Austin, TX 78711-3047. Comments must be received no later than thirty days from the date of publication of the proposal to the Texas Register.

The amendments are proposed under the authority of the Texas Government Code, Title 10, Subtitle D, §§2152.003 and 2171.002, 2171.055 and H.B. 3150, 77th Leg. which provides the commission with the authority to promulgate rules necessary to implement the sections.

The following code is affected by these rules: Government Code, Title 10, Subtitle, Chapter 2171.

§125.28. Travel Agency Transaction Fees.

(a) A travel agency that has a Travel Agency Services Contract with the state to provide travel services to state agencies and/or counties may charge a base transaction fee for ticketing an airline reservation made for official state and/or county business.

(b) Travel agency base transaction fees will be based on the following:

(1) The maximum allowable base transaction fee is ten percent (10%) of the average state ticket price less the current commissions paid by the contract airlines to the travel agencies based on the level of service provided;

(2) the base transaction fee based on the level of service provided may be adjusted up or down when thirty (30%) of the state's

flights by usage is affected by a commission change made by the contract airlines and shall be implemented through revisions in the Travel Agency Services Contract no more than thirty (30) business days after the effective date of the change.

(c) Applicable travel agency base transaction fees may only be charged at the amounts set forth in subsection (d) of this section for the level of service actually provided and defined as follows:

(1) Full Travel Agency Service - The issuance of an electronic or paper airline ticket from a reservation made over the telephone (toll-free service available) after speaking with a travel agent;

(2) Electronic Service - The issuance of an electronic or paper airline ticket from a reservation made through a FAX request and/or E-Mail correspondence sent to a contract travel agency;

(3) Web-Based On-Line Booking System - The issuance of an electronic or paper airline ticket from a reservation made through a Web-based on-line booking selection service (traveler does not obligate funds) and transmitted to the contract travel agency for processing;

(4) Full State Agency and/or County Service - The issuance of an electronic or paper airline ticket from reservations made totally by state agency and/or county staff with reservation/ticketing systems provided by the travel agency.

(d) The base transaction fees per level of service provided are as follows:

(1) Full Travel Agency Service fee will be the maximum allowed as defined in subsection (b) of this section;

(2) Electronic Service fee will be sixty-four percent (64%) of the fee paid by the state for Full Travel Agency Service;

(3) Web-Based On-Line Booking Service fee will be fifty-eight percent (58%) of the fee paid by the state for Full Travel Agency Service;

(4) Full State Agency and/or County Service fee will be forty percent (40%) of the fee paid by the state for Full Travel Agency Service.

(e) The transaction fee schedule will be included in the Travel Agency Services Contract using the following methodology:

(1) the average state ticket price will be derived on an annual basis from previous fiscal year data compiled, on availability, from consolidated usage reports received through the travel program's contract corporate travel charge card vendor and through data received from non-participating state agencies as defined in Section 125.21 of this title (relating to Reporting Requirements for State Agencies);

(2) the average state ticket price will be derived no later than November 1st of each year; and,

(3) the fee will be adjusted up or down based on the previous fiscal year's average ticket price;

(f) Contract travel agencies may charge an additional fee for providing the following services:

(1) a cancellation of a ticketed reservation; (partial or complete) when a refund is processed through the Airline Reporting Corporation (ARC) from work initiated by the contract travel agency;

(2) the delivery through a local courier service of a paper ticket that has been issued when an electronic ticket was available;

(3) the delivery through an overnight delivery service of a paper ticket that has been issued when an electronic ticket was available.

(g) The additional fees for providing additional services are as follows:

(1) the refund service fee for the cancellation of a ticketed reservation will be fifty percent (50%) of the fee for providing the type of service as set forth in subsection (d) of this section, provided that the contract travel agency performed the work necessary to initiate the cancellation;

(2) the fee for the delivery through a local courier service of a paper ticket may not exceed \$15.00;

(3) the fee for the delivery through an overnight delivery service of a paper ticket may not exceed \$20.00.

(h) A contract travel agency may charge the base transaction fee in the amount authorized for the level of service provided under the following circumstances:

(1) an airline reservation made by the state that has been ticketed if the fee is assessed at the point-of-sale issuance of an electronic or paper ticket;

(2) an additional and equal transaction fee may be charged if the airline reservation has been ticketed and a change is made in the air carrier or the departure or arrival city.

(i) A contract travel agency may not charge a base transaction fee under the following circumstances:

(1) the original invoice/itinerary forwarded to the state agency and/or county;

(2) an airline, rental car, or any other mode of transportation reservation or a lodging establishment reservation available through the travel agency;

(3) changes made to an airline, rental car, or any other mode of transportation reservation or a lodging establishment reservation available through the travel agency;

(4) changes made to an airline reservation that has not been ticketed;

(5) changes made to a ticketed reservation in the departure or return date or the departure or return time;

(6) any additional fee to supplement airline commission caps;

(7) any additional fee that could result from correcting a transaction-eligible ticket made in error by a travel agency; or

(8) any airline reservation ticketed through a Web-based self-booking tool that offers all types of airfares (including state contract airfares) in which the traveler obligates funds.

(j) A contract travel agency charging any transaction fee (base or additional) must do the following:

(1) charge the appropriate fee on the same date an airline reservation is ticketed, so that the point-of-sale transaction fee is billed through ARC as a Miscellaneous Charge Order (MCO) listing the associated airline ticket number;

(2) list the transaction fee service level and fee amount on the invoice/itinerary copies provided to the state agency and/or county;

(3) provide copies of MCOs and invoice/itinerary documents to state agencies and/or counties at least seven (7) calendar days after date of issue;

(4) charge the appropriate corporate travel charge card and provide itemization with supporting documentation for each additional

fee authorized in subsection (f) of this section to each state agency and/or county at least seven (7) calendar days after the billing date.

(k) Failure of a contract travel agency to charge the appropriate transaction fee at the time required in subsection (j) of this section shall result in waiver of the transaction fee and the transaction fee shall not be assessed against the state agency and/or county by any other means.

§125.29. Texas Counties Use of Contract Airline Fares and/or Travel Agency Services.

(a) A Texas county officer or employee, or persons who are in the custody of the state may use the following program services: [program's contract airline fares for purposes of obtaining reduced airline fares.]

(1) contract airline fares for purposes of obtaining reduced airline fares; and/or

(2) contract travel agency services for purposes of obtaining reduced travel agent fees.

(b) [(4)] A Texas county seeking to participate in the program to use the contract airline fares and/or the contract travel agency services shall execute and submit a Commissioner's Court Resolution that indicates compliance with all applicable travel program guidelines. The Commissioner's Court Resolution shall include, but is not limited to the following provisions:

(1) Agreement to pay an applicable participation [(A) Participation] fee;

(2) [(B)] Participation dates;

(3) [(C)] Use of contract airline fares;

(4) Use of contract travel agency services;

(5) [(D)] Consent to travel vendor reporting [Reporting] requirements; and

(6) [(E)] Contract termination.

(c) [(2)] The commission will charge Texas counties a participation fee to recover the commission's cost incurred in administering this program [for counties].

(d) [(b)] Texas counties participating in this program must comply with all rules and procedures as outlined in the commission's airline and/or travel agency contracts [contract between the commission and the airlines].

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

Filed with the Office of the Secretary of State, on August 1, 2001.

TRD-200104439

Cynthia J. Hill

Acting General Counsel

General Services Commission

Earliest possible date of adoption: September 16, 2001

For further information, please call: (512) 463-3230

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**PART 12. COMMISSION ON STATE
EMERGENCY COMMUNICATIONS**

**CHAPTER 251. REGIONAL PLANS -
STANDARDS**

1 TAC §251.5

The Commission on State Emergency Communications (CSEC) proposes an amendment to §251.5, concerning the use of 9-1-1 funds for equipment management and disposition by providing uniform guidelines and expectations.

The amendment proposes to revise sections of the rule to meet requirements set in the Appropriations Bill rider specific to CSEC as enacted by the 77th Texas Legislature. The references to capital recovery are being deleted since that component will no longer be allowed effective September 1, 2001. The title of the rule is also amended to remove reference to capital recovery.

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

Ms. Spence also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be accountability of public funds per the intent of the Legislature.

No historical data is available, however, there appears to be no direct impact on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no anticipated local employment impact as a result of enforcing the section.

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

The amendment is proposed under Health and Safety Code, Chapter 771, §§771.051, 771.055, 771.056, 771.071, 771.0711, 771.072, 771.075, 771.078 and 771.079 which authorize the Commission to adopt policies and procedures prescribing the distribution and use of 9-1-1 funds for providing 9-1-1 service.

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

§251.5. Guidelines For 9-1-1 Equipment Management and Disposition [and Capital Recovery].

(a) As authorized by the Texas Health and Safety Code, Chapter 771, the ~~[Advisory]~~ Commission on State Emergency Communications (CSEC) ~~[(ACSEC)]~~ may impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 9-1-1 service throughout the State of Texas. In accordance with Texas Health and Safety Code, Chapter 771, §771.055, such service implementation shall be consistent with regional plans developed by regional planning commissions. Each regional planning commission shall develop a plan for the establishment and operation of 9-1-1 service throughout the region that the regional planning commission serves. The service must meet the standards established by the CSEC ~~[Advisory Commission]~~.

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

(1) 9-1-1 Equipment--Equipment acquired partially or in whole with 9-1-1 funds and designed to support and/or facilitate the delivery of an emergency 9-1-1 call to an appropriate Public Safety Answering Point (PSAP)s and as defined in §251.6 of this title (relating to Guidelines for Strategic Plans, Amendments, and Equalization Surcharge Allocation).

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

(3) 9-1-1 Program Assets--9-1-1 and Addressing Capital Equipment purchased with 9-1-1 Funds.

(4) Addressing Equipment--Equipment acquired partially or in whole with 9-1-1 funds, and/or Addressing Pool funds, designed to support and/or facilitate the work associated with addressing completion and/or addressing maintenance activities, as defined in §251.3 of this title (relating to Guidelines for Addressing Funds).

(5) Addressing Activities--The work associated with the addressing of a county as defined in ~~[ACSEC]~~ §251.3 of this title (relating to Guidelines for Addressing Funds).

(6) Addressing Pool Funds--Funds directed to statewide addressing use including, but not limited to federal or state grants, contributions, donations, and telephone rate case settlement distributions; but, which exclude 9-1-1 Service Fee, either restricted or unrestricted in use.

~~[(7) Advisory Commission on State Emergency Communications: ACSEC.]~~

(7) ~~[(8)]~~ Applicable Law--Includes, but is not limited to, the State Administration of Emergency Communications Act, Texas Health and Safety Code, Chapter 771; Commission rules implementing the Act contained in Title 1, Part XII, Texas Administrative Code; the Uniform Grant management Standards, Title 1, §§5.151 - 5.165, Texas Administrative Code; the Preservation and Management of Local Government Records Act, Chapter 441, Subchapter J, Texas Government Code; and amendments to the cited statutes and rules. Also referred to as "applicable law and rules".

(8) ~~[(9)]~~ Capital Equipment--Items and components that comprise the technology used to answer and deliver 9-1-1 calls whose cost is over \$5,000 ~~[\$1,000]~~ and have a useful life of at least one year.

(9) ~~[(10)]~~ Capital Replacement Cost--The cost of a piece of equipment that was originally identified to be amortized (i.e. the original cost for equipment.)

(10) ~~[(11)]~~ Controlled Equipment--Items and components that comprise the technology used to answer and deliver 9-1-1 calls whose cost is less than \$5,000 ~~[\$1,000]~~ and have a useful life of at least one year. Used at the discretion of the RPC for items that tracking is deemed necessary.

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

(12) ~~[(13)]~~ Intangible Assets--Includes items such as labor for PSAP room prep, electrical wiring costs, labor for the assembly of equipment, or any costs for the delay or transfer of equipment.

(13) ~~[(14)]~~ Interlocal Agreement--A contract cooperatively executed between local governments or other political subdivisions of the state to perform administrative functions or provide services, relating to 9-1-1 telecommunications.

(14) ~~[(15)]~~ Local Government--A county, municipality, public agency, or any other political subdivision that provides, participates in the provision of, or has authority to provide fire-fighting, law enforcement, ambulance, medical, 9-1-1, or other emergency services and/or addressing functions.

(15) [(46)] Maintenance--The preservation and upkeep of 9-1-1 equipment in order to insure that it continues to operate and perform at a level comparable to that exhibited at its initial acquisition.

(16) [(47)] Maintenance Plan--A plan that identifies a cost effective program for the maintenance of 9-1-1 equipment. For regional planning commissions this plan is part of a regional plan as described by the Texas Health and Safety Code, Chapter 771.

(17) [(48)] Contract for Services [Memorandum of Understanding (MOU)]--A contract executed between the Regional Planning Commission (RPC) and the CSEC [ACSEC] that establishes the responsibilities of each of the parties regarding the use of all 9-1-1 fees, equipment and data.

(18) [(49)] Non-Recurring Charge--The amount of cost identified as the entire lump sum, or one time, cost for 9-1-1 equipment replacement. The charge may be inclusive of an out right purchase of equipment or the primary cost for the implementation of leased equipment through a major telephone provider.

(19) [(20)] Public Safety Answering Point--A 24-hour communications facility established as an answering location for 9-1-1 calls originating within a given service area, as further defined in applicable law, Texas Health and Safety Code, Chapter 771. Also referred to as a "PSAP".

(20) [(24)] Recorders--Devices that capture and retain sound, including but not limited to the following:

(A) Voice Loggers--A device that records sound on a permanent source for later review.

(B) Instant Recall Recorders--A device that records and temporarily stores calls for immediate review.

(21) [(22)] Regional Planning Commission--A commission established under Local Government Code, Chapter 391, also referred to as a regional council of governments.

(22) [(23)] Strategic Plan--As part of a regional plan, a document identifying 9-1-1 equipment and related activity, by strategic plan component, required to support plan levels of 9-1-1 service within a defined area of the state. The strategic plan normally covers at least a three year planning period, and specifically projects 9-1-1 implementation costs and revenues associated with the above including equalization surcharge requirements.

(23) [(24)] Tangible Assets--Only those items that are tangible may be considered for capital [recovery] costs. Tangible assets include, but is not limited to any capital equipment such as the ANI/ALI Controllers, answering position units, integrated workstations, addressing computers, GIS workstations, plotters, or any other technical piece of equipment.

(24) [(25)] Uniform Grant Management Standards (UGMS)--As developed by the Governor's Office of Budget and Planning, January 1998, under the authority of the Texas Government Code, Chapter 783.

(25) [(26)] Useful Life--The period of time that a piece of capital equipment can consistently and acceptably fulfill its' service or functional assignment.

(c) Management and Disposition of Equipment. Each RPC is responsible and accountable for all 9-1-1 and Addressing Equipment in its region, as approved in its strategic plan, and will contract with each of its participating Local Governments to ensure, at a minimum, that: all issues of equipment ownership, transfer of ownership, control and/or disposition of equipment acquired with 9-1-1 funds shall be identified within interlocal agreements; and, all contract provisions for

equipment shall be consistent with Uniform Grant Management Standards (UGMS) as published by the Governor's Office of Budget and Planning, January 1998.

(1) Ownership of equipment acquired with 9-1-1 funds will vest in the RPC upon acquisition, or in the Local Government as agreed to within the applicable interlocal agreement.

(2) Transfer of ownership of equipment acquired with 9-1-1 funds shall be designated and approved in writing by the RPC, and agreed upon within the interlocal agreement.

(A) Before any such transfer of ownership, the RPC should evaluate the adequacy of controls of the prospective receiver to ensure that sufficient controls and security exist by which to protect and safeguard the equipment purchased with 9-1-1 funds;

(B) Transfer of Ownership documents shall be prepared by the RPC and signed by both parties upon transference in accordance with UGMS and the State Comptroller of Public Accounts;

(C) Upon transference of ownership, the receiving party shall assume responsibility for the proper use, maintenance, management, control and safeguarding of the equipment.

(3) Control of equipment shall be the responsibility of the party to whom ownership is assigned.

(A) The owner of the equipment shall have a capital asset management system to ensure adequate safeguards to prevent loss, damage, or theft of the equipment.

(B) Any loss, damage, or theft of equipment shall be investigated. Cases of theft will be pursued to the fullest extent of the law.

(C) Local Government and/or other responsible party shall provide reimbursement to RPC, or owner, for damage to 9-1-1 and Addressing equipment caused by intentional abuse, misuse or negligence by PSAP employees, County/Addressing personnel, or other persons to whom custodial responsibility is assigned. This provision shall not include ordinary wear and tear or ordinary day to day use of equipment.

(4) Disposition of equipment shall take place when original or replacement equipment acquired with 9-1-1 funds is obsolete, failing repeatedly, or scheduled for replacement; or, when the equipment is no longer needed for the original project or program.

(A) Methods used to determine per-unit fair market value must be documented, kept on file and made available to the RPC and CSEC [ACSEC] upon request, and as outlined in the remainder of this rule.

(B) [(A)] Equipment [with a current fair market value of less than \$1,000] may be retained, sold or otherwise disposed of with no further obligation to the awarding agency. If sold, the resulting revenue shall be credited to the RPC local funds and recorded as "Other Revenue." [returned to the capital recovery fund.] If transferred to another program funded by federal or state funds, the transfer of ownership shall be documented.

[(B)] Equipment with a current fair market value of more than \$1,000 may be retained or sold. If sold, the resulting revenue shall be returned to the capital recovery fund. Proper sales procedures must be established to ensure the highest possible return.]

(C) Equipment may be used for trade-in value to offset the cost of replacement.

(d) Maintenance - Maintenance procedures shall be in place to keep the property in good condition.

(1) Regional planning commissions funding the purchase and/or lease of 9-1-1 equipment shall develop and adopt maintenance plans covering the equipment involved as part of the regional plan within 30 days of purchase.

(2) Emergency communication districts requesting 9-1-1 funds in accordance with established rules and procedures for the maintenance of 9-1-1 equipment shall provide a maintenance plan for the equipment involved within 30 days of purchase.

(3) Maintenance plans shall be provided to the CSEC [ACSEC] in conjunction with equipment plan amendments or district requests submitted to the CSEC [Commission]. For equipment purchased and/or leased prior to the adoption of this rule, maintenance plans for regional planning commissions shall be submitted to the CSEC [ACSEC] for consideration no later than the beginning of the next budget cycle from the date of adoption of this rule.

(4) Annual budgeted costs associated with the maintenance of 9-1-1 equipment shall be monitored by the CSEC [ACSEC] staff for consistency with approved maintenance plans. Such costs that are determined by the CSEC [ACSEC] staff to not be consistent with approved maintenance plans shall be reviewed and approved by the CSEC [Commission].

(e) Requirements for Capital [Recovery] Tracking. A Capital Asset [Recovery] Schedule that lists 9-1-1 related equipment by [recovery] item shall be included in each regional planning commission's strategic plan. Strategic plans are required under the Health and Safety Code, Chapter 771 and §251.6 of this title (relating to Guidelines for Strategic Plans, Amendments, and Equalization Surcharge Allocation). A Capital Asset [Recovery] Schedule shall be maintained by the regional council in a spreadsheet or database that includes the following information for each item listed.

- (1) Date Acquired;
- (2) Description;
- (3) Location of the Equipment;
- (4) Identifying Number (Serial, Asset Tag, etc.);
- (5) Percent of State Participation (Cost Sharing);
- (6) Original Recovery Value;
- (7) Life Assigned (In Years);

~~[(8) Annual Recovery Amount by Year (The total for all items recovered should be equal to the annual amount that is identified in the strategic plan for all components for one given year. The total amount should also correspond to the budget amount identified in the quarterly Financial Status Report)]~~

- ~~(8) [(9)] Responsible Agency (Person in Possession);~~
- ~~(9) [(10)] Estimated Replacement Date;~~
- ~~(10) [(11)] Addressing Program Asset? (Y/N);~~

~~[(f) Requirements for Capital Recovery Fund Contributions. Contributions shall be made to the fund at least once a quarter until the full fiscal year contribution budget has been reached. The total deposit to the capital recovery account for a given year shall not exceed the total amount identified in the strategic plan for that same year for all levels. Should funding not be available to fully fund capital recovery in all counties, the RPC shall balance regional priorities with the need to maintain a consistent level of service in all counties.]~~

(f) [(g)] Requirements for Capital [Recovery] Fund Expenditures. Expenditures from the capital recovery schedule shall be reported on the following Financial Status Report submitted to the CSEC

[ACSEC] as required by §251.6 of this title (relating to Guidelines for Strategic Plans, Amendments, and Equalization Surcharge Allocation).

(1) The RPC shall submit with the FSR a "Capital Recovery Asset Disposal Notice" (as promulgated by the ACSEC) for each item that is replaced using Capital Recovery Funds as follows. Figure: 1 TAC §251.5(f) [(g)](1)

(2) Should additional funds be needed, the balance of funds needed for costs above original equipment costs must be identified in the strategic plan in the corresponding county narrative and submitted to CSEC [ACSEC] through an amendment.

~~[(3) Capital recovery funds set aside for replacement of an asset and not expended when purchasing a replacement asset shall be returned to the capital recover fund for future use.]~~

(g) [(h)] Addressing Capital Equipment [Recovery]. Costs for the replacement of addressing equipment purchased with 9-1-1 funds shall be reflected within the regional planning council strategic plan. Computers, printers, plotters, distance measuring devices (DMD), global positioning satellite (GPS) equipment and sign-making machines that meet the definition of Capital Equipment, shall be included in the schedule.

(h) [(i)] Emergency Communication Districts. Those districts requesting 9-1-1 funds in accordance with established rules and procedures for the replacement of 9-1-1 equipment shall provide a replacement plan for the equipment involved.

(i) [(j)] Annual Certification. Regional planning commissions shall submit an "Annual Certification of 9-1-1 Assets" (as promulgated by the CSEC [ACSEC]) to the CSEC [ACSEC] at least once each fiscal year. In accordance with UGMS, a physical inventory of the property must be taken and the results reconciled with the property records at least once every year. The RPC shall document and maintain all such inventory records, and will submit copies to the CSEC [ACSEC] upon request.

Figure: 1 TAC §251.5(i) [(j)]

(j) [(k)] Monitoring. The CSEC [Commission] reserves the right to perform on-site monitoring of the RPC and/or its performing Local Governments or PSAPs for compliance with this rule as well as all applicable law, policies and procedures. All monitoring activities will be conducted in accordance with [ACSEC] §251.11 of this title (relating to Monitoring Policies and Procedures).

(k) [(l)] Other Issues.

(1) The management and disposition of equipment shall follow UGMS. Funds acquired from the disposal of assets shall be returned to the regional planning commission as "Other Revenue." [9-1-1 capital recovery fund.]

(2) The Texas State Property Accounting Policies and Procedures Manual shall be referenced for guidance [(Comptroller of Public Accounts, May 1997; Phone number (512) 305-9954)] when questions arise to particular questions not covered in this rule.

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

Filed with the Office of the Secretary of State, on August 6, 2001.

TRD-200104475

Carey F. Spence
Interim Executive Director
Commission on State Emergency Communications
Earliest possible date of adoption: September 16, 2001
For further information, please call: (512) 305-6933



TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 11. ADMINISTRATIVE DEPARTMENT

13 TAC §11.11

The Texas Historical Commission (THC) proposes new §11.11, relating to Restrictions on Assignment of Vehicles.

The THC is proposing the new section so that it may contain rules that govern the assignment and use of the agency's vehicles. The proposed new §11.11 relating to Property Accountability with the proposed new section is in response to House Bill 3125, 76th Legislature, 1999 that required the General Services Commission and the Council on Competitive Government to develop a plan for improving the administration and operation of the state's vehicles. The bill further requires each state agency to adopt rules, consistent with the plan, relating to the assignment and use of the agency's vehicles. Section 11.11 is necessary to comply with House Bill 3125.

Penny Black, Chief Financial Officer, has determined that for the first five-year period, the new sections are in effect, there will be no fiscal implications for state or local governments as a result of enacting or administering the new sections. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no significant impact on local economies or overall employment as a result of enforcing or administering the new sections.

Penny Black has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing or administering the new sections will be to ensure the efficient use of state resources for solely legitimate business purposes. There will be no effect on small business and there is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Written comments on the proposed new chapter and sections may be submitted to Kimberly Gamble, Texas Register Liaison, P.O. Box 12276, Austin, Texas 78711. All comments must be received within 30 days of publication.

The new section is proposed under Cultural Resources Code, §442.005 that provides the Texas Historical Commission with the authority to establish rules for the conduct of the work of the Texas Historical Commission. The proposed new § 11.11 relating to Property Accountability with the proposed new section is proposed under Government Code, §2171.1045, which requires the THC to adopt rules relating to the assignment and use of THC vehicles.

No statutes, articles or codes are affected by the proposed new chapter, subchapters or sections.

§11.11. Restrictions on Assignment of Vehicles.

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

(1) THC--The Texas Historical Commission

(2) Executive Director--The Executive Director of the Texas Historical Commission of Texas or the Executive Director's designee not below the level of division director.

(b) Motor pool. Each THC vehicle, with the exception of a vehicle assigned to a field employee, will be assigned to the THC motor pool and is available for checkout.

(c) Regular vehicle assignment. The THC may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis only if the Executive Director makes a documented finding that the assignment is critical to the needs and mission of the department.

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

Filed with the Office of the Secretary of State, on August 3, 2001.

TRD-200104458

F. Lawrence Oaks

Executive Director

Texas Historical Commission

Earliest possible date of adoption: September 16, 2001

For further information, please call: (512) 463-6100



13 TAC §11.12

The Texas Historical Commission (THC) proposes new §11.12, concerning Memorandum of Understanding with the Texas Department of Economic Development, the Texas Department of Transportation, the Texas Parks and Wildlife Department, the Texas Commission on the Arts and the Texas Historical Commission.

Government Code, §481.028, requires the Texas Department of Economic Development to develop a memorandum of understanding with the Texas Department of Transportation (TxDOT), and the Texas Parks and Wildlife Department to cooperate in marketing and promoting Texas as a travel destination and provide services to travelers, and requires each agency to adopt the MOU by rule. This section adopts by reference the provision of the MOU proposed by the Texas Department of Economic Development and published in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12878). The Texas Department of Economic Development adopted the rule in the March 9, 2001, issue of the *Texas Register* (26 TexReg 2017).

Mr. Terry Colley, Deputy Executive Director, Texas Historical Commission, has determined that for the first five-year period, the new sections are in effect, there will be no fiscal implications for state or local governments as a result of enacting or administering the new sections. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no significant impact on local economies or overall employment as a result of enforcing or administering the new sections.

Terry Colley has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing or administering the new sections will be

to ensure the efficient use of state resources for solely legitimate business purposes. There will be no effect on small business and there is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Written comments on the proposed new chapter and sections may be submitted to Kimberly Gamble, Texas Register Liaison, P.O. Box 12276, Austin, Texas 78711. All comments must be received within 30 days of publication.

The new section is proposed under the Government Code, §442.005, which provided the Texas Historical Commission with the authority to establish rules for the conduct of the work of the Texas Historical Commission.

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

§11.12. Memorandum of Understanding with the Texas Department of Economic Development, the Texas Department of Transportation, the Texas Parks and Wildlife Department, the Texas Commission on the Arts and the Texas Historical Commission.

In order to comply with Government Code, §481.028, the provisions of 10 TAC §195.6, concerning a Memorandum of Understanding with the Texas Department of Economic Development, the Texas Department of Transportation, the Texas Parks and Wildlife Department, the Texas Commission on the Arts and the Texas Historical Commission relating to the coordination of travel and tourism responsibilities, are adopted by reference.

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

Filed with the Office of the Secretary of State, on August 3, 2001.

TRD-200104459

F. Lawrence Oaks

Executive Director

Texas Historical Commission

Earliest possible date of adoption: September 16, 2001

For further information, please call: (512) 463-6100



CHAPTER 12. TEXAS HISTORIC COURTHOUSE PRESERVATION PROGRAM

13 TAC §12.9

The Texas Historical Commission proposes amendments to §12.9, concerning future rounds of the courthouse program, to review the status of on-going projects and to decide on important issues of program administration for the coming biennium. This change will provide the broadest flexibility of allocating grants funds.

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

Mr. Oaks has also determined that for each year of the first five year period the rule is in effect, the public benefit anticipated as a result of administering the rule will be that more grants will be able to be funded.

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Written comments on the amended rule proposal may be submitted to Kimberly Gamble, Texas Register Liaison, Texas Historical Commission, P. O. Box 12276, Austin, Texas 78711. All comments will be accepted for 30 days after publication in the *Texas Register*.

The amendment is proposed under the Natural Resources Code, Title 9, Chapter 191 (revised by Senate Bill 231, 68th Legislature, 1983, and by House Bill 2056, 70th Legislature, 1987), § 191.02, which provides the Texas Antiquities Committee with authority to promulgate rules and require contract or permit conditions to reasonably effect the purposes of Chapter 191.

No statutes, articles or codes are affected by the proposed chapter, subchapters or sections.

§12.9. Application Requirements and Considerations.

(a) A county that owns a historic courthouse may apply to the commission for a grant or loan for a historic courthouse project. The application must include:

- (1) the address of the courthouse;
- (2) a statement of the historic designations that the courthouse has or is likely to receive;
- (3) a statement of the amount of money or in-kind contributions that the county commits to contribute to the project;
- (4) a statement of previous allowable money or in-kind contribution the county will use for their match;
- (5) a statement of whether the courthouse is currently functioning as a courthouse;
- (6) copies of any plans, including the required master preservation plan, that the county may have for the project;
- (7) copies of existing deed covenants, restrictions or easements held by the commission or other preservation organizations;
- (8) statements of support from local officials and community leaders; and
- (9) the current cost estimate of the proposed project; and
- (10) any other information that the commission may require.

(b) The Texas Historic Courthouse Preservation Program will be a competitive process, with applications evaluated and grants awarded based on the factors provided in this section, including the amount of program money for grants.

(c) In considering whether to grant an application, the commission will assign weights to and consider each of the following factors:

- (1) the status of the building as a functioning courthouse;
- (2) the age of the courthouse;
- (3) the degree of endangerment;
- (4) the courthouse is subject to a current conservation easement or covenant held by the commission;
- (5) the proposal is in conformance with the approved master plan and addresses the work in proper sequence;
- (6) the county agrees to place/extend a preservation covenant and/or deed restriction as part of the grant process;
- (7) the importance of the building within the context of an architectural style;

(8) the proposal addresses and remedies former inappropriate changes;

(9) the historic significance of the courthouse, as defined by 36 CFR §101(a)(2) (A) and (E), and NPS Bulletin 15, "How to Apply the National Register Criteria for Evaluation."

(10) the degree of surviving integrity of original design and materials;

(11) if a county submits complete plans and specifications for proposed work at the time of the application, provided the plans and specifications comply with the previously approved master plan;

(12) the use of the building as a courthouse after the project;

(13) the county's provision of a match greater than 15% of the grant request;

(14) the proposal results in a fully restored county courthouse;

(15) the status of the courthouse in terms of state and local historical designations that are in place;

(16) the county government's provision of preservation incentives and support of the county historical commission and other county-wide preservation efforts;

(17) the location of the county in a region with few awarded courthouse grant applications;

(18) the existence of a plan for physically protecting county records during the restoration and afterwards, as well as an assessment of current and future space needs and public accessibility for such records;

(19) the existence of a strong history of compliance with the state courthouse law (Texas Government Code, §442.008);

(20) the effort to protect and enhance surrounding historic resources; and

(21) the evidence of community support and county commitment to protection.

(d) Other Considerations.

(1) ~~(d)~~ The factors noted in subsection (c) of this section, and any additional ones determined necessary by the commission, will be published prior to each individual grant round as part of the formal procedures for the round.

(2) The commission may distribute a portion of the funds available for each grant period to be used for specific purposes and/or granted through different criteria than other funds. Such specific purposes may include, but are not limited to, the following:

(A) Emergency repairs necessary to prevent damage to or deterioration of the courthouse; or

(B) Compliance with the Americans with Disabilities Act or other state or federally mandated repairs or modifications.

(3) Any such distribution to a specific purpose or change in criteria must be decided by a vote of the commission and advertised to the potential grantees prior to the date for the submission of applications.

(e) As a condition for a county to receive money under the courthouse fund, the commission may require creation of a conservation easement on the property, and may require creation of other appropriate covenants in favor of the state. The highest preference will

be given to counties agreeing to the above referenced easements or covenants at the time of application.

(f) The commission shall provide oversight of historic courthouse projects.

(1) The commission may make periodic inspections of the projects to ensure compliance with program rules and procedures.

(2) The commission may require periodic reports to ensure compliance with program rules and procedures and as a prerequisite to disbursement of grant or loan funds.

(3) The commission may adopt additional procedures to ensure program compliance.

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

Filed with the Office of the Secretary of State, on August 3, 2001.

TRD-200104460

F. Lawrence Oaks

Executive Director

Texas Historical Commission

Earliest possible date of adoption: September 16, 2001

For further information, please call: (512) 463-6100

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 3. TEXAS COMMISSION ON ALCOHOL AND DRUG ABUSE

CHAPTER 150. COUNSELOR LICENSURE

40 TAC §§150.1 - 150.10, 150.31 - 150.33, 150.35 - 150.40, 150.51 - 150.54, 150.60, 150.61, 150.71, 150.72, 150.75 - 150.78

(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 Commission on Alcohol and Drug Abuse or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on Alcohol and Drug Abuse proposes the repeal of §§150.1 - 150.10, 150.31 - 150.33, 150.35 - 150.40, 150.51 - 150.54, 150.60, 150.61, 150.71, 150.72, 150.75 - 150.78 concerning counselor licensure.

Sections 150.1 - 150.10 contain definitions as well as information on fees, exemptions, scope of practice, current standing, and consumer information.

Sections 150.31 - 150.33 pertain to licensure application, requirements for licensure, and background investigations.

Sections 150.35 - 150.40 contain information on graduate status, examinations, issuing licenses, license expiration and renewal, inactive status and retired status.

Sections 150.51 - 150.54 contain information on provisional license, reciprocity, sanctions, and suspension for failure to pay child support.

Sections 150.60, 150.61, 150.71, 150.72, and 150.75 - 150.78 provide information on civil penalty enforcement, ethical standards, pre-service education institutions (PSEI) registration, pre-service education institutions (PSEI) standards, practicum provider registration, practicum provider standards, clinical training institution registration and clinical training institution standards.

The repeal of Chapter 150 is proposed because of extensive changes to the existing rules. The proposed new rules will be published in the *Texas Register* for public comment.

Vernon "Max" Arrell, Interim Executive Director, has determined that there will be no fiscal implications for state or local government for the first five-year period the repeal is in effect.

Mr. Arrell has also determined that for each year of the first five years the repeal is in effect the anticipated public benefit will be elimination of redundant rules. There will be no effect on small businesses and there is no anticipated economic cost to current providers.

Comments on the proposal may be submitted to Tamara Allen, Rules Coordinator, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*.

The repeal is proposed under the Texas Occupations Code, Chapter 504, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules for the licensure of chemical dependency counselors.

The code affected by the proposed repeal is the Texas Occupations Code, Chapter 504.

§150.1. *Authority.*

§150.2. *Application of the Rules.*

§150.3. *Definitions.*

§150.4. *Exemptions.*

§150.5. *License Required.*

§150.6. *Scope of Practice.*

§150.7. *Discrimination Prohibited.*

§150.8. *Consumer Information.*

§150.9. *Current Standing.*

§150.10. *Fees.*

§150.31. *Licensure Application.*

§150.32. *Requirements for Licensure.*

§150.33. *Background Investigation.*

§150.35. *Graduate Status.*

§150.36. *Examination.*

§150.37. *Issuing Licenses.*

§150.38. *License Expiration and Renewal.*

§150.39. *Inactive Status.*

§150.40. *Retired Status.*

§150.51. *Provisional License.*

§150.52. *Reciprocity.*

§150.53. *Sanctions.*

§150.54. *Suspension for Failure To Pay Child Support.*

§150.60. *Civil Penalty Enforcement.*

§150.61. *Ethical Standards.*

§150.71. *Pre-Service Education Institutions (PSEI) Registration.*

§150.72. *Pre-Service Education Institutions (PSEI) Standards.*

§150.75. *Practicum Provider Registration.*

§150.76. *Practicum Provider Standards.*

§150.77. *Clinical Training Institution Registration.*

§150.78. *Clinical Training Institution Standards.*

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 31, 2001.

TRD-200104417

Karen Pettigrew

General Counsel

Texas Commission on Alcohol and Drug Abuse

Earliest possible date of adoption: September 16, 2001

For further information, please call: (512) 349-6607



40 TAC §§150.1, 150.11 - 150.14, 150.21 - 150.28, 150.31 - 150.34, 150.41 - 150.43, 150.51 - 150.56, 150.61, 150.62

The Texas Commission on Alcohol and Drug Abuse proposes new §§150.1, 150.11 - 150.14, 150.21 - 150.28, 150.31 - 150.34, 150.41 - 150.43, 150.51 - 150.56, 150.61, and 150.62 concerning Counselor Licensure.

These proposed new rules incorporate statutory changes resulting from this year's legislative session. Content changes have been made in other areas as well, including revisions that strengthen the counselor training system and provide consumer protection for the students. The defining reference for chemical dependency counseling services has been updated to incorporate new national standards. New sections have been added to establish minimum documentation standards, a continuing education program administered by the commission, and a system for monitoring the conduct of interns. The rules have also been reorganized to provide a more accessible format.

Section 150.1 and §§150.11 - 150.14 of the proposed new rules define terms, state the scope of practice, and list the schedule for fees.

Sections 150.21 - 150.28 of the proposed new rules establish requirements for licensure, establish educational, practicum and supervised work experience standards, as well as delineate processes for issuing licenses through examination and reciprocity.

Sections 150.31 - 150.34 of the proposed new rules establish criminal history standards, delineate procedures for renewing a license and requesting inactive status, and establish criteria for continuing education hours.

Sections 150.41 - 150.43 of the proposed new rules describe minimal standards for clinical documentation, establish ethical standards and grounds for taking action against a licensee.

Sections 150.51 - 150.56 of the proposed new rules establish guidelines for transition from pre-service education institutions and practicum providers to proprietary schools, and establish criteria for becoming a clinical training institution. Additionally, standards for clinical training institutions, supervising interns, and grounds for taking action against an intern are described.

Section 150.61 and §150.62 of the proposed new rules establish guidelines for becoming a registered continuing education provider and continuing education provider standards.

Vernon "Max" Arrell, Interim Executive Director, has determined that there will not be fiscal implications for state or local government as a result of enforcing the proposed new rules for the first five-year period the proposed new rules are in effect.

Organizations currently registered as Pre-Service Education Institutions or Practicum Providers that choose to continue providing services as proprietary schools regulated by the Texas Workforce Commission will be subject to a registration fee. The fee for a small school is \$1,001 and the fee for any other school is \$3,000.

A new fee of \$40 will be charged to all counselors and interns to cover the costs of obtaining a national and state criminal background check. The fee is within the statutory authority of this agency and its governing board to adopt and is not mandated by the Legislature.

Vernon "Max" Arrell, Interim Executive Director, has also determined that for each year of the first five years the new rules are in effect the anticipated public benefit will be: a clearer and more effective licensure process; improved training for counselor interns, consumer protection for students, enhanced protection for clients receiving services from counselors and interns, for counselors providing chemical dependency treatment services. There will be no additional effect on small businesses.

Comments on the proposal may be submitted to Tamara Allen, Rules Coordinator, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days after the date the proposal is published in the *Texas Register*.

The new rules are proposed under the Texas Occupations Code, Chapter 504, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules for the licensure of chemical dependency counselors.

The code affected by the proposed new rules is the Texas Occupations Code, Chapter 504.

§150.1. Definitions.

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

(1) Abuse--An intentional, knowing, or reckless act or omission by a counselor, intern or applicant that causes or may cause death, emotional harm or physical injury to a client. Client abuse includes:

(A) any sexual activity between facility personnel and a client;

(B) corporal punishment;

(C) nutritional or sleep deprivation;

(D) efforts to cause fear;

(E) the use of any form of communication to threaten, curse, shame, or degrade a client;

(F) restraint that does not conform with applicable rules in Chapter 148 of this title (relating to Facility Licensure);

(G) coercive or restrictive actions taken in response to the client's request for discharge or the client's refusal of medication or treatment that are illegal or not justified by the client's condition; and

(H) any other act or omission classified as abuse by the Texas Family Code, §261.001.

(2) Applicant--A person who has submitted an application for an initial or renewal license.

(3) Chemical dependency counseling services--The application of the principles, methods, and procedures of the chemical dependency counseling profession as defined by the activities listed in the

domains of the *Addictions Counseling Competencies: the Knowledge, Skills, and Attitudes of Professional Practice (KSAs)*, published by the Center for Substance Abuse Treatment.

(4) Client--A person who receives services from a licensed chemical dependency counselor, or from an organization where the counselor is working on a paid or voluntary basis. A client's status continues for two years after services end.

(5) Clinical training institution (CTI)--An individual or legal entity registered with the commission to supervise a counselor intern.

(6) Commission (TCADA)--The Texas Commission on Alcohol and Drug Abuse.

(7) Counselor intern--A person registered with the Commission who is pursuing a course of training in chemical dependency counseling at a registered clinical training institution. Through June 30, 2002, interns also include individuals pursuing a course of training in chemical dependency counseling who are completing a practicum at a registered practicum provider or an accredited institution of higher education.

(8) Exploitation-- The illegal or improper use of a client or a client's resources for monetary or personal benefit, profit, or gain by a counselor, intern, or applicant.

(9) KSAs--The knowledge, skills, and attitudes of addictions counseling as defined by the Center for Substance Abuse Treatment in Technical Assistance Publication 21: *Addictions Counseling Competencies: the Knowledge, Skills, and Attitudes of Professional Practice*.

(10) Licensed chemical dependency counselor (LCDC)--A person who:

(A) renders chemical dependency counseling services for compensation to an individual, group, organization, corporation, institution, or the general public;

(B) implies that the person is licensed, trained, or experienced in chemical dependency counseling; and

(C) holds a license under this chapter to offer or provide chemical dependency counseling.

(11) Neglect--A negligent act or omission by a counselor, intern, or applicant that causes or may cause death, substantial emotional harm, or physical injury to a client. Examples of neglect include, but are not limited to, failure to provide a safe environment free from abuse, failure to establish or carry out an appropriate individualized treatment plan, and any other act or omission classified as neglect by the Texas Family Code, §261.001.

(12) Practicum provider--An individual or legal entity registered with the commission to supervise practicums through June 30, 2002.

(13) Pre-service educational institution (PSEI)--An individual or legal entity registered with the commission to provide the 270 hours of education required for licensure through June 30, 2002.

(14) Proprietary school--An organization approved and regulated by the Texas Workforce under the Texas Administrative Code, Title 40, Chapter 807 (relating to Proprietary Schools) that offers a course of study in chemical dependency counseling.

(15) Qualified credentialed counselor (QCC)--A licensed chemical dependency counselor or one of the professionals listed below who is licensed and in good standing in the state of Texas and has

at least 1,000 hours of documented experience treating substance use disorders:

- (A) licensed professional counselor (LPC);
- (B) licensed master social worker (LMSW);
- (C) licensed marriage and family therapist (LMFT);
- (D) licensed psychologist;
- (E) licensed physician;
- (F) certified addictions registered nurse (CARN); and
- (G) advance practice nurse recognized by the Board of Nurse Examiners as a clinical nurse specialist or nurse practitioner with a specialty in psyche-mental health (APN-PMH).

(16) Sexual exploitation--A pattern, practice, or scheme of conduct by a counselor, intern, or applicant that can reasonably be construed as being for the purpose of sexual arousal or gratification or sexual abuse of any person. It may include sexual contact, a request for sexual contact, or a representation that sexual contact or exploitation is consistent with or part of treatment. It is not a defense to sexual exploitation of a client or former client if it occurs:

- (A) with consent of the client or former client;
- (B) outside of therapy or treatment;
- (C) off the premises used for therapy or treatment; or
- (D) within a two-year period following termination of

treatment.

§150.11. License Required.

(a) An individual identified to the public as a chemical dependency counselor must be licensed or exempt under this chapter. Except as provided by this section, individuals who are not licensed chemical dependency counselors shall not:

- (1) offer or provide chemical dependency counseling services;
- (2) represent themselves as chemical dependency counselors; or
- (3) use any name, title, or designation that implies licensure as a chemical dependency counselor.

(b) The following people are exempt from this chapter when they are acting within the scope of their authorized duties:

- (1) counselors employed by federal institutions;
- (2) school counselors certified by the Texas Education Agency;
- (3) licensed psychologists, licensed professional counselors, licensed marriage and family therapists, and licensed master social workers;
- (4) religious leaders of congregations providing pastoral counseling within the scope of their congregational duties and people who are working for or providing counseling with a program exempted under Chapter 145 of this title (relating to Faith-Based Chemical Dependency Treatment Programs);
- (5) students who are participating in a practicum as part of a supervised course of clinical training at a regionally accredited institution of higher education or a proprietary school; and
- (6) counselor interns who are registered with the commission and working under the auspices of a registered Clinical Training Institution.

(c) Residents of other states are exempt if they:

(1) are legally authorized to provide chemical dependency counseling in those states; and

(2) do not offer or provide chemical dependency counseling in Texas for more than 30 days in any 12-month period.

(d) A person who qualifies for an exemption but chooses to get a license from the commission is subject to the same rules and sanctions as other licensees.

§150.12. Scope of Practice.

A licensed chemical dependency counselor is licensed to provide chemical dependency counseling services involving the application of the principles, methods, and procedures of the chemical dependency profession as defined by the profession's ethical standards and the KSAs. The license does not qualify an individual to provide services outside this scope of practice.

§150.13. Commission Review.

(a) A person licensed, registered, or approved under this chapter shall allow commission staff to access the facilities and records and to interview or survey clients, members of the governing body, staff, and students. The person shall make all property, records, and documents related to the license, registration, or approval available for examination or reproduction during normal business hours.

(b) The commission's executive director may waive a rule if an applicant demonstrates exceptional circumstances provided the requirement is not established in statute or related to criminal history standards.

§150.14. Fees.

(a) The schedule for fees is:

- (1) initial application fee--\$25;
- (2) initial licensure fee--\$75;
- (3) renewal fees:

(A) renewal application fee--\$25;

(B) license renewal fee--\$75;

(C) late renewal penalty fee (up to 90 days after the license expiration date)--\$37.50;

(D) late renewal penalty fee (between 91 days and one year after the license expiration date)--\$75;

(4) background investigation fee--\$40;

(5) inactive status fee--\$50;

(6) certificate or sticker replacement or duplication fee--\$25;

(7) continuing education provider fee--\$150.

(b) The commission charges a \$25 fee for a printed list of licensed counselors or a set of mailing labels.

(c) The commission contracts with an outside organization to administer the licensure examination, and the fee charged by the contract organization is subject to change. The current fee shall be printed in the notice of the opportunity for examination. Examination fees shall be paid directly to the contract organization administering the examination.

(d) Licensure fees paid to the commission are not refundable.

(e) Fees shall be paid in full with a cashier's check, commercial check, or money order. If online application is available, the fee

may be paid with a credit card and is subject to a surcharge by the on-line vendor.

§150.21. Requirements for Licensure by Examination.

(a) To be eligible for a license under this chapter, a person must:

- (1) be at least 18 years of age;
- (2) have a high school diploma or its equivalent;
- (3) successfully complete 270 classroom hours of chemical dependency curricula as described in §150.22 of this title (relating to Educational Standards);
- (4) complete 300 hours of approved supervised field work practicum as described in §150.23 of this title (relating to Practicum Standards);
- (5) complete 4,000 hours of approved supervised experience working with chemically dependent persons as described in §150.24 of this title (relating to Standards for Supervised Work Experience);
- (6) pass the written chemical dependency counselor examination approved by the commission;
- (7) submit an adequate, written case presentation to the test administrator;
- (8) pass an oral chemical dependency counselor examination approved by the commission;
- (9) meet the criminal history standards described in §150.31 of this title (relating to Criminal History Standards);
- (10) sign a written agreement to abide by the ethical standards contained in §150.42 of this title (relating to Ethical Standards); and
- (11) be worthy of the public trust and confidence as determined by the commission.

(b) Applicants holding a degree in chemical dependency counseling, sociology, psychology, or any other degree approved by the commission are exempt from the 270 hours of education and the 300 hour practicum. The applicant must submit an official college transcript with the official seal of the college and the signature of the registrar. Degree programs approved by the commission include baccalaureate, masters, or doctoral degrees with a course of study in human behavior/development and service delivery.

(c) The commission may waive the 4000 hours of supervised work experience for individuals who hold a masters or doctoral degree in social work or a masters or doctoral degree in a counseling-related field with 48 semester hours of graduate-level courses. Counseling related degrees shall be reviewed on a case-by-case basis. The applicant shall submit an official college transcript with the official seal of the college and the signature of the registrar, and any other related documentation requested by the commission.

§150.22. Educational Standards

(a) At least 135 (nine semester hours) of the education hours must be specific to substance use disorders and their treatment. The remaining 135 hours may be specific or related to chemical dependency counseling. Related education hours may include courses in psychology, upper division sociology, counseling, mental health, behavioral science, psychiatric nursing, ethics, and rehabilitation counseling.

(b) The education shall be provided by registered Pre-service Education Institution, a proprietary school, or an accredited institution

of higher education. Classroom hours may be obtained from a registered Pre-service Education Institution only through June 30, 2002. Beginning July 1, 2002, all classroom hours must be obtained from a proprietary school or an accredited institution of higher education.

(c) Continuing education and extended learning courses offered by institutions of higher education are not acceptable unless the curriculum follows the Workforce Education Curriculum Manual and meets the standards equivalent to a credit course.

(d) Educational hours obtained at proprietary school must follow the curriculum for Transdisciplinary Foundations for Addictions Professional outlined in the KSAs:

- (1) Understanding Addiction;
- (2) Treatment Knowledge;
- (3) Application to Practice; and
- (4) Professional Readiness.

(e) The Commission shall not accept hours unless documented with a passing grade on an official transcript from the school. The applicant shall submit additional information requested by the Commission if needed to verify the content of a course.

§150.23. Practicum Standards.

(a) The practicum shall be completed under the supervision of a registered practicum provider, a proprietary school, or an accredited institution of higher education. Practicum hours may be obtained from a registered Practicum Provider only through June 30, 2002. Beginning July 1, 2002, all practicum hours must be obtained from a proprietary school or an accredited institution of higher education.

(b) An applicant shall complete the required 270 hours of education before participating in a practicum, with one exception. Students enrolled in an accredited university, college, junior college, or community college may complete the practicum before completing the 270 hours of education if the practicum is:

- (1) part of the assigned curriculum; and
- (2) performed under the auspices of the educational institution.

(c) The applicant must complete the practicum under the supervision of a single school.

(d) The commission shall not accept a practicum without an official transcript from the school and a letter from the school's educational coordinator or chair verifying that the Practicum was completed in the field of substance abuse.

(e) Practicum hours may be paid or voluntary.

(f) The practicum shall be delivered according to a written training curriculum that provides the student with an orientation to treatment services and exposure to treatment activities in each of the KSA domains. The practicum must include the intern observing treatment delivery and the intern providing services under direct observation. The practicum shall include at least 20 hours of experience in each of the KSA domains (observation and being observed). A practicum student shall not provide counseling services (except education) without direct observation by a QCC.

(g) All training shall be provided by QCCs.

§150.24. Standards for Supervised Work Experience.

(a) An applicant must be registered with the commission as described in §150.21 of this title (relating to Requirements for Licensure by Examination) before accumulating supervised work experience with the following exceptions.

(1) Individuals with an application on file with the commission who began accumulating work experience at a Clinical Training Institution before December 1, 2001 shall submit fingerprint cards by June 30, 2002. Registration must be complete to provide chemical dependency counseling services and accumulate additional hours after August 15, 2002.

(2) Individuals who began accumulating supervised work experience hours at a Clinical Training Institution before December 1, 2001 but had not submitted an application to the commission by that date shall submit an application and the fingerprint cards by June 30, 2002. Registration must be complete to provide chemical dependency counseling services and accumulate additional hours after August 15, 2002.

(3) The commission shall not accept work experience completed more than five years preceding the date of registration.

(b) All supervised work experience obtained in Texas must be completed at a registered clinical training institution (CTI).

(c) Work experience must be documented on the commission's Supervised Work Experience Documentation Form and signed by the agency's CTI coordinator.

(1) All hours included in the documented supervised work experience must be performed within the KSA domains.

(2) The supervised work experience form must be accompanied by the intern's job description reflecting duties in the KSA domains.

(d) Out of state work experience will be accepted only if the following conditions are met.

(1) The applicant is either certified or licensed or in the process of seeking licensure or certification in the other state.

(2) The standards for clinical supervision of work experience must meet or exceed Texas standards and be outlined in the governing agency's rules or standards. A copy of the governing rules or standards must be submitted with the other required documentation of supervised work experience.

(3) The supervised work experience must be documented on the commission's Supervised Work Experience form or a comparable form used by the governing agency of the other state.

(e) Supervised work experience may be paid or voluntary.

(f) An intern must complete all supervised work experience and pass the written and oral examination within five years from the date of registration.

(g) A person who has completed the 4,000 hours of supervised work experience and is currently eligible to take or retake the examination is a graduate intern and may continue to provide chemical dependency services under the auspices of a registered clinical training institution during the five-year registration period.

(h) It is the applicant's responsibility to verify that the training institution is registered with the commission. The commission shall not accept hours from an unregistered provider.

§150.25. Licensure Application and Registration Process.

(a) Every person seeking licensure shall register with the commission by submitting:

(1) the application fee and the background investigation fee;

(2) the commission's current application form which has been completed, signed, dated, and notarized;

(3) a recent full-face wallet-sized photograph of the applicant;

(4) two sets of fingerprints on cards issued by the commission;

(5) documentation that the applicant has successfully completed the 270 classroom hours of education and 300 hour field work practicum or an acceptable college transcript as described in §150.21 of this title (relating to Requirements for Licensure by Examination);

(6) documentation of a high school diploma or its equivalent; and

(7) two letters of recommendation from LCDCs.

(b) An applicant shall:

(1) disclose and provide complete information about all misdemeanor and felony charges, indictments, deferred adjudications, episodes of community supervision or probation, and convictions;

(2) read the commission rules (Texas Administrative Code, Title 40, Chapter 150);

(3) follow all laws and rules, including the ethical standards;

(4) allow the commission to seek any additional information or references necessary; and

(5) notify the commission in writing within 14 days of a change in address.

(c) Application materials become the property of the commission.

(d) An application packet will not be accepted unless it is complete.

(1) Incomplete documents will be returned to the sender. The commission will hold the remaining documents, but will not accept the application until all outstanding documents have been completed and approved.

(2) The application fee is not refundable and will not be returned. When resubmitting documents that were returned to the sender as incomplete, a second application fee is not required.

(e) A document may be considered incomplete if it does not conform with the following standards.

(1) All documents must be complete, signed, and dated. Signatures shall include credentials when required. If the documentation relates to past activity, the date of the activity shall also be recorded.

(2) Documentation shall be permanent and legible.

(3) When it is necessary to correct a document, the error shall be marked through with a single line, dated, and initialed by the writer. Correction fluid shall not be used.

(f) An applicant shall pass criminal history investigation described in §150.31 of this title (relating to Criminal History Standards).

(g) An applicant must receive written notice of registration from the commission before accumulating any supervised work experience or taking the examination or providing chemical dependency services.

(h) Within 45 days of receipt of the application, the commission shall notify the applicant that the application is complete or specify the additional information required.

(i) By signing the application, the applicant accepts responsibility for remaining knowledgeable of licensure rules, including revisions.

(1) Current rules are published in the Texas Administrative Code and posted on the secretary of state's web site and the commission's web site.

(2) Proposed rule changes are published in the *Texas Register* and posted on the secretary of state's web site and the commission's web site.

§150.26. Examination.

(a) To be eligible for examination, an applicant shall:

(1) be registered with the commission as an intern as described in §150.25 of this title (relating to License Application and Registration Process);

(2) submit an acceptable case study to the test administrator; and

(3) pay the examination fee to the test administrator.

(b) All required documentation and fees must be submitted to the test administrator by the specified deadlines. It is the applicant's responsibility to obtain testing information.

(c) An applicant may only take the examination four times, and all testing must be completed within five years from the date of registration. An applicant shall take the written and oral portions of the examination together unless the applicant has already passed one part of the examination.

(d) If an applicant does not pass both parts of the examination within five years of the date of registration and/or does not complete the required 4,000 hours of supervised work experience, the commission shall deny the application.

(1) A person whose license application has been denied is no longer an intern and cannot provide chemical dependency counseling services under the auspices of a clinical training institution.

(2) A person whose application has been denied under this section may reapply for licensure only after completing 24 semester hours of course work pre-approved by the commission at an institution of higher education. The new application shall not be considered complete without an official college transcript documenting the required coursework.

(3) If the commission accepts the new application, the person may take the failed portion(s) of the examination an additional three times. The additional tests must be completed within three years of the new date of registration. During this period, the applicant may provide chemical dependency counseling services as an intern under the auspices of a registered clinical training institution.

§150.27. Issuing Licenses.

(a) When the applicant has met all requirements for licensure and paid the licensure fee, the commission will issue a license within 45 days.

(b) Licensed chemical dependency counselors shall keep current versions of the certificate of licensure and the commission's public complaint notice prominently displayed in their place of business.

(c) A licensee shall not duplicate the licensure certificate to obtain a second copy of the license. A licensee can obtain an official duplicate certificate from the commission by submitting a written request and the fee specified in §150.14 of this title (relating to Fees).

(d) The commission will replace a lost or damaged certificate if the licensee provides:

(1) the remnants of the original license (if damaged);

(2) the original license and copy of legal documents (for a name change);

(3) the original license (for printing error); or

(4) a notarized statement if the license has been lost, stolen, or destroyed.

(e) A license replaced because of a printing error or mail damage will be replaced without cost, but all other license replacements require a fee, as specified in §150.14 of this title. The fee shall be paid in advance with a money order, commercial check, or cashier's check.

(f) Licensed chemical dependency counselors shall notify the commission in writing within 14 days of a change in address.

(g) The licensee shall return the license if it is suspended or revoked.

(h) The licensee shall remain knowledgeable of the current rules in this chapter, including rule changes.

§150.28. Licensure through Reciprocity.

(a) A person seeking application through reciprocity shall submit:

(1) a copy of the reciprocal license or certification;

(2) the commission's current reciprocity application which has been completed, signed, dated, and notarized;

(3) two sets of fingerprints on cards issued by the commission;

(4) a recent full-face wallet-sized photograph of the applicant;

(5) two letters of recommendation; and

(6) the application fee and the background investigation fee.

(b) The applicant shall meet the criminal history standards described in §150.31 of this title (relating to Criminal History Standards).

(c) The commission may issue a license based on reciprocity if the individual is currently licensed or certified by another state as a chemical dependency counselor.

(d) The commission shall not issue a license based on reciprocity unless it finds that the licensing or certification standards of the state of origin are at least substantially equivalent to the requirements of this chapter.

(e) An applicant who does not qualify for reciprocity may apply for licensure through examination and is subject to the same standards as other applicants.

§150.31. Criminal History Standards.

(a) The commission reviews the criminal history of every applicant for licensure. Reviews are conducted when:

(1) an applicant for licensure through examination registers with the commission as an intern;

(2) an applicant has met all other requirements for licensure;

(3) a licensed chemical dependency counselor applies for license renewal; and

(4) the commission receives information that a counselor or intern has been charged, indicted, placed on deferred adjudication, community supervision, or probation, or convicted of an offense described in subsection (d) of this section.

(b) An applicant shall disclose and provide complete information about all misdemeanor and felony charges, indictments, deferred adjudications, episodes of community supervision or probation, and convictions. Failure to make full and accurate disclosure will be grounds for immediate application denial, disciplinary action, or license revocation.

(c) The commission obtains criminal history information from the Texas Department of Public Safety, including information from the Federal Bureau of Investigations (FBI).

(d) The commission shall deny the initial or renewal license application of a person who has been convicted or placed on community supervision in any jurisdiction for committing the following offenses:

(1) during the five years preceding the date of application:

(A) class B misdemeanor alcohol and drug offenses;
and

(B) class B misdemeanor offenses resulting in actual or potential harm to others or animals;

(2) during the seven years preceding the date of application:

(A) class A misdemeanor alcohol and drug offenses;

(B) class A misdemeanor offenses resulting in actual or potential harm to others or animals;

(C) felony property offenses; and

(D) felony alcohol and drug offenses;

(3) during the ten years preceding the date of application: felony offenses that result in actual or potential harm to others and/or animals not listed separately in this section;

(4) during the 15 years preceding the date of application:

(A) kidnapping;

(B) arson;

(C) manslaughter;

(D) homicide (single count); and

(E) felony sexual offenses involving an adult victim who is not a client (single count);

(5) during the applicant's lifetime:

(A) capital offenses;

(B) sexual offenses involving a child victim;

(C) felony sexual offenses involving an adult victim who is a client (single count);

(D) multiple counts of felony sexual offenses involving any adult victim; and

(E) multiple counts of homicide.

(e) The commission shall defer action on the application of a person who has been charged, indicted, or placed on deferred adjudication, community supervision, or probation for an offense described in subsection (d) of this section. The person may reapply for licensure when:

(1) the charges are dropped or the person is found not guilty; or

(2) the timeframes established in subsection (d) of this section have been met.

(f) The commission shall suspend a counselor's license or an intern's registration if the commission receives notice from the Texas Department of Public Safety or another law enforcement agency that the individual has been charged, indicted, placed on deferred adjudication, community supervision, or probation, or convicted of an offense described in subsection (d) of this section.

(1) The commission shall send notice stating the grounds for summary suspension by certified mail to the license holder at the address listed in the commission's records. The suspension is effective five days after the date of mailing.

(2) The commission shall restore the person's license upon receipt of official documentation that the charges have been dismissed or the person has been found not guilty.

(g) A person whose license has been denied or suspended under this section may only appeal the action if:

(1) The person was convicted or placed on community supervision; and

(2) the appeal is based on the grounds that the timeframes defined in subsection (d) of this section have been met.

§150.32. License Expiration and Renewal.

(a) A license issued under this chapter is valid for two years, or until the expiration date printed on the license. The licensee is responsible for renewing the license in a timely manner. The commission shall send the licensee a renewal notice, but failure to receive notice from the commission does not waive or extend renewal deadlines.

(b) To renew a license, the counselor shall:

(1) send a renewal application to the commission;

(2) pay the renewal application fee, the license fee, and the background investigation fee;

(3) submit two sets of fingerprints on cards issued by the commission;

(4) meet the criminal history standards described in §150.31 of this title (relating to Criminal History Standards); and

(5) complete all required continuing education.

(c) A licensed chemical dependency counselor who is also licensed as an LMSW, LMFT, LPC, physician, or psychologist in the state of Texas shall complete at least 24 hours of continuing education during each two-year licensure period. The individual must submit a copy of the active non-LCDC licensure certificate to be eligible for this provision.

(d) A licensed chemical dependency counselor who does not meet the criteria in subsection (c) of this section must complete at least 60 hours of continuing education.

(e) All continuing education hours must be specific to substance use disorders and their treatment or related to chemical dependency counseling as defined by the KSA domains. Related education hours may include courses in psychology, sociology, counseling, mental health, behavioral science, psychiatric nursing, ethics, and rehabilitation counseling.

(f) Continuing education hours must include at least three hours of ethics training and at least six hours of training (total) in HIV, Hepatitis C, and sexually transmitted diseases.

(g) If an individual's job duties include clinical supervision, required hours of continuing education must include three hours of clinical supervision training.

(h) Renewal fees are due on or before the expiration date. A licensee who submits a late renewal application shall pay a penalty fee in addition to the renewal application and licensure fees, as provided in §150.14 of this title (relating to Fees).

(i) A license cannot be renewed more than one year after the date of expiration. To obtain a new license, the person shall comply with the requirements and procedures for obtaining an initial license. Everyone who applies for a new license under this subsection must pass the written and oral examinations, with one exception. If the person was licensed in Texas, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application, the person may renew an expired license without reexamination. The person must pay a fee that is equal to two times the required renewal fee.

(j) A person whose license has expired cannot offer or provide chemical dependency counseling services as defined by the KSAs, represent himself or herself as an LCDC, or act in the capacity of a QCC.

(k) A licensee who teaches a qualifying continuing education course shall receive the same number of hours as students attending the course. Only one set of hours can be accrued for a single curriculum and no more than 30 hours of CE credit will be granted for courses taught by the applicant.

§150.33. Continuing Education Standards.

(a) The commission will accept continuing education (CE) hours that meet the criteria in this section. Hours that do not meet these criteria may be evaluated on a case-by-case basis.

(b) The commission will accept continuing education credits from:

- (1) the commission;
- (2) other recognized state boards, including, but not limited to the Texas State Boards of Nurse, Social Work, and Professional Counselor Examiners;
- (3) the National Association of Alcohol and Drug Abuse Counselors; and
- (4) the Texas Certification Board for Addiction Professionals (TCBAP). Courses approved by TCBAP shall meet the standards described in §150.62 of this title (relating to Continuing Education Provider Standards).

(c) For counselors who live out of state, the commission will also accept continuing education hours approved by other state and federal agencies.

(d) Continuing education certificates must contain:

- (1) applicant's name and license number;
- (2) date CE hours were completed;
- (3) number of CE hours assigned to each course;
- (4) CE course title;
- (5) educational provider number, if applicable;
- (6) sponsoring agency name; and

(7) signature of instructor or coordinator.

(e) The commission will also accept education hours from an accredited college or university.

(1) College transcripts must contain the official seal of the college and the signature of the registrar.

(2) One hour of college credit is equivalent to 15 CE hours.

(f) No more than 30 hours of independent study or distance learning courses will be accepted. Independent study or guided learning courses must be guided and monitored by the instructor and include an evaluation of performance and/or participation verification. In addition, the course must be structured so that students have access to faculty or instructors for questions and assistance in the completion of such course work.

§150.34. Inactive Status.

(a) A licensee may request to have his or her license placed on inactive status by submitting a written request and paying the inactive fee before the license expires. Inactive status shall not be granted unless the license is current and in good standing, with no pending investigations or disciplinary actions.

(b) A person on inactive status cannot perform activities outlined in the KSA domains, represent himself or herself as an LCDC, or act in the capacity of a QCC. A person is subject to investigation and action during the period of inactive status.

(c) Inactive status shall not exceed two years.

(d) To return to active status, the person shall submit a written request to reactivate the license, a completed renewal application form, the renewal application fee and the license renewal fee, and documentation of 30 hours of continuing education within the inactive status period.

(e) An inactive license will automatically expire at the end of the two-year period.

§150.41. Documentation.

(a) The counselor shall establish and maintain a record for every client at the time of initial service delivery. The client record shall include:

- (1) client identifying information;
- (2) assessment results, including a statement of the client's problems and/or diagnosis;
- (3) plan of care;
- (4) documentation of all services provided, including date, duration, and method of delivery; and
- (5) a description of the client's status at the time services are discontinued.

(b) A counselor who is an independent practitioner shall maintain a record of all charges billed and all payments received.

(c) All entries shall be permanent, legible, accurate, and completed in a timely manner.

(d) All documents and entries shall be dated and authenticated. Authentication of electronic records shall be a cryptography-based digital signature.

(e) When it is necessary to correct a record, the error shall be marked through with a single line, dated, and initialed by the counselor.

(f) The counselor shall protect all client records and other client-identifying information from destruction, loss, tampering, and

unauthorized access, use or disclosure. Electronic client information shall be protected to the same degree as paper records and shall have a reliable backup system.

(g) The counselor shall not deny clients access to the content of their records except as provided by the Texas Health and Safety Code, §611.0045.

(h) Client records shall be kept for at least five years. Records of adolescent clients shall be kept for at least five years after the client turns 18.

§150.42. Ethical Standards.

(a) All applicants, and licensed chemical dependency counselors shall comply with these ethical standards.

(b) The licensed chemical dependency counselor shall not discriminate against any client or other person on the basis of gender, race, religion, age, national origin, disability, sexual orientation, or economic condition.

(c) The licensed chemical dependency counselor shall maintain objectivity, integrity, and the highest standards in providing services to the client.

(d) The licensed chemical dependency counselor shall:

(1) report to the commission any suspected, alleged, or substantiated incidents of abuse, neglect, or exploitation committed by self or other licensed chemical dependency counselors or registered counselor interns;

(2) promptly report to the commission violations of Texas Occupations Code, Chapter 504, or rules adopted under the statute, including violations of this section by self or others;

(3) recognize the limitations of his or her ability and shall not offer services outside the counselor's scope of practice or use techniques that exceed his or her professional competence; and

(4) try to prevent the practice of chemical dependency counseling by unqualified or unauthorized persons.

(e) The licensed chemical dependency counselor shall not engage in the practice of chemical dependency counseling if impaired by, intoxicated by, or under the influence of chemicals, including alcohol.

(f) The licensed chemical dependency counselor shall uphold the law and refrain from unprofessional conduct. In so doing, the licensed chemical dependency counselor shall:

(1) comply with all applicable laws and regulations;

(2) not make any claim, directly or by implication, that the counselor possesses professional qualifications or affiliations that the counselor does not possess;

(3) not mislead or deceive the public or any person; and

(4) refrain from any act which might tend to discredit the profession.

(g) The licensed chemical dependency counselor shall:

(1) report information fairly, professionally, and accurately to clients, other professionals, the commission, and the general public;

(2) maintain appropriate documentation of services provided; and

(3) provide responsible and objective training and supervision to interns and subordinates under the counselor's supervision. This includes properly documenting supervision and work experience and providing supervisory documentation needed for licensure.

(h) In any publication, the licensed chemical dependency counselor shall give written credit to all persons or works, which have contributed to or directly influenced the publication.

(i) The licensed chemical dependency counselor shall respect a client's dignity, and shall not engage in any action that may injure the welfare of any client or person to whom the counselor is providing services. The licensed chemical dependency counselor shall:

(1) make every effort to provide access to treatment, including advising clients about resources and services, taking into account the financial constraints of the client;

(2) remain loyal and professionally responsible to the client at all times, disclose the counselor's ethical code of standards, and inform the client of the counselor's loyalties and responsibilities;

(3) not engage in any activity which could be considered a professional conflict, and shall immediately remove himself or herself from such a conflict if one occurs;

(4) terminate any professional relationship or counseling service which is not beneficial, or is in any way detrimental to the client;

(5) always act in the best interest of the client;

(6) not abuse, neglect, or exploit a client;

(7) not have sexual contact with or intentionally enter into a personal or business relationship with a client (including any client receiving services from the counselor's employer) for at least two years after the client's services end;

(8) not request a client to divulge confidential information that is not necessary and appropriate for the services being provided; and

(9) not offer or provide chemical dependency counseling or related services in settings or locations which are inappropriate, harmful to the client or others, or which would tend to discredit the profession of chemical dependency counseling.

(j) The licensed chemical dependency counselor shall protect the privacy of all clients and shall not disclose confidential information without express written consent, except as permitted by law. The licensed chemical dependency counselor shall remain knowledgeable of and obey all state and federal laws and regulations relating to confidentiality of chemical dependency treatment records, and shall:

(1) inform the client, and obtain the client's consent, before tape-recording the client, allowing another person to observe or monitor the client;

(2) ensure the security of client records;

(3) not discuss or divulge information obtained in clinical or consulting relationships except in appropriate settings and for professional purposes which clearly relate to the case;

(4) avoid invasion of the privacy of the client;

(5) provide the client his/her rights regarding confidentiality in writing as part of informing the client in any areas likely to affect the client's confidentiality; and

(6) ensure the data requested from other parties is limited to information that is necessary and appropriate to the services being provided and is accessible only to appropriate parties.

(k) The licensed chemical dependency counselor shall inform the client about all relevant and important aspects of the professional relationship between the client and the counselor, and shall:

(1) in the case of clients who are not their own consenters, inform the client's parent(s) or legal guardian(s) of circumstances which might influence the professional relationship;

(2) not enter into a professional relationship with members of the counselor's family, close friends or associates, or others whose welfare might be jeopardized in any way by such relationship;

(3) not establish a personal relationship with any client (including any individual receiving services from the counselor's employer) for at least two years after the client's services end;

(4) neither engage in any type or form of sexual behavior with a client (including any individual receiving services from the counselor's employer) for at least two years after the client's services end nor accept as a client anyone with whom they have engaged in sexual behavior; and

(5) not exploit relationships with clients for personal gain.

(l) The licensed chemical dependency counselor shall treat other professionals with respect, courtesy, and fairness, and shall:

(1) refrain from providing or offering professional services to a client who is receiving chemical dependency treatment from another professional, except with the knowledge of the other professional and the consent of the client, until treatment with the other professional ends;

(2) cooperate with the commission, professional peer review groups or programs, and professional ethics committees or associations, and promptly supply all requested or relevant information unless prohibited by law; and

(3) ensure that his/her actions in no way exploit relationships with supervisees, employees, students, research participants or volunteers.

(m) Prior to treatment, the licensed chemical dependency counselor shall inform the client of the counselor's fee schedule and establish financial arrangements with a client. The counselor shall not:

(1) charge exorbitant or unreasonable fees for any treatment service;

(2) pay or receive any commission, consideration, or benefit of any kind related to the referral of a client for treatment;

(3) use the client relationship for the purpose of personal gain, or profit, except for the normal, usual charge for treatment provided;

(4) accept a private professional fee or any gift or gratuity from a client if the client's treatment is paid for by another funding source, or if the client is receiving treatment from a facility where the counselor provides services (unless all parties agree to the arrangement in writing).

§150.43. Actions Against a License.

(a) Actions against a license include:

(1) refusal to issue or renew a license;

(2) suspension or revocation of a license;

(3) placing a counselor on probation if the counselor's license has been suspended; and

(4) reprimand of a license holder.

(b) The commission shall take action against a license for:

(1) violating or assisting another to violate the statute or these rules;

(2) circumventing or attempting to circumvent the statute or these rules;

(3) participating, directly or indirectly, in a plan to evade the statute or these rules;

(4) engaging in false, misleading, or deceptive conduct as defined by Business and Commerce Code, §17.46;

(5) engaging in conduct that discredits or tends to discredit the profession of chemical dependency counseling;

(6) revealing or causing to be revealed, directly or indirectly, a confidential communication made to the licensed chemical dependency counselor by a client or recipient of services, except as required by law;

(7) having a license to practice chemical dependency counseling in another jurisdiction refused, suspended, or revoked for a reason that the commission finds would constitute a violation of this chapter;

(8) refusing to perform an act or service for which the person is licensed to perform under this chapter on the basis of the client's or recipient's sex, race, religion, age, national origin, or handicaps; or

(9) committing an act for which liability exists under Civil Practice and Remedies Code, Chapter 81.

(c) The commission will determine the length of the probation or suspension. The commission may hold a hearing at any time and revoke the probation or suspension.

(d) The commission may impose an administrative penalty against a licensee who violates Texas Occupations Code, Chapter 504, or a rule or order adopted under the statute.

(e) Surrender or expiration of a license does not interrupt an investigation or disciplinary action. The individual is not eligible to regain the license until all outstanding investigations, disciplinary actions, or hearings are resolved.

(f) An individual whose license has been revoked is not eligible to apply for licensure until two years have passed since the date of revocation. During the period of revocation, the individual cannot become a counselor intern.

(g) The commission shall deny, suspend, and/or refuse to renew the license of a person based on criminal history as provided in §150.31 of this title (relating to Criminal Histories).

(h) The commission shall implement a final order to suspend the license of a counselor for failure to pay child support as provided by the Texas Family Code, Chapter 232.

§150.51. Pre-Service Education Institution (PSEI) Transition.

(a) The commission shall not register new Pre-Service Education Institutions (PSEIs) after November 1, 2001. The registration of any PSEI registered with the commission on November 1, 2001 is valid through and expires on June 30, 2002.

(b) The PSEI shall ensure that all students admitted to the program can complete the 270 hours before the program closes.

(c) The PSEI shall maintain compliance with the standards for PSEIs described in §150.72 of this title (relating to Pre-Service Education Institution (PSEI) Standards) as published on January 1, 2000.

(d) The PSEI shall notify the commission in writing within 30 days of any changes from the information submitted on the initial or renewal application. This includes:

(1) closure of the education program;

- (2) addition of a new education site; or
- (3) a change in the organization's name.

(e) The commission may withdraw approval if the PSEI fails to comply with all applicable commission rules.

§150.52. Practicum Provider Transition.

(a) The commission shall not register new practicum providers after November 1, 2001. The registration of any practicum provider registered with the commission on November 1, 2001 is valid through and expires on June 30, 2002.

(b) The practicum provider shall ensure that all students admitted to the program can complete the 300-hour practicum before the program closes.

(c) The practicum provider shall maintain compliance with the standards for practicum provider described in §150.73 of this title (relating to Practicum Provider Standards) as published on January 1, 2000.

(d) The practicum provider shall notify the commission in writing within 30 days of any changes from the information submitted on the initial or renewal application. This includes:

- (1) closure of the practicum program;
- (2) addition of a new practicum site; or
- (3) a change in the organization's name.

(e) The commission may withdraw approval if the practicum providers fail to comply with all applicable commission rules.

§150.53. Clinical Training Institution (CTI) Registration.

(a) To become a registered clinical training institution (CTI), an organization shall:

- (1) provide activities in an array of the KSA domains, including assessment and counseling;
 - (2) serve a predominantly substance-abusing population;
 - (3) be in good standing with applicable licensing and regulatory agencies;
 - (4) agree to comply with applicable rules in this chapter;
- and
- (5) submit a complete application.

(b) A complete application includes:

- (1) application form supplied by the commission; and
- (2) reading assignments and training activities including material in each KSA domain.

(c) The program shall receive the registration letter and training program number before training begins. Approval allows the organization to provide clinical training at any of its programs or sites with relevant services.

(d) The approval is valid for two years. The CTI shall reapply every two years by submitting a completed application form. The commission may mail a courtesy notice, but it is the program's responsibility to reapply at least 45 days before the expiration date.

(e) The CTI shall notify the commission in writing within 30 days of any changes from the information submitted on the initial or renewal application. This includes:

- (1) a change in the CTI coordinator;

and

- (2) a change in the organization's name or mailing address;

- (3) closure of the training program.

(f) The commission may withdraw approval if the CTI fails to comply with all applicable commission rules.

§150.54. Clinical Training Institution (CTI) Standards.

(a) The training program shall appoint a single training coordinator who is a qualified credentialed counselor (QCC). The training coordinator shall oversee all training activities and ensure compliance with commission requirements and rules.

(b) The clinical training institution (CTI) shall establish admission criteria. No applicant shall be admitted without:

- (1) documentation that the applicant is registered with the commission; and
- (2) a signed ethics agreement which is consistent with the LCDC Ethical Standards in §150.42 of this title (relating to Ethical Standards).

(c) The CTI shall establish the following level system to classify interns according to hours of supervised work experience:

- (1) Level I: 0-1,000 hours of work experience;
- (2) Level II: 1,001-2,000 hours of work experience;
- (3) Level III: 2,001-4,000 hours of work experience; and
- (4) Graduate Status: over 4,000 hours of work experience.

(d) The CTI shall accommodate interns at all levels of experience and shall not deny admission to an applicant based on the person's level of experience. The CTI shall designate each intern's level in writing and provide the intern with a copy of the documentation.

(e) All interns must be under the direct supervision of a QCC as described in §150.55 of this title (related to Direct Supervision of Interns).

(f) The CTI shall provide each Level I, II, and III intern with reading assignments and training activities for the supervised work experience that includes material in each KSA domain.

(g) The CTI shall use the commission's KSA evaluation tool to structure the intern's 4,000 hours of supervised work experience.

(1) The clinical supervisor and the intern shall set weekly objectives based on areas that targeted for improvement.

(2) The supervisor shall provide reading, computer, and/or video assignments that address areas needing improvement. The CTI shall allow the intern two hours per month to complete these assignments.

(3) The clinical supervisor shall monitor the intern's progress and provide verbal and written feedback during weekly supervision meetings.

(4) The intern shall complete a written KSA self-evaluation during the first 50 hours of work experience.

(5) The clinical supervisor and the intern shall complete and discuss a written KSA evaluation at the completion of each level of experience (after 1,000 hours, 2,000 hours, and 4,000 hours).

(h) The CTI shall not allow a Level I, II, or III intern to accrue more than 40 hours of work experience per week.

(i) A person who has completed the 4,000 hours of supervised work experience and is currently eligible to take or retake the examination is a graduate intern and may continue to provide chemical dependency counseling services at a registered clinical training institution during the five-year registration period.

(j) The CTI coordinator shall send the following documents directly to the commission and provide the intern with copies within ten working days from the date the intern completes the required 4,000 hours or leaves the agency:

(1) the Supervised Work Experience form signed by the CTI Coordinator; and

(2) a copy of the intern's job description showing job responsibilities within the KSAs.

(k) All activities counted towards the intern's supervised work experience shall be within the scope of chemical dependency counseling service as defined by the KSAs.

(l) The CTI shall not approve hours for which the intern fails to complete related activities and supervision assignments. Any failure to complete assignments shall be documented on the weekly supervision form.

(m) The CTI shall give each student the commission's Student CTI Assessment Form with instructions to complete the assessment and mail it directly to the commission's counselor licensure department.

(n) The CTI shall use all forms mandated by the commission.

(o) The CTI shall ensure that each clinical supervisor obtains three hours of continuing education in clinical supervision every two years.

(p) The CTI shall inform students of testing requirements and procedures, as well as testing schedules and information provided by the commission.

(q) The CTI shall ensure that interns designate their status by using "intern" or "CI" when signing client record entries.

(r) The CTI shall maintain the following documentation for four years:

(1) documentation of supervised work experience reading assignments and training activities;

(2) verification of current credentials of all training personnel;

(3) documentation of supervisor continuing education; and

(4) student files, which shall include:

(A) letter of registration;

(B) ethics agreement signed by the student;

(C) copies of KSA evaluations;

(D) documentation of all supervision activities;

(E) documentation of intern levels and accumulated

hours; and

(F) copy of the Supervised Work Experience Form.

(s) The CTI shall give the student a copy of all information contained in the intern file when the intern completes the required supervised work experience and/or leaves the agency.

(t) The CTI shall ensure that interns admitted to the program before November 1, 2001 apply for registration with the commission as

required by §150.21 of this title (relating to Requirements for Licensure by Examination)

§150.55. Direct Supervision of Interns.

(a) Direct supervision is oversight and direction of a counselor intern provided by a qualified credentialed counselor (QCC) that complies with the provisions in this section.

(b) If the intern has less than 2,000 hours of supervised work experience, the supervisor must be on site when the intern is providing services. If the intern has at least 2,000 hours of documented supervised work experience, the supervisor may be on site or immediately accessible by telephone.

(c) During an intern's first 1,000 hours of supervised work experience (Level I), the CTI coordinator or QCC shall:

(1) be on duty at the program site where the intern is working;

(2) observe and document the intern performing assigned activities at least once every two weeks (or 80 hours);

(3) provide and document one hour of face-to-face individual or group supervision each week; and

(4) sign off on all clinical assessments, treatment plans, and discharge summaries completed by the intern.

(d) During an intern's second 1,000 hours of supervised work experience (Level II), the CTI coordinator or designee shall:

(1) be on duty at the program site where the intern is working;

(2) observe and document the intern performing assigned activities at least once every month (160 hours);

(3) provide and document one hour of face-to-face individual or group supervision each week; and

(4) sign off on all clinical assessments, treatment plans, and discharge summaries completed by the intern.

(e) During an intern's last 2,000 hours of required supervised work experience (Level III), the CTI coordinator or designee shall:

(1) be available by phone while the intern is working;

(2) observe and document the intern performing assigned activities as determined necessary by the CTI coordinator;

(3) provide and document one hour of face-to-face individual or group supervision each week; and

(4) sign off on all clinical assessments, treatment plans, and discharge summaries completed by the intern.

(f) After an intern achieves graduate status, the CTI coordinator or designee shall:

(1) be available by phone while the graduate intern is working;

(2) provide and document one hours of face-to-face individual or group supervision each week; and

(3) sign off on all clinical assessments, treatment plans, and discharge summaries completed by the graduate intern.

(g) A supervisor's schedule must allow an average of two hours of supervision-related activity per week per intern.

§150.56. Intern Violations.

(a) The CTI shall investigate all allegations that an intern has violated the ethical standards described in §150.42 of this title (relating to Ethical Standards).

(b) If the allegation is substantiated, the CTI shall take appropriate action. Action may include denying some or all of the intern's supervised work experience hours.

(c) The CTI shall submit a written report to the commission within 48 hours of substantiating that an intern has:

- (1) abused, neglected, or exploited a service recipient;
- (2) committed an ethical violation that results in actual or potential harm to a service recipient;
- (3) engaged in illegal activity;
- (4) falsified or destroyed documentation; or
- (5) established a close personal or business relationship with a client outside the counseling relationship.

(d) The CTI shall deny all supervised work experience hours for an intern with a substantiated ethical violation described in subsection (c) of this section.

§150.61. Continuing Education Provider Registration.

(a) To become a registered Continuing Education Provider (CEP), an organization shall be in good standing with applicable licensing and regulatory authorities and submit:

- (1) a completed application form;
- (2) procedures for verifying and documenting attendance;
- (3) copy of the course description as described in §150.62 of this title (relating to Continuing Education Provider standards) for each course to be offered; and
- (4) the continuing education provider fee established in §150.14 of this title (relating to Fees).

(b) A provider shall not offer, advertise, or provide training for continuing education credit before receiving the letter of registration and CEP number from the commission.

(c) Each continuing education course shall be approved in writing by the commission before it is offered, advertised, or delivered.

(1) To obtain approval for additional courses, the CEP shall submit a copy of the course description described in §150.62 of this title. Approval may take up to 45 days.

(2) All substantial changes to an approved course shall be approved in writing by the commission.

(d) Registration allows the organization to provide approved courses at any appropriate location and time.

(e) The CEP shall not state or imply that a course is provided or sponsored by the commission.

(f) The registration is valid for two years. The CEP shall reapply every two years by submitting the application provided by the commission. The commission may mail a courtesy notice, but it is the CEP's responsibility to reapply at least 45 days before the expiration date.

(g) Approval for individual courses expires upon expiration of the CEP registration.

(h) The CEP shall notify the commission in writing within 30 days of any changes from the information submitted on the initial or renewal application. This includes:

- (1) a change in the CEP coordinator;
- (2) a change in the organization's name or address; or
- (3) closure of the continuing education program.

(i) The commission may withdraw approval if the CEP fails to comply with all applicable commission rules.

§150.62. Continuing Education Provider Standards.

(a) The CE hours shall consist only of material directly related to the skills and knowledge defined in the KSAs.

(b) The Continuing Education Provider (CEP) shall develop a description for each course that includes:

- (1) course objectives that reference the KSAs;
- (2) course content;
- (3) teaching methods to be used; and
- (4) number of continuing education hours.

(c) Courses shall be taught by qualified instructors with appropriate knowledge in the subject matter. Qualified instructors include:

- (1) qualified credentialed counselors;
- (2) individuals with at least a master's degree in the subject;
- (3) individuals who are licensed, registered, or certified in the subject area; and
- (4) individuals with documented education and experience generally recognized as providing expertise in the subject.

(d) Each credit hour of continuing education shall include at least 50 minutes of instruction time.

(e) The CEP shall implement procedures to verify attendance and ensure that no participant receives credit for time not actually spent attending the program.

(f) The CEP shall provide a certificate of attendance to each participant who completes the course that includes:

- (1) name of the CEP and the provider number;
- (2) course title;
- (3) KSA domains addressed in the course;
- (4) number of CE credit hours;
- (5) name and license number of the participant;
- (6) date and location of the program; and
- (7) signature of the CEP coordinator.

(g) Each course shall include a mechanism for evaluation of the program by participants. The CEP and instructor shall review the evaluation results and revise subsequent programs accordingly.

(h) The CEP shall keep the following records for each course at least four years:

- (1) letter of course approval from the commission;
- (2) course description;
- (3) handouts;
- (4) the pre- and post- tests;
- (5) participant sign in sheets;
- (6) participant evaluations; and
- (7) a copy of the certificate of attendance.

(i) Complaints regarding a CEP may be submitted to the Commission in writing. Instructions for submitting a complaint to the commission, including the commission's current address and toll-free number, shall be included on all course advertisements and in a program handout.

(j) The following standards apply to independent study or guided learning courses.

(1) The course must be faculty or instructor-guided and monitored and structured so students have access to faculty or instructors for questions and assistance in the completion of such course work.

(2) The course must include a pre-test and a post-test.

(3) Certificates of completion must indicate that the course was a distance learning experience.

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 31, 2001.

TRD-200104418

Karen Pettigrew

General Counsel

Texas Commission on Alcohol and Drug Abuse

Earliest possible date of adoption: September 16, 2001

For further information, please call: (512) 349-6607



ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 12. WEIGHTS AND MEASURES SUBCHAPTER D. METROLOGY

4 TAC §12.30

The Texas Department of Agriculture (the department) adopts amendments to Chapter 12 Weights and Measures, Subchapter D, §12.30, concerning fees charged for metrology services, without changes to the proposal published in the June 29, 2001, issue of the *Texas Register* (26 TexReg 4816). The amendments are adopted to increase fees charged for metrology services to recover costs of upgrading the department's metrology lab facility, replacing outdated equipment and providing more detailed documentation on certificates of calibration. The fees increased by this adoption have not been increased by the department since 1991. The National Voluntary Laboratory Accreditation Program (NVLAP) standards require metrology laboratories to meet stringent documentation, temperature, humidity, and vibration controls in order to become accredited. The current facility will not meet the required environmental standards. Increasing demand from companies requesting the department to provide ISO9000 compliance certification require an upgrade of the department's laboratory. Associated costs for the facility upgrade, replacing equipment, and providing this information will affect cost recovery as required by the Texas Agriculture Code, §12.0144. The increase in fees will allow the department to recover some of its cost associated with testing, in accordance with §12.0144. Further, the funds provided by the amendments will allow the department to provide Texas businesses and individuals with substantial marketing and audit benefits with a more detailed certificate containing information such as: state primary standards information, before and after calibration data, environmental conditions, procedure used, allowable tolerance, and measurement uncertainties. In addition, replacing outdated mechanical laboratory balances and upgrading lab facilities will improve measurement accuracy and efficiency. Another benefit for Texas businesses will be that the department will be able to provide services that will meet internationally recognized quality standards. In addition to increasing tolerance testing fees, the amendments also provide, at new subsection (c), that applies the increased fees to any testing performed after August 31, 2001.

No comments were received on the proposal

The amendments are adopted under the Texas Agriculture Code (the Code), §13.002 which provides the department with the authority to adopt rules necessary for the enforcement and administration of the department's Weights and Measures program; and § 13.115, which provides the department with the authority to set and charge a fee for the testing of a weight or measure by the department's metrology laboratory.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2001.

TRD-200104479

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: August 26, 2001

Proposal publication date: June 29, 2001

For further information, please call: (512) 463-4075



CHAPTER 24. TEXAS AGRICULTURAL FINANCE AUTHORITY: FARM AND RANCH FINANCE PROGRAM

4 TAC §§24.3, 24.9, 24.10, 24.12, 24.15

The Board of Directors of the Texas Agricultural Finance Authority (TAFA) of the Texas Department of Agriculture (the department) adopts amendments to §§24.3, 24.9, 24.10, 24.12 and 24.15, concerning the Farm and Ranch Finance Program, with changes to the proposal published in the June 22, 2001, issue of the *Texas Register* (26 TexReg 4578). Grammatical errors have been corrected in §24.3(10), concerning the definition of Guarantee amount, and in §24.10(a)(3), concerning the requirement for an applicant to provide the applicant's agricultural experience. Sections 24.9, 24.12 and 24.15 are adopted without changes and will not be republished.

The amendments are adopted in order to make the sections consistent with changes made to the Texas Agriculture Code, Chapters 58 and 59 by the enactment of Senate Bill 716 (SB 716), 77th Legislature (2001). Senate Bill 716 provides authority for TAFA to provide loan guarantees to lenders for the purchase of farm and ranch real estate. In addition, the amendments will generate a greater number of approved commitments for agricultural entities under the Farm and Ranch Finance Program. The amendments

to §24.3, concerning Definitions, add the definitions of "Commissioner" and "Guarantee Amount". The amendment to §24.9, concerning Filing Requirements and Consideration of Application, amends subsection (d) to provide for review and approval of applications by the commissioner if the lender had been approved through TAFE's Preferred Lender Program. The amendment to §24.10, concerning Contents of the Application, amends paragraph (a)(3) to eliminate the resume requirement and provide that the applicant must provide information regarding agricultural experience and deletes subsection (f), regarding the requirement for an earnest money contract. The amendment to §24.12, concerning General Terms and Conditions of Authority's Financial Commitment, amends subsection (c) to change the ratio of pledged collateral required and provides for TAFE to provide a lender a guarantee on the lender commitment in an amount not to exceed 15% of the lender's total commitment. The amendment to §24.15, concerning Default Proceedings amends subsections (g) to change the ratio for sharing of net proceeds by the lender and TAFE after a default occurs.

No comments were received on the proposal.

The amendments are adopted under the Texas Agriculture Code, §58.022 and §59.022, which provide the TAFE board with the authority to adopt rules and procedures for administration of the programs of TAFE, including the Farm and Ranch Finance Program.

§24.3. Definitions.

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

- (1) Act--Texas Agriculture Code, Chapter 59, Farm and Ranch Finance Program.
- (2) Applicant--Any person who is applying for assistance under the Act and this chapter.
- (3) Application--An application, including supporting documentation and schedules as required by the Authority for participation in this program.
- (4) Authority--The Texas Agricultural Finance Authority acting through its Board of Directors.
- (5) Borrower--An applicant approved for a loan by the Authority Board of Directors.
- (6) Commissioner--The Commissioner of the Texas Department of Agriculture.
- (7) Department--The Texas Department of Agriculture.
- (8) Financial statements--Financial statements submitted by the applicant, which shall include a balance sheet, income statement, cash flow statement and owners equity reconciliation, if applicable.
- (9) Fund--The Farm and Ranch Finance Program Fund.
- (10) Guarantee Amount--With respect to a loan made by a lender, a sum measured in terms of United States dollars that the Authority agrees to pay in the case of default by the borrower, not to exceed the percentage and amount as stated in the guaranty agreement.
- (11) Interest rate--The interest rate on a loan as determined and approved by the Authority and the lender on a case-by-case basis.
- (12) Lender--A lender shall be a state or nationally chartered commercial lending institution, savings and loan association, credit union, any member of the Farm Credit System in the state, or

any institution that the Authority determines is an experienced and sophisticated lender.

(13) Loan--A loan approved by the Authority in accordance with the requirements and criteria set forth in the Act and in this chapter.

(14) Program--The Farm and Ranch Finance Program.

(15) Staff--The staff of the Department performing work for the Authority.

(16) State--The State of Texas.

§24.10. Contents of the Application.

- (a) Required information.
 - (1) the applicant's name and address;
 - (2) the applicant's social security number;
 - (3) the applicant's agricultural experience;
 - (4) a completed personal history questionnaire;
 - (5) a current credit bureau report and/or two credit references;
 - (6) information and/or letters of commitment regarding other funding sources, if applicable;
 - (7) disclosure of any and all business affiliations of the applicant with members of the Authority, employees of the department and the staff which could present a conflict of interest; and
 - (8) any other information which the applicant, the lender, or the Authority decides may be useful in the determination of the applicant's eligibility and/or creditworthiness.
- (b) Financial statement. Financial statements, preferably based in accordance with generally accepted accounting principles, should be typed or written in ink, dated (no more than three months old), and signed by the applicant and spouse, if applicable. Printed forms of lending institutions will be accepted. A financial statement will be required from each person/entity who will become personally liable on the loan.
- (c) Business plan. A business plan for the applicant's proposed operation, including the land acquisition must provide assurance to the Authority that the applicant intends to use the land purchased primarily for farming or ranching. The plan must provide a comprehensive overview of the proposed operation and evidence of sufficient cash flow of the applicant for the requested financing and all other indebtedness. The assumptions on which the plan is based must be provided, including the interest rate used.
- (d) Tax returns. The applicant's complete tax returns including W-2 forms, if applicable, for the preceding three years.
- (e) Farm or ranch land appraisal. An appraisal of the farm or ranch land, as completed in compliance with Federal law, must be submitted which identifies the appraised market value of the farm or ranch land. The appraisal must be completed by an appraiser, selected by the lender, who is duly qualified to perform such task. A letter stating the appraiser's qualifications and experience must be submitted with the appraisal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2001.
TRD-200104477

Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: August 26, 2001
Proposal publication date: June 22, 2001
For further information, please call: (512) 463-4075

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**CHAPTER 30. TEXAS AGRICULTURAL
FINANCE AUTHORITY: YOUNG FARMER
LOAN GUARANTEE PROGRAM**
SUBCHAPTER A. GENERAL PROCEDURES

4 TAC §30.6

The Board of Directors of the Texas Agricultural Finance Authority (TAFA) of the Texas Department of Agriculture (the department) adopts an amendment to §30.6, concerning the Young Farmer Loan Guarantee Program, without changes to the proposal published in the June 22, 2001, issue of the *Texas Register* (26 TexReg 4579). The amendment is adopted in order to make the sections consistent with the adoption by TAFA of the Preferred Lender Program Rules and to provide a more efficient manner of processing applications by preferred lenders under the Young Farmer Loan Guarantee Program. The amendment to §30.6, concerning Board or Commissioner Review, is amended to provide for review and approval of applications by the commissioner if the lender has been approved through TAFA's Preferred Lender Program.

No comments were received on the proposal.

The amendment is adopted under the Texas Agriculture Code, §58.022 which provides the TAFA board with the authority to adopt rules and procedures for administration of the programs of TAFA, including the Young Farmer Loan Guarantee 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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Dolores Alvarado Hibbs
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For further information, please call: (512) 463-4075

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TITLE 13. CULTURAL RESOURCES
**PART 1. TEXAS STATE LIBRARY AND
ARCHIVES COMMISSION**
**CHAPTER 2. GENERAL POLICIES AND
PROCEDURES**
**SUBCHAPTER A. PRINCIPLES AND
PROCEDURES OF THE COMMISSION**

13 TAC §2.54

The Texas State Library and Archives Commission adopts an amendment to §2.54 relating to Bid Submission, Bid Opening, and Tabulation, without changes to the proposed text as published in the June 29, 2001, *Texas Register* (26 TexReg 4817). The amendment adopts by reference the General Services Commission rules for the Historically Underutilized Business (HUB) Program, and bring the commission into compliance with requirements of SB 178, 76th Legislature, 1999, and Government Code §2161.003.

The agency anticipates that this amendment may increase state contracting opportunities for minority- and woman-owned businesses in Texas, and will protect the interests of the state as required under law.

No comments were received regarding the adoption of the amendment.

The amended rule is adopted under the Government Code §441.006(a).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 31, 2001.

TRD-200104407
Edward Seidenberg
Assistant State Librarian
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Effective date: August 20, 2001
Proposal publication date: June 29, 2001
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CHAPTER 6. STATE RECORDS
SUBCHAPTER D. FEE SCHEDULES

13 TAC §6.121

The Texas State Library and Archives Commission adopts the repeal of §6.121, concerning fees for micrographics services provided by the Commission without change to the proposal published in the June 29, 2001, *Texas Register* (26 TexReg 4818).

The repeal will permit the Commission to adopt new rules relating to establishing fees for its micrographics services. The new rules will allow the Commission to respond in a more timely manner to changes in the costs of providing the services, thus fulfilling the intent of state law that all costs are recovered.

No comments were received regarding the proposed repeal.

The repeal is adopted under the Government Code, §441.168, which requires the Commission to establish fees to recover the costs of its micrographics services.

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 31, 2001.

TRD-200104400

Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Effective date: August 20, 2001
Proposal publication date: June 29, 2001
For further information, please call: (512) 463-5459



13 TAC §6.121

The Texas State Library and Archives Commission adopts new §6.121, concerning the development and approval of a fee schedule for the recovery of its costs in providing micrographics services with changes to the proposed text as published in the June 29, 2001 *Texas Register* (26 TexReg 4818). The deadline for submission of a proposed fee schedule to the Commission in subsection (a) of the section is changed from June 30 to July 31. The revised date more closely coincides with the Commission's customary meeting schedule.

State law requires that the Commission establish fees to recover the costs of its micrographics services, but state law does not require that the fees be adopted as administrative rules of the Commission. The new section will replace current §6.121, which the agency is repealing in a separate action. In contrast to the repealed section, which contains a detailed fee schedule, the new section establishes a procedure for the establishment and approval of a fee schedule each fiscal year by the Commission. Under this process the Commission can respond in a more timely and frequent manner to changes in the costs of providing micrographics services, thus fulfilling the intent of state law that all such costs are recovered.

No comments were received regarding the adoption of the section.

The new section is adopted under the Government Code, §441.168, which requires the Commission to establish fees to recover the cost of its micrographics services.

§6.121. *Micrographics Services Fee Schedule.*

(a) No later than July 31 of each fiscal year, the state records administrator, as defined by the Government Code, §441.180, shall present to the Commission for approval a schedule of proposed fees to recover the costs of providing micrographics services to state agencies and local governments during the following fiscal year.

(b) The schedule of proposed fees presented to the Commission under subsection (a) of this section must be sufficient to recover all direct and indirect costs of providing the services and shall also include costs for expanding micrographics services offered to local governments by the Commission as provided by the Government Code, §441.168.

(c) The state records administrator shall monitor the costs of providing micrographics services and present to the Commission for approval any needed amendments to fees to cover changes in costs during a fiscal year.

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 31, 2001.

TRD-200104401

Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Effective date: August 20, 2001
Proposal publication date: June 29, 2001
For further information, please call: (512) 463-5459



SUBCHAPTER E. RECORDS CENTER STORAGE SERVICES FEE SCHEDULE

13 TAC §6.122, §6.123

The Texas State Library and Archives Commission adopts the repeal of 13 TAC §6.122 and §6.123 concerning fees for records center storage services provided by the Commission without change to the proposal published in the June 29, 2001 *Texas Register* (26 TexReg 4819).

The repeal will permit the Commission to adopt new rules relating to establishing fees for its records storage services. The new rules will allow the Commission to respond in a more timely manner to changes in the costs of providing the services, thus fulfilling the intent of state law that all costs are recovered.

No comments were received regarding the proposed repeals.

The repeal is adopted under the Government Code, §441.017, which requires the Commission to establish fees to recover the costs of its records storage services.

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 31, 2001.

TRD-200104404

Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Effective date: August 20, 2001
Proposal publication date: June 29, 2001
For further information, please call: (512) 463-5459



13 TAC §6.122

The Texas State Library and Archives Commission adopts new 13 TAC §6.122 concerning the development and approval of a fee schedule for the recovery of its costs in providing records storage services with changes to the proposed text as published in the June 29, 2001 *Texas Register* (26 TexReg 4819). The deadline for submission of a proposed fee schedule to the Commission in subsection (a) of the section is changed from June 30 to July 31. The revised date more closely coincides with the Commission's customary meeting schedule.

State law requires that the Commission establish fees to recover the costs of its records storage services, but state law does not require that the fees be adopted as administrative rules of the Commission. The new section will replace current §§6.122-6.123, which the agency is repealing in a separate action. In contrast to the repealed sections, which contain a detailed fee schedule, the new section establishes a procedure for the establishment and approval of a fee schedule each fiscal year by

the Commission. Under this process the Commission can respond in a more timely and frequent manner to changes in the costs of providing records storage services, thus fulfilling the intent of state law that all such costs are recovered.

No comments were received regarding the adoption of the section.

The section is adopted under the Government Code, §441.017, which requires the Commission to establish fees to recover the cost of its micrographics services.

§6.122. Records Storage Services Fee Schedule.

(a) No later than July 31 of each fiscal year, the state records administrator, as defined by the Government Code, §441.180, shall present to the Commission for approval a schedule of proposed fees to recover the costs of providing records storage services to state agencies and local governments during the following fiscal year.

(b) The schedule of proposed fees presented to the Commission under Subsection (a) must be sufficient to recover all direct and indirect costs of providing the services.

(c) The state records administrator shall monitor the costs of providing records storage services and present to the Commission for approval any needed amendments to fees to cover changes in costs during a fiscal year.

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 31, 2001.

TRD-200104405

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Effective date: August 20, 2001

Proposal publication date: June 29, 2001

For further information, please call: (512) 463-5459



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 adopts the repeal of §201.2, concerning Agreements To Be in Writing, without changes to the proposed text as published in the June 29, 2001, issue of the *Texas Register* (26 TexReg 4821).

The Texas Funeral Service Commission repeals the section to get rid of an obsolete rule.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under §651.152 of the Texas Occupation Code, as amended by Section 18 of House Bill 3516, 76th Legislature which authorizes the Commission to issue such rules and

regulations as may be necessary to effect the intent of the provisions of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 3, 2001.

TRD-200104465

O.C. "Chet" Robbins

Executive Director

Texas Funeral Service Commission

Effective date: August 23, 2001

Proposal publication date: June 29, 2001

For further information, please call: (512) 936-2480



22 TAC §201.3

The Texas Funeral Service Commission adopts the repeal of §201.3, concerning Appearances; without changes to the proposed text as published in the June 29, 2001, issue of the *Texas Register* (26 TexReg 4820).

The Texas Funeral Service Commission repeals the section to get rid of an obsolete rule.

No comments were received regarding the adoption of the repeal.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 3, 2001.

TRD-200104466

O.C. "Chet" Robbins

Executive Director

Texas Funeral Service Commission

Effective date: August 23, 2001

Proposal publication date: June 29, 2001

For further information, please call: (512) 936-2480



22 TAC §201.4

The Texas Funeral Service Commission adopts the repeal of §201.4, concerning Motions for Consideration; Exceptions without changes to the proposed text as published in the June 29, 2001, issue of the *Texas Register* (26 TexReg 4821).

The Texas Funeral Service Commission repeals the section to get rid of obsolete rules.

No comments received.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200104457

O.C. "Chet" Robbins

Executive Director

Texas Funeral Service Commission

Effective date: August 22, 2001

Proposal publication date: June 29, 2001

For further information, please call: (512) 936-2474



22 TAC §201.6

The Texas Funeral Service Commission adopts the repeal of §201.6, Place and Nature of Hearings without changes to the proposed text as published in the June 29, 2001, issue of the *Texas Register* (26 TexReg 4821).

The Texas Funeral Service Commission repeals the section to get rid of obsolete rules.

No comments received.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200104456

O.C. "Chet" Robbins

Executive Director

Texas Funeral Service Commission

Effective date: August 22, 2001

Proposal publication date: June 29, 2001

For further information, please call: (512) 936-2474



22 TAC §201.7

The Texas Funeral Service Commission adopts an amendment to §201.7, concerning Allegations and Investigations, without changes to the proposed text as published in the June 29, 2001, issue of the *Texas Register*(26 TexReg 4821).

The Texas Funeral Service Commission adopting an amendment to delete the language "must be in writing" and add the language "should". It is also to change the language from "and" to "and/or". The language "/or" is being added. This is a grammatical change. The language is being changed/written to make it easier for the consumer to respond.

The amendment brings the rule into agreement with statute.

Comment received: On line 5 of (b) appears the phrase..."other material pertinent to an investigation...." Service Corporation International (SCI) would like to suggest that the term pertinent should be changed to relevant. Relevancy is a term that has

been legally defined and is more easily understood. The term pertinent, on the other hand, is more likely to be subject to vague and indefinite construction and interpretation. As such, it is believed that both the Commission and licensees would be better served by the substitution of relevant for pertinent in the Commission's proposal.

With regards to the comment by Service Corporation International (SCI), the Commission believes the words pertinent and relevant have the same general meaning, and common usage. Pertinent is a synonym of relevant and viceversa. Relevancy is equally subjective and although SCI believes it carries a more legal interpretation, the word pertinent is understood in common usage and vernacular. The language of the rule stands as already submitted for adoption.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 3, 2001.

TRD-200104463

O.C. "Chet" Robbins

Executive Director

Texas Funeral Service Commission

Effective date: August 23, 2001

Proposal publication date: June 29, 2001

For further information, please call: (512) 936-2480



22 TAC §201.8

The Texas Funeral Service Commission adopts an amendment to §201.8, concerning Procedures for the Petition for Adoption of Rules, without changes to the proposed text as published in the June 29, 2001, issue of the *Texas Register*(26 TexReg 4822).

The Texas Funeral Service Commission adopting an amendment to change some of the language. The wording has changed although the meanings are equivalent. Delete the words "commission chairman" and add "presiding officer". Delete the words "task a standing committee" and add "assign the task to staff". Delete the words "tasked committee" and add "appropriate group". This is a grammatical change. The language is being changed/written to make it easier for the consumer to respond.

The amendment brings the rule into agreement with statute.

No comments were received regarding adoption of the amendment.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 3, 2001.

TRD-200104468

O.C. "Chet" Robbins

Executive Director

Texas Funeral Service Commission

Effective date: August 23, 2001

Proposal publication date: June 29, 2001

For further information, please call: (512) 936-2480



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 34. STATE FIRE MARSHAL SUBCHAPTER E. FIRE EXTINGUISHER RULES

28 TAC §§34.501, 34.506 - 34.509, 34.514, 34.515, 34.517, 34.523

The Commissioner of Insurance adopts amendments to §§34.501, 34.506-34.509, 34.514, 34.515, 34.517 and 34.523 concerning fire extinguisher rules and license fees. The amended sections are adopted without changes to the proposed text as published in the June 29, 2001, issue of the *Texas Register* (26 TexReg 4826) and will not be republished.

Amendments to §§34.507, 34.514 and 34.515 are necessary to reflect the most recent industry standards and to improve the processing of applications. Amendments to §§34.501, 34.506-34.509, 34.515, 34.517, and 34.523 are necessary, in part, to implement legislation enacted by the 75th Legislature in SB 371. SB 371 transferred the operations of the state fire marshal and all of the powers, duties, rights, obligations, contracts, records, personnel, property, funds, and unspent appropriations of the Texas Commission on Fire Protection with respect to the administration of Article 5.43-1 of the Insurance Code from the Texas Commission on Fire Protection to the Texas Department of Insurance, effective September 1, 1997. Consequently, the Texas Department of Insurance, through the state fire marshal, now regulates portable fire extinguishers and fixed fire extinguisher systems. Amendments to §34.507 are necessary to replace some of the currently adopted standards and recommendations of the National Fire Protection Association (NFPA) with the most recent versions of those standards and recommendations, deleting some standards that are outdated or incorporated into other standards. The use of the most recent NFPA standards and recommendations is necessary because, as the technology for fire extinguishers develops, the minimum industry safety standards for their use, installation and maintenance also change. Application of the most recent standards and recommendations results in better protection of the public through the use of these fire extinguishing devices. Additionally, other units of state and local government with jurisdiction over fire safety in Texas are adopting these standards. The uniformity of standards enables both the fire extinguisher industry and the public to know and utilize consistent standards that are applicable in all jurisdictions. The amendment to §34.515 regarding non-refundable fees is necessary to promote efficiency in the collection and servicing of fees by the department and to make the rule consistent with statutory requirements and with other rules of the department.

The amendments to §34.514 requiring that all applications be completed within 180 days from receipt by the department limits the time non-refundable fees can be used for a specific application. If the applicant has not provided all the information required by the application within 180 days, a new application, including fees, must be submitted. In addition, the National Institute for the Certification in Engineering Technologies (NICET) qualification required for an extinguisher planning (Type PL) license, is amended in §34.514 to include successful completion of the examination requirements for certification at Level III for Special Hazard Suppression Systems. NICET has discontinued the Special Hazard Systems Layout certification program and substituted a Special Hazard Suppression Systems certification program. An additional amendment to §34.514, which deletes the provision that permits a license to be renewed if the applicant is not currently employed by a registered firm, will result in consistency with the requirements of Article 5.43-1, §5(c) that individuals holding a license be an employee, agent, or servant of a registered firm.

Provisions in §§34.501, 34.506-34.509, 34.515, 34.517, and 34.523 referring to the Texas Commission on Fire Protection are amended to reflect the transfer of authority from that commission to the commissioner of insurance. Section 34.507, which adopts by reference minimum standards and recommendations of the National Fire Protection Association (NFPA), is amended to replace some of the currently adopted standards and recommendations with the most recent versions of those standards and recommendations, deleting some standards that are outdated or incorporated into other standards. These amendments update the standards that clarify existing requirements, identify existing current maintenance practices, expand existing requirements to apply to current state-of-the-art equipment, and add maintenance procedures to verify that the required maintenance work was performed, thus ensuring a greater level of safety to the public that rely on the performance of these devices and systems. The updated standards reflect the changes made by the NFPA by adding the definition, classification, use and maintenance of class K rated fire extinguishers, adding procedures to install a verification collar when performing maintenance on fire extinguishers that require an internal examination or recharge, adding procedures regarding the marking of fire extinguishers that are condemned, adding minimum criteria for the type and calibration of pressure gauges used to hydrostatically test fire extinguishers, and requiring fire extinguisher firms to maintain a record of all fire extinguishers hydrostatically tested. The department has noted certain exceptions and substitutions relating to cooking appliances that clarify application of the standard to existing department rules and that provide alternatives to comply with the standards based on the greater benefit to the public. The amendment to §34.515 adds a provision for non-refundable fees except where overpayment results from mistakes of law or fact. The amendments to §34.514 require that all applications be completed within 180 days from receipt by the department and that the NICET qualification required for a Type PL license include successful completion of the examination requirements for certification at Level III for Special Hazard Suppression Systems. Amended §34.514 deletes the provision that permits a license to be renewed if the applicant is not currently employed by a registered firm.

No comments were received.

The amended sections are adopted pursuant to the Insurance Code Article 5.43-1 and §36.001. Article 5.43-1, §8 provides in

pertinent part that the department may formulate rules as may be necessary for the protection and preservation of life and property in controlling the registration, licensing and examination of firms and individuals engaged in the business of installing or servicing portable fire extinguishers or planning, certifying, installing, or servicing fixed fire extinguisher systems. Section 8 also provides that the department shall formulate rules controlling the requirements for the installing or servicing of portable fire extinguishers and the planning, certifying, installing or servicing of fixed fire extinguisher systems. Section 36.001 authorizes the Commissioner of Insurance to adopt rules for the conduct and execution of the duties and functions of the Texas Department of Insurance as authorized by statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2001.

TRD-200104480

Lynda Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: August 26, 2001

Proposal publication date: June 29, 2001

For further information, please call: (512) 463-6327

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 50. §1915(c) CONSOLIDATED WAIVER PROGRAM

40 TAC §§50.1, 50.2, 50.4, 50.6, 50.8, 50.10, 50.12, 50.14, 50.16, 50.18, 50.20, 50.22, 50.24, 50.26, 50.28, 50.30, 50.32, 50.34, 50.36, 50.38, 50.40, 50.42, 50.44, 50.46, 50.48

The Texas Department of Human Services (DHS) adopts new §§50.1, 50.6, 50.8, 50.10, 50.12, 50.14, 50.18, 50.20, 50.22, 50.28, 50.34, 50.36, 50.38, 50.40, 50.42, 50.44, and 50.48, without changes to the proposed text published in the April 20, 2001, issue of the *Texas Register* (26 TexReg 2965). These sections will not be republished. New §§50.2, 50.4, 50.16, 50.24, 50.26, 50.30, 50.32, and 50.46 are adopted with changes to the proposed text published in the April 20, 2001, issue of the *Texas Register* (26 TexReg 2965). Sections 50.2, 50.30, and 50.46 contain technical changes that clarify the meaning of the TDMHMR waivers. Numerous meetings were held with advocates, providers, and other stakeholders to gain input for these rules.

Justification for the new sections is to establish rules for the Consolidated Waiver Program (CWP), a §1915(c) waiver pilot program that will provide home and community-based services to individuals who meet the criteria for institutional care. The pilot was authorized by Texas Government Code, §531.0219, for the purpose of testing the feasibility of combining five of the state's §1915(c) Medicaid waiver programs: Community Based Alternatives (CBA), Community Living Assistance and Support Services

(CLASS), Deaf Blind Multiple Disabilities (DBMD), Medically Dependent Children Program (MDCP), and Home and Community Based Services (HCS). The pilot will be located in Bexar County, an area where CBA, CLASS, DBMD, HCS, and MDCP are currently operating. These rules will not repeal or replace any existing §1915(c) waiver rules statewide or in the pilot area for individuals not participating in the pilot.

DHS received comments regarding the establishment of the CWP. A summary of the comments and the department's responses follow. Several of the parties had similar concerns, so where appropriate, questions and concerns are combined and one response is given. Comments were received during the comment period from the Texas Association for Home Care; CALAB, Inc.; United Cerebral Palsy of Texas; the Texas Council for Developmental Disabilities; the ARC of Texas Rehabilitation Commission; Advocacy, Inc.; the Texas Council of Community Mental Health and Mental Retardation (MHMR) Centers, Inc.; and the Private Providers Association of Texas.

The following comments pertain to §50.2. Definitions.

Comment: We want to be certain that the cutoff age is consistent with the Medically Dependent Children Program (MDCP) so that children transitioning from that waiver to the CWP could do so without interruption of services. The case manager and CWP provider must plan and begin services to effect a smooth transition between waiver programs.

Response: An individual cannot transfer from MDCP to CWP. The legislation specifically excludes individuals already receiving waiver services. Since there is no age requirement in CWP, there is no transitioning to another waiver; all populations are served in one program, that is part of the reason for having the pilot.

Comment: The advance notice guidelines should mirror those of other waivers. Do participants in the existing waivers receive more than 10 days notice prior to any reduction or termination in services?

Response: This rule is consistent with other waivers administered by DHS.

Comment: If a person becomes an applicant when he is "next in line" to fill a slot in a waiver program, which waiver program is being referred to? If a person is awaiting Community Based Alternatives (CBA) services, does the person become an applicant when he is "next in line" for the traditional CBA program or the CWP?

Response: This definition relates to the CWP only. We will add "CWP" before waiver in this definition for clarity.

Comment: We feel the definition for case management is not comprehensive enough. Please consider the following as an alternative. "Assistance in accessing medical, social, educational, and other appropriate services that will help an individual achieve a quality of life and community participation acceptable to the individual (and Legally Authorized Representative (LAR) on the individual's behalf)."

Response: DHS agrees and will revise the definition using the suggested language.

Comment: The definition of Interdisciplinary Team (IDT) is a good, well developed definition.

Response: DHS agrees. No changes are indicated.

Comment: As an alternate definition for Individual Service Plan (ISP), we suggest the following; "A consumer-directed plan of

care developed with the assistance of the IDT to prevent institutionalization and facilitate an individual's ability to fully participate in the community, taking into account the individual's preference."

Response: DHS agrees and will revise the definition using the suggested language.

Comment: In the Definition of Legal Confinement, we are uncomfortable with the term, "normal" in the second line and would prefer that "current" or "usual" be used in its place.

Response: DHS agrees and will replace normal with usual.

Comment: In the definition of Legal Confinement, we believe that settings for legal confinement should also include nursing facilities.

Response: The definition as it is written could include nursing facilities. The examples listed are not meant to be all-inclusive, as indicated by the phrase "include but are not limited to," therefore the change is not necessary.

Comment: In the definition of Respite, we suggest that you delete the phrase, "during times when the participant's primary caregiver would normally provide uncompensated care." We are concerned that this language could be unfairly used against working parents.

Response: DHS will revise the definition deleting the referenced phrase using the Health Care Financing Administration (HCFA) waiver preprint definition instead.

Comment: We suggest adding the following definitions and/or using this language to replace existing definitions when appropriate.

Family-Directed Planning: A process that empowers the family of a minor to direct the development of a plan of supports and services which meet the child and family's desired goals. The process: A. identifies existing supports and services necessary to achieve the child and family's goals; B. identifies natural supports available to the child and family and negotiates needed services system supports; C. occurs with the support of a group of people chosen by the child and family; D. is supportive of the self-determination of the child; and E. mirrors the way in which families without children with disabilities make plans.

Person-Directed Planning: A process that empowers the individual (and LAR on the individual's behalf) to direct the development of a plan of supports and services that meet the individual's goals. The process: A. identifies existing supports and services necessary to achieve the individual's goals; B. identifies natural supports available to the individual and negotiates needed services system supports; C. occurs with the support of a group of people chosen by the individual (and the LAR on the individual's behalf); D. mirrors the way in which people without disabilities make plans.

Permanency Planning: A philosophy and planning process that focuses on the outcome of family support by facilitating a permanent living arrangement with the primary feature of an enduring and nurturing parental relationship.

Response: DHS agrees and will add definitions for Family-Directed Planning, Person-Directed Planning, and Permanency Planning.

The following comments pertain to §50.4, Participant Eligibility Criteria.

Comment: Rather than limit the different service categories to specified amounts we recommend that the overall expenses not exceed the individual cap in order that maximum flexibility is given to consumers.

Response: To establish a cost-effective alternative to institutional care, we believe these caps are necessary. However, DHS reserves the right to make exceptions and will consider individual cases on an individual basis.

Comment: We want to be certain that home modification funds are not used by participating CWP facilities to meet their licensure requirements; therefore, we recommend rule language that prohibits facilities from using a CWP consumer's budget for home modifications.

Response: Home modifications are excluded from Assisted Living/Residential Care (AL/RC) services in the waiver and cannot be authorized for a participant residing in AL/RC. The case manager will not authorize these services together, so facilities will not have the option to charge these items to the participant's ISP.

Comment: Please replace existing rule language with: "Enrollment into this waiver program is limited to the number of participants approved by the Health Care Financing Administration (HCFA) and funded by the State of Texas. For the initial implementation of the CWP in 2001, slot allocation is projected to be 200. Less than 200 individuals will inhibit the drawing of valid conclusions and thus 200 individuals is the minimum needed."

Response: Slot allocation was added at the request of stakeholders last fall. We will add language to clarify that enrollment is limited to 200 for the pilot only and if the allocation changes, the ratios will remain the same.

Comment: What happens if a slot comes open in a "traditional" waiver before a CWP slot? Does the person have to give up their place in line for the CWP if they accept a CBA slot?

Response: A person accepting a CBA slot would give up their place in line for the CWP. HB 2148 directs the pilot to "serve individuals not currently receiving services under a Section 1915(c) waiver program."

Comment: We encourage the inclusion of two additional individuals from the Deaf Blind Multiple Disabilities (DBMD) waiver to have a better representation of this population within the CWP. We recommend that these slots be deducted from those allocated the Home and Community-based Services (HCS) since the existing two slots would come from Community Living Assistance and Support Services (CLASS).

Response: The interest list for DBMD as well as the relatively small population of that waiver did not warrant more than two slots. The funding has already been allocated this biennium; however, we may evaluate the situation again prior to the next biennium.

Comment: Please replace existing language in the rule with: "The percentage of cost ceiling for Yearly Consolidated Waiver services may vary according to the amount of Comprehensive Care Program (CCP) cost contributed to the child's Individual Plan of Care (IPC), but should not exceed the estimated annual cost in §50.4(a)(5)(A) and (B)."

Response: This cost ceiling is for children from the MDCP interest list because children who are medically needy have high acute care costs. Since they receive a large amount of services from CCP, we must have this cost ceiling to maintain cost effectiveness for the overall waiver. Even at 50% of the adults' cost

ceiling, this is substantially higher than the cost ceilings currently allowed in MDCP.

Comment: Home and Community Support Service Agencies (HCSSAs) have traditionally performed the pre-admission assessment under CBA and CLASS, as initial experience showed that DHS caseworkers were not qualified to perform them.

Response: HCSSAs will administer the pre-admission assessment. DHS will delete the words "by DHS" for clarity.

The following comment pertains to §50.16. Individual Service Plan.

Comment: We would recommend the inclusion of the term, "consumer-directed" or "person-directed" before "service plan."

Response: DHS agrees and will change the wording to person-directed.

The following comment pertains to Section 50.18. Right to Appeal.

Comment: We recommend that advance notices related to reduced or denied services be issued in accessible formats.

Response: We provide notice verbally and in writing. We will consider other options if specific requests are made.

The following comments pertain to §50.22. Service Array for Home and Community Support Services Providers.

Comment: We believe it would be more appropriate to remove transportation services (under (7)) and dental services (under (18)) from under §50.22, since these services are provided directly through the Medicaid program. Persons in these waivers are automatically eligible for Medicaid state plan services.

Response: The definition for transportation and dental services in the waiver is different from the definition in the state plan. Because the scope of services for these items is broader than the state plan allows, they must be included as a waiver service.

Comment: What is the definition of "child support services?" This is not defined in the rule. Are HCSSAs going to be expected to collect child support? What about support services for adults?

Response: Child support services as defined in the waiver is a reimbursement of the cost of child care that is determined to be disability-related, and is limited to children under the age of 21. This is similar to part of the adjunct support service provided in the MDCP waiver.

Comment: What is the definition of "intervenor services?" This is not defined in the rule.

Response: Intervenor is a service currently utilized in the DBMD waiver. All the services will have detailed definitions in the contract enrollment packet.

The following comments pertain to §50.24. General Contracting.

Comment: Section 50.24(a)(2) should be reworded to read: "deliver CWP services required to be licensed through the licensed home health category of HCSSA licensure and may deliver other support services outside the HCSSA license." Many of the services listed under §50.22 are not required to be delivered through a licensed HCSSA.

Response: DHS agrees that this could be worded differently and will change the wording to "Must have a HCSSA license with the licensed home health category of licensure and deliver CWP

services as required by licensure and by contract as indicated in §50.22 of this title (relating to Service Array for Home and Community Support Services Providers)."

Comment: Adult Foster Care (AFC) should also have the option of HCS standards.

Response: HCS foster care providers are welcome to apply for a CWP AFC contract and one will be granted if they meet the criteria. This is an idea we can consider in the future.

Comment: We recommend adding language that specifies that when a child is placed in a facility for respite, the preference of the parent or LAR must be taken into account. In addition, it should state that the facility must demonstrate proficiency in caring for children, including current or recent respite provisions for children, staff training, and available equipment to meet the needs of children.

Response: Since the participant and/or the participant's parent or representative must agree to the ISP, we do not feel this is necessary. No one is going to place a child in respite out of the child's natural home without approval from the IDT, which includes the family and participant's representative. The additional language will be considered and implemented into policy regarding respite for children, but a child's placement will be determined by the parents, as long as it is with a contracted provider, and considers the child's needs and preferences.

Comment: We recommend allowing Family Surrogate Service (FSS) providers to meet standards of Child Protective Services (CPS) and/or HCS.

Response: There was stakeholder input in the meetings last fall against allowing children in existing HCS homes, stating that Protective and Regulatory Services (PRS) would be the choice for certifying homes for children since that is their area of expertise. This service was developed based on stakeholder input after much research and negotiation with PRS. Existing HCS providers have the option to apply for contracts as FSS providers, and if they meet the requirements, they will be given a contract to provide CWP FSS services.

Comment: Please add to the description of family surrogate services "community integration" before "the" and after "health" in the second line so that the statement reads: "...assures the community integration, health, safety, comfort, and welfare of the individual." A critical element of §1915(c) waivers is community integration.

Response: DHS agrees. "Community integration" will be added to the service description.

Comment: What services are included in the term "independent advocacy?" Unlike other services outlined in this section they refer back to existing definitions and programs, this term has no specific definition. It is unclear what role the "independent advocate" will have in dealing with CWP service providers.

Response: The extent of the role of this provider is to be determined in part by the participant as part of the person-directed philosophy. This provider may be part of the IDT, and may represent the participant at meetings or appeals at the participant's discretion.

The following comment pertains to §50.30(1). What category of license does the HCSSA have to hold in order to provide 24-hour residential habilitation?

Response: HCSSAs contracted to deliver CWP services must have the licensed home health category of licensure as indicated in §50.30(2) and in §50.24(a)(2) and (3).

The following comments pertain to §50.32. Maintenance of Interest Lists.

Comment: We believe there is a need to more clearly define how slots will be offered to individuals when they become eligible for the CWP. The first sentence under maintenance of interest lists states that "The Consolidated Waiver Program (CWP) staff (will) maintain a list of individuals, identified from existing §1915(c) waiver interest lists, who have expressed an interest in receiving §1915(c) services." It does not indicate who is responsible for determining whether someone on an existing §1915(c) waiting list is interested in receiving CWP services. As written, either the CWP staff or the §1915(c) waiver staff could perform this task. We recommend that you clearly identify which staff will perform this "first step" function. In addition, section §50.32(c) indicates that "The CWP staff remove an individual's name from the interest list only if it is documented that" Does this refer to the §1915(c) waiver program interest list or the CWP interest list? Again, this needs to be clarified. Moreover, the language in section §50.32(c) raises the issue of whether individuals lose their spot on an existing §1915(c) interest list if they enroll in the CWP pilot. We understood that someone could be in CWP and still keep his or her spot on the originating §1915(c) waiver program interest list. This protects CWP participants in case the pilot results indicate it is not advisable to consolidate any or all of the waivers. We believe that individuals must have the option of either CWP or the §1915(c) waiver program--when it finally becomes available. It is important to include language to this effect in the rules.

Response: DHS agrees this could be clarified and will add language to ensure the correct interpretation. The CWP case manager has primary responsibility for contacting the individual and ensuring they get enough information to make an informed choice. No one is removed from any §1915(c) interest list because they choose to participate or not participate in the CWP. All participants retain their place on whatever list they came from and have the option of choosing either CWP or the original waiver when their name comes up on the original waiver list after having chosen CWP services. However, they may not have the option to "transfer back" if they turn down the original waiver service, as that would require new bypass rules for most of the waivers.

Comment: We recommend replacing "representative" with "legally authorized representative (LAR)" in this section.

Response: DHS disagrees. Medicaid regulations 42 CFR Sections 435.907(a), 435.908, and 431.206(b)(3) do not use the term legally authorized representative when describing persons who can act for a person applying for assistance, in the application process, in a redetermination of eligibility and in a fair hearing. These regulations generally allow a person acting responsibly for the applicant or a person designated by the applicant or recipient to assist or represent the individual. Requiring each individual to designate a Legally Authorized Representative (LAR) could postpone eligibility for services and delivery of services. It can be costly and time consuming to establish guardianships. There is often no LAR for adults who are elderly or have disabilities, but there is a family member or friend chosen by the participant to assist them with decisions regarding care and service planning. We will coordinate with the child's LAR, if there is one,

just as we will coordinate with any participant's legal guardian if they have one.

The following comments were received from Texas Council of Community MHMR centers and the Private Providers Association of Texas:

Comment: The pilot establishes a point of entry to services that differs from the point of entry to the Mental Retardation Services system. Please add to or amend section 50.32, Maintenance of Interest Lists, with the following:

"In identifying the interest list for the CWP the DHS will develop, with the Texas Department of Mental Health and Mental Retardation and its local mental retardation authority (MRA) in Bexar County, the procedure by which both agencies will jointly identify and inform individuals awaiting Home and Community - Based Services of their choice between this waiver and the CWP. This procedure will include the method for providing each person and their family with clear and comprehensive information about the CWP, how it differs from the Home and Community - Based Services waiver, and the process by which the individual and their family may return to the Home and Community - Based Services waiver should they choose the CWP and desire to change in the future."

Response: This process is already underway and we do not believe it needs to be in rule form. However, we are developing a Memorandum of Understanding (MOU) with the Texas Department of Mental Health and Mental Retardation (MHMR) to address several issues and this may be included in that memorandum as well. We agree that the MRA should be involved in informing consumers so they can make an educated choice. Information will be made available to all appropriate parties.

Comment: Persons with mental retardation and their families who volunteer to be in the pilot should not lose access to the outcomes that come from Person-Directed Planning, access to all the resources or services available to meet service needs (e.g., those available at the local mental retardation authority and not included within the waiver), and to the value base in today's mental retardation services. Please incorporate person-directed and family-directed planning, along with permanency planning for children and "aging in place" for adults to delay or prevent institutionalization. Please add these terms to section 50.2, Definitions. We strongly recommend that DHS use the definitions for person-directed and family-directed planning that have been adopted in MHMR rules.

Response: DHS agrees that the philosophies of person-directed planning, family-directed planning, and permanency planning are part of the CWP. Definitions for these will be added to the rules.

Comment: Persons with mental retardation and their families need to receive a comprehensive explanation of the pros and cons of enrollment in the CWP, including differences and similarities between the HCS Program and the CWP. Additional language suggested under the first comment can address this point.

Response: DHS agrees with the procedure, but disagrees with adding it to the rules. Comprehensive information will be made available about all of the waivers, not just the HCS waiver, as prospective participants' names will come from five interest lists of existing waivers.

Comment: A consumer enrolled in the pilot should be able to return to the mental retardation services system and enroll in the HCS waiver without penalty (meaning, not losing their place

on the interest list for HCS services). Please add this concept to section 50.32, Maintenance of Interest Lists. Additional language suggested under the first comment can address this point.

Response: Persons who elect to receive CWP services will not lose their place on the respective interest list from which they came. This will be clarified in the rules. Each waiver has its own rules about interest list maintenance and conditions for bypassing the list if any exist. The CWP does not affect the rules of any existing waiver program and cannot override any of the other waivers' existing rules.

Comment: A consumer and their family should receive quality information about options regarding assisted living settings; including person-directed planning as part of CWP service plan development will assist in accomplishing this.

Response: DHS agrees. The case manager has primary responsibility for informing the person about all options in the waiver. Personal choice for living arrangements lies with the participant.

Comment: DHS should assess Home and Community Support Services Agency (HCSSA) standards compared to HCS principles for certification in order to determine if variances in standards and survey process may inadvertently diminish the quality of services to persons with mental retardation enrolled in the pilot. To the best of our knowledge, this comparison has not occurred. In light of the proposed rules, we suggest that this comparison include DHS licensing standards for assisted living facilities, the CBA Manual as it addresses adult foster care settings, and Texas Department of Protective and Regulatory Services minimum standards for Independent Foster Family Homes as they address foster care children. We continue to believe this comparison is essential to comprehensive planning for this waiver and its' services to persons with mental retardation. The comparison will benefit consumers, providers, both DHS and MHMR, and the Health and Human Services Commission (HHSC), in understanding the impact of the pilot on mental retardation services and the providers who deliver those services.

Response: DHS will take this under consideration. This pilot will provide the opportunity to see how different populations are served by one provider base, one set of rates, and one set of rules. The differences in licensure and standards that currently exist may become apparent and require more in depth study, or the differences may not be as noticeable given one set of providers following the same rules while serving multiple populations.

Comment: Because the assessment of this pilot will be important to future policy and service system design, we ask that the three associations comprising the Public/Private Sector Coalition be included in an advisory capacity to DHS and HHSC. Please add an additional section to these rules that provides for the appointment of an oversight committee that includes within its membership representatives of the MHMR, it's local mental retardation authority in Bexar County, and the three associations of the Public/Private Sector Coalition.

Response: HHSC has contracted with an independent party to do the evaluation for the CWP, which will include provider satisfaction surveys, consumer satisfaction surveys, and data compilation and evaluation. Consumers and providers have been involved in the development of the evaluation tools. We will pass along your suggestion to HHSC as they are coordinating the independent evaluation.

Comment: In addition, please amend the rules by adding a section that specifies the qualification, role and responsibilities, and case load expectation of the DHS case managers working with individuals and their families enrolling in this pilot. These staff will be essential to the development of service plans that successfully address each individual's needs. Because this information was not published for comment, we strongly support DHS asking for stakeholder review before adoption.

Response: This information was shared with stakeholders in meetings last fall. The six Human Service Specialist positions are newly created positions with responsibilities and requirements derived from the populations they serve. These six positions will provide the administrative case management for the 200 individuals served in the CWP.

Comment: Please clarify in these rules (or in the preamble to the adopted rules) how the Home and Community Support Services providers, emergency response services providers, adult foster care providers, assisted living/residential care providers, home-delivered meals providers, out-of-home respite providers, family surrogate services providers, independent advocacy providers, and 24-hour residential habilitation providers - all seemingly separate contractors with DHS according to the rules - will be used in the development of a service plan by an interdisciplinary team (as defined in the rules).

Response: DHS will provide this information in a policy manual, which will be available to potential contractors. The definition of the interdisciplinary team allows for inclusion of all providers and anyone the participant desires. The intent and the purpose of the pilot and the eligibility and contracting rules that are needed are in these rules, but the actual procedures should not be in rule form as they will change as we gain more knowledge in combining populations in one program. This is a pilot that requires some flexibility to meet the goal of testing the feasibility of serving a broad population with one set of providers and rates within a single program.

In addition, DHS received the following questions from CALAB, INC.

Comment: Will participants have unlimited medications like HCS consumers? If not, what limitations will be in place?

Response: Yes, CWP participants will have unlimited prescriptions as in the other §1915(c) waivers.

Comment: Referring to Section 50.4, what is the approval/payment process for adaptive aids and minor home modifications?

Response: Adaptive aids and minor home modifications, when indicated as needed on the ISP, are authorized on Service Authorization System (SAS) by the case manager and the provider's bills via Claims Management Systems (CMS).

Comment: The co-pay described sounds like the Intermediate Care Facility (ICF) applied income payments. Will co-pays be reviewed every six months with adjustments and can immediate adjustments occur such as if a participant is terminated from employment or when employment is gained?

Response: Co-pay is required for CWP participants who are residing in residential services. It is the amount of income remaining after personal needs and room and board payments are deducted. Co-pay will be reviewed as needed, and changes and adjustments can occur at any time.

Comment: Under §50.20, there is not a listed cutoff date for submitting claims. What cutoff date will be in place for claims submission? And will there be any provision for exceptional circumstances with regard to late billing?

Response: All claims are paid through CMS and all claims filing rules apply pursuant to §49.9. There are no provisions for exceptional circumstances.

Comment: Where are the definitions of the services listed under §50.22? For example, does "nursing" mean a Registered Nurse (RN) or Licensed Vocational Nurse (LVN) or both, depending on the actual nursing service being provided, and so on.

Response: Definitions of services will be in the provider manual, which will be distributed with contract application packets. Nursing may be RN or LVN according to licensure, and will have separate rates.

Comment: Will there be billing guidelines like HCS? If so, when will these be available for review?

Response: There will be billing guidelines available as well as training on CMS if needed. More information was provided in the contract enrollment packets in July of 2001.

Comment: As to the Adult Foster Care (AFC) and Family Surrogate Services (FSS) described in §50.24, will a provider agency be allowed to be the comprehensive provider of these services as HCS providers are allowed to do right now? As an HCS provider, CALAB contracts with families to provide foster care services and monitors the services received in such settings. Will this type of comprehensive service be allowed in the CWP? If not, the participants will not be able to benefit from the established foster family provider base that HCS providers have to offer.

Response: The services provided by the HCSSA providers are listed in §50.22. The waiver is currently written so that AFC and FSS are considered separate contractors. Certainly the HCS foster family providers are welcome to apply as individual CWP AFC or FSS providers and, if they meet the requirements, will be granted individual contracts. HCSSAs are required to provide directly or through subcontracts the 24-Hour Residential Habilitation service, which is similar to HCS Residential Support. If there is a need for change in the future, we will look at amending the rules and waivers, but this will require a great deal of researching licensure issue and MHMR contracting issues. It would delay implementation of the waiver and delay individuals from receiving services so it will not be changed at this time.

Comment: Out-of-home respite as described in §50.24 lists an array of places that this service can occur but fails to list HCS residential homes and HCS foster homes, both of which provide an excellent source of respite. Can these be added to the list of places where out-of-home respite can occur?

Response: The waiver did not include these as respite options. We will consider adding them at a later date if there appears to be a need. However, there are several other options available to meet the need for respite.

Comment: Where is the definition of Independent Advocacy? Section 50.24 references advocacy functions as described in the waiver service description, but where is this description?

Response: The definition of Independent Advocacy is in the waiver and will be in the provider manual. A separate contract is required for this and the participant recommends the provider

for contract enrollment. This service cannot be provided by the HCSSA.

Comment: Under §50.30, a participant can receive 24-hour residential services in an HCS residential home as long as the home has at least one person receiving HCS services. What if the HCS recipient moves out after the fact?

Response: The provider will be allowed some time to seek another HCS provider. If that does not occur, the CWP participant must be relocated to remain eligible.

Comment: What is the dollar amount of the personal needs allowance described under §50.34?

Response: \$85.00.

Comment: Where is the participant's bill of rights?

Response: There is not a specific bill of rights, however the provisions of the waiver and the rules, policies, and procedures are in place in part to protect the interests, identify the preferences, and ensure the health and safety of the participant.

Comment: The proposed rules fail to clearly indicate which authorities will be surveying or monitoring the providers. Duplication of surveying/monitoring might result, which seems to conflict with the intent of the waiver.

Response: MHMR and DHS are developing an MOU to address this situation. It is not our intent to duplicate activities already performed by another state agency for the same provider. Licensure requires surveying and contract management requires monitoring to ensure the integrity of the program, and these activities may occur simultaneously by the same or different state agencies for the same provider.

Comment: What documentation will the service providers have to maintain?

Response: Documentation requirements will be similar to existing waivers. This waiver is a pilot, so we will address changes in procedures through frequent contact with providers as we learn better ways to serve this diverse population. The contract manager will keep providers apprised of monitoring requirements and procedures.

Comment: How easily can a participant transfer from one service provider to another?

Response: It is always the participant's choice to choose or change providers. Procedures will be outlined in the provider manual, but will involve negotiation of dates with both providers by the case manager and review of the ISP by the IDT.

Comment: How easily can the ISP be modified or changed as a participant's needs change?

Response: This is a function of the case manager in accordance with the IDT. It will be a simple procedure for the case manager to authorize changes once they are approved by the IDT.

Comment: How is the provider notified if a participant becomes ineligible for Medicaid to ensure that the provider is not providing a service for which they will not be reimbursed?

Response: It is the case manager's responsibility to coordinate eligibility information with the provider and issue appropriate authorizations or notices of adverse action.

Comment: How will the slots be rolled out?

Response: DHS has established a database of all individuals whose names are on an interest list in Bexar County, with the ability to retrieve those names in any desired number by age or interest list, in date order. The individuals will be contacted by the case managers, given the option to participate, and referred for assessment when they are identified as being interested in CWP. This does not affect their placement or status on any other interest list.

Comment: How will provider enrollment occur?

Response: Providers will be contracted through open enrollment. A meeting was held in July of 2001 in San Antonio to provide contract enrollment packets and information to prospective contractors. Invitation letters were sent to waiver providers in each of the five waivers. Training will be held in August of 2001.

Comment: How available will the DHS Case Manager be? Will this Case Manager be on call and available for emergencies?

Response: The DHS case manager will be available during normal business hours. There will be provisions for providers to expedite services on an emergency basis if needed.

Comment: Where is the provision for Day Habilitation services for individuals who do not qualify for a Day Activity Health Services (DAHS) program, i.e., the participant with mental retardation (MR) who wants to attend a day habilitation program? Is this included under the "habilitation" service?

Response: Day Habilitation is included with habilitation services.

Comment: How will the Mental Retardation Authority (MRA) be involved with participants with mental retardation? As the entry point to services for individuals with MR, the MRA needs to be involved so that families and individuals do not experience confusion in their attempts to request services to meet their needs.

Response: We are working on an MOU with MHMR to address this and other situations. At minimum, the MRA will have information to provide to prospective CWP participants regarding HCS so the individual can make an informed choice.

Comment: Will the person-directed planning process be used in the development of the service plan? This process is crucial to ensure the provision of appropriate services to persons with mental retardation.

Response: Person-directed planning is being used in this program.

Comment: What type of developmental disability (DD) training and experience will the DHS Case Manager be required to have to ensure the needs of participants with mental retardation are adequately met?

Response: The positions for case management are newly created positions specifically for this program. Half of the case managers will have experience and expertise in working with the MR/DD population and the other half will have experience and expertise with elderly individuals and disabled adults and children.

Comment: Families and individuals with mental retardation have fought long and hard to be treated differently than the aged population. What assurances do participants and providers have that this difference will be preserved in this waiver?

Response: This is a pilot to test the feasibility of combining populations within one program. There will be an independent evaluation performed by a source contracted with HHSC. We will gather

information and have invited consumers and providers to participate in the evaluation of the program. We expect changes to be made based on feedback from providers and participants for the duration of the pilot.

Comment: When will the reimbursement rates be available?

Response: Rates will be available after the HHSC rate hearing on June 14, 2001.

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorize the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Human Resources Code, §§22.001 - 22.030 and §§32.001 - 32.042.

§50.2. Definitions.

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

(1) Adult--For the purposes of this waiver, an individual, applicant, or participant who is 21 years of age and older unless indicated otherwise.

(2) Advance notice--A statement of the adverse action the state intends to take, provided in writing to the individual or the individual's authorized representative advising them of the right to a hearing, the method by which a hearing may be obtained, and that the individual may represent himself or use legal counsel, a relative, a friend, or other spokesperson. A participant is entitled to be notified 10 days before any reduction or termination of his services and to have the notification mailed 12 days before the date of reduction or termination.

(3) Applicant--An individual whose eligibility for waiver services in the Consolidated Waiver Program (CWP) is in the process of being determined. An individual becomes an applicant when he is next in line to fill a slot in the CWP, a slot exists, DHS has approved the filling of the slot, DHS has notified the individual, and the individual has submitted the required application materials to DHS within a specified time frame.

(4) Case Management--Assistance in accessing medical, social, educational, and other appropriate services that will help an individual achieve a quality of life and community participation acceptable to the individual.

(5) Child--For the purposes of this waiver, an individual, applicant, or participant who is under the age of 21, unless indicated otherwise.

(6) Family-Directed Planning--A process that empowers the family of a minor to direct the development of a plan of support and services which meet the child and family's desired goals. The Process:

(A) identifies existing supports and services necessary to achieve the child and family's goals;

(B) identifies natural supports available to the child and family and negotiates needed services system supports;

(C) occurs with the support of a group of people chosen by the child and family;

(D) is supportive of the self-determination of the child;

and

(E) mirrors the way in which families without children with disabilities make plans.

(7) Individual Service Plan (ISP)--A person-directed plan of care developed with the assistance of the IDT to prevent institutionalization and facilitate an individual's ability to fully participate in the community, taking into account the individual's preference.

(8) Interdisciplinary Team (IDT)--At minimum, a group consisting of the participant (applicant) and his parent or guardian, if appropriate; DHS case manager; and home and community support services agency (HCSSA) representative. Other professionals may be included as appropriate, as well as anyone the participant or applicant chooses to invite to participate.

(9) Legal confinement--The result of an individual having been remanded by a judge to a particular setting other than their usual living arrangement for a specified period of time or to achieve a desired outcome. Some examples of settings for legal confinement include, but are not limited to, jails, prisons, hospitals, or institutions for mental disease, or rehabilitation facilities.

(10) Participant--An individual who has been determined eligible to receive waiver services, has enrolled in the Consolidated Waiver Program, and receives waiver services according to an ISP.

(11) Permanency Planning--A philosophy and planning process that focuses on the outcome of family support by facilitating a permanent living arrangement, with the primary feature of an enduring and nurturing parental relationship.

(12) Person-Directed Planning--A process that empowers the individual to direct the development of a plan of supports and services that meet the individual's goals. The Process:

(A) identifies existing supports and services necessary to achieve the individual's goals;

(B) identifies natural supports available to the individual and negotiates needed services system supports;

(C) occurs with the support of a group of people chosen by the individual, or their representative; and

(D) mirrors the way in which people without disabilities make plans.

(13) Respite--Services provided to individuals unable to care for themselves. These services are furnished on a short-term basis (up to 45 days per individual service plan year in full or partial day increments as indicated in the individual service plan) because of the absence or need for relief of those persons normally providing the care.

(14) Suspension of services--A temporary cessation of certain specified waiver services without loss of program or Medicaid eligibility.

(15) TDMHMR Waiver--A §1915(c) waiver program operated by the Texas Department of Mental Health and Mental Retardation, including HCS, HSC-O, and MRLA.

(16) Waiver program--A Medicaid program that provides home and community-based services as an alternative to institutional care in accordance with waiver provisions of the Social Security Act, §1915(c) (42 United States Code §1396n).

§50.4. Participant Eligibility Criteria.

(a) To be determined eligible by the Texas Department of Human Services (DHS) for Consolidated Waiver Program (CWP) services, an applicant or participant must:

(1) live in the pilot area;

(2) meet the financial eligibility criteria as defined in §50.6 of this title (relating to Financial Eligibility Criteria);

(3) not participate in other §1915(c) Medicaid waiver programs;

(4) have an individual service plan for home and community-based services developed by the interdisciplinary team (IDT). The individual service plan (ISP) for home and community-based services must specify the type of waiver services required to keep an individual in the community, the units of waiver services, and their frequency and duration as defined in §50.16 of this title (relating to Individual Service Plan);

(5) have an ISP for home and community-based services with an estimated annual cost that does not exceed:

(A) 125% of the average aggregate cost of intermediate care facilities for individuals with mental retardation (ICF-MR) Level I, V, VI, and VIII for individuals who meet the ICF-MR level of care in accordance with §50.8(a)(2) of this title (relating to Individual Level-of-Care Criteria); or

(B) 150% of the individual's actual Texas Index for Level of Effort (TILE) payment rate for individuals with a nursing facility level-of-care in accordance with §50.8(a)(1) of this title (relating to Individual Level-of-Care Criteria);

(6) meet the level-of-care criteria as described in §50.8 of this title (relating to Individual Level-of-Care Criteria);

(7) have ongoing needs for waiver services whose projected costs, as indicated on the ISP, do not exceed the maximum service ceilings that follow:

(A) adaptive aids and medical supplies service category cannot exceed \$10,000 per ISP plan year with DHS maintaining the right to exception;

(B) minor home modifications service category cannot exceed \$7500 per individual per 7 years until age 21; then the minor home modifications service category cannot exceed \$7500 (lifetime maximum) with a maximum of \$300 for repairs per ISP year thereafter;

(C) respite care cannot exceed 45 days per individual per ISP year with DHS maintaining the right to exception; and

(D) dental care cannot exceed \$1000 per ISP year;

(8) receive waiver services within 30 days after waiver eligibility is determined;

(9) meet the re-evaluation of institutional level-of-care criteria as performed annually by DHS using the same criteria as used initially;

(10) reside in his own home, in a licensed assisted living facility, in an adult foster care home, 24-hour residential habilitation or family surrogate services setting contracted with DHS to provide CWP services, or in a foster home that meets the requirements for foster homes in accordance with 40 TAC §700.1501 (concerning Foster and Adoptive Home Development). CWP services will not be delivered to residents of hospitals, nursing facilities, ICF-MR facilities, or unlicensed assisted living facilities unless the facility is exempt in accordance with §50.30 of this title (relating to 24-Hour Residential Habilitation) as pertains to provider requirements for 24-hour residential habilitation; and

(11) choose waiver services as an alternative to institutional care.

(b) A preadmission level of care assessment expires 120 calendar days from its issuance. For participants who are enrolled in the waiver program within 30 calendar days of discharge from an institution, the current level-of-care assessment may be used for enrollment and is valid until the expiration date on the approved ISP;

(c) Enrollment into this waiver program is limited to the number of participants approved by the Health Care Financing Administration (HCFA) and funded by the State of Texas.

(d) Enrollment in the pilot is restricted to 200 participants with the following slot allocation:

(1) 50 slots for adults who meet the requirements for nursing facility care from the Community Based Alternatives (CBA) interest list;

(2) 50 slots for children who meet the requirements for nursing facility care from the Medically Dependent Children Program (MDCP) interest list;

(3) 25 slots for adults with mental retardation who meet the requirements for ICF-MR care level I from the Home and Community Based Services (HCS) interest list;

(4) 25 slots for children with mental retardation who meet the requirements for ICF-MR care level I from the HCS interest list;

(5) 25 slots for adults with related conditions or developmental disabilities who meet the requirements for ICF-MR care level VIII from the CLASS interest list, with one of these slots specifically targeted to an individual who is deaf-blind with multiple disabilities from the Deaf Blind Multiple Disabilities (DBMD) interest list; and

(6) 25 slots for children with related conditions or developmental disabilities who meet the requirements for ICF-MR care level VIII from the CLASS interest list, with one of these slots specifically targeted to an individual who is deaf-blind with multiple disabilities from the DBMD interest list.

(e) If the funding for CWP changes, the ratios for slot allocation will remain the same.

(f) For purposes of slot allocation, HCS means TDMHMR waiver currently operating in the pilot area.

§50.16. *Individual Service Plan (ISP).*

(a) Waiver participants must have a person-directed individual service plan (ISP) for waiver services developed by the interdisciplinary team (IDT) as described in the waiver request.

(b) The IDT members must sign and date the ISP prior to implementation of the plan. The IDT members must certify in writing that the waiver services are necessary as an alternative to institutionalization and appropriate to meet the needs of the individual in the community.

(c) The Texas Department of Human Services (DHS) must approve and the IDT must update the ISP at least annually.

§50.24. *General Contracting.*

(a) Home and community support services agencies (HCSSAs). To be qualified as a HCSSA provider to deliver Consolidated Waiver Program (CWP) services under contract with the Texas Department of Human Services (DHS), a HCSSA must:

(1) have a separate contract with DHS to provide CWP services in the designated service area in which services are to be delivered;

(2) have a HCSSA license with the licensed home health category of licensure and deliver CWP services, as required by licensure and by contract as indicated in §50.22 of this title (relating to Service Array for Home and Community Support Services Providers).

(3) have the county in the DHS contract for CWP services included in the identified service area on file at DHS with the licensed home health category of licensure;

(4) be authorized by the secretary of state to do business in the State of Texas, if an out-of-state corporation; and

(5) meet all requirements outlined in §48.6028 of this title (relating to Provisional Contracts - Home and Community Support Service Agencies). The reference to Community Based Alternatives (CBA) contract in §48.6028(k)(2) and (3) means Consolidated Waiver Program (CWP) contract for home and community support service agency providers that are contracted to deliver CWP services.

(b) Emergency Response Services (ERS). To contract with DHS to provide ERS under the CWP, a legal entity must:

(1) have a 24-hour, seven-day-a-week emergency response monitoring capability;

(2) be a public agency or a private not-for-profit or for-profit corporation that is either chartered with or authorized by the secretary of state to transact business within the State of Texas;

(3) be licensed by the Texas Commission on Private Security, unless exempt from its regulation. The provider agency must send a copy of its license and a copy of the annual renewal of its license to DHS; and

(4) have a separate contract with DHS to provide CWP services in the designated service area in which services are to be delivered.

(c) Adult Foster Care (AFC). To contract with DHS to provide AFC services under the CWP, the provider must:

(1) be enrolled by DHS as a CWP adult foster care provider;

(2) be serving four or fewer participants;

(3) if serving four participants, be licensed by DHS as a Type C Assisted Living Facility as defined in §92.4(3) of this title (relating to Types of Assisted Living Facilities) of the DHS Licensing Standards for Assisted Living Facilities;

(4) agree to comply with all Adult Foster Care standards found in the Community Based Alternatives (CBA) Provider Manual, Section 4200, Adult Foster Care; and

(5) have a separate contract with DHS to provide CWP services in the designated service area in which services are to be delivered.

(d) Assisted Living/Residential Care (AL/RC). To contract with DHS to provide assisted living/residential care services under the CWP, the facility must be licensed as an assisted living facility by DHS, type "A" or "B" as defined in Chapter 92 of this title (relating to Licensing Standards for Assisted Living Facilities); and have a separate contract with DHS to provide CWP services in the designated service area in which services are to be delivered.

(e) Home-delivered Meals (HDM). To contract with DHS to provide home delivered meals under the CWP, the provider must:

(1) meet state, local health, and DHS requirements in the handling, transporting, serving and delivery of these meals;

(2) ensure that menus for standard diets are developed using Dietary Guidelines for Americans and are reviewed and approved by a registered dietitian;

(3) ensure that menus for therapeutic and modified diets are written by and prepared under the supervision of a registered dietitian;

(4) ensure that established procedures are in place to assure that each participant who requires a therapeutic and modified meal receives only the meal ordered for that individual; and

(5) have a separate contract with DHS to provide CWP services in the designated service area in which services are to be delivered.

(f) Out-of-home respite. To contract with DHS to provide out-of-home respite services under the CWP, providers must have a separate contract with DHS to provide CWP services in the designated service area in which services are to be delivered and be one of the following:

(1) a licensed Intermediate Care Facility for Individuals with Mental Retardation (ICF-MR);

(2) a licensed hospital;

(3) a licensed nursing facility;

(4) one of the American Camping Association's accredited camps;

(5) a child care center that meets state requirements for respite;

(6) an assisted living facility in accordance with §50.24(d) of this title (relating to General Contracting); or

(7) an adult foster care facility meeting the requirements in §50.24(c) of this title (relating to General Contracting).

(g) Family surrogate services. To contract with DHS to provide family surrogate services (available only to CWP participants younger than 18 years of age), providers must meet all the requirements of the Texas Department of Protective and Regulatory Services (TDPRS) minimum standards for Independent Foster Family Homes pursuant to 40 TAC §720.231-720.248 (concerning Standards for Foster Family Homes). Additional provider requirements are outlined in §50.26 of this title (relating to Care Options in Family Surrogate Services).

(h) Independent advocacy. To contract with DHS to provide Independent Advocacy services, the provider:

(1) must be 21 years of age or older;

(2) must be chosen and recommended for contract enrollment by the participant;

(3) must be capable of performing advocacy functions as described in the waiver service description, which are specific to the participant's needs;

(4) cannot be providing any other CWP services to the participant; and

(5) cannot be the participant's parent, spouse, or first-degree relative.

(i) In addition to the requirements in subsections (a)-(h) of this section, all providers contracted to deliver CWP services must adhere to the rules found in Chapter 49 of this title (relating to Contracting for Community Care Services).

§50.26. *Care Options in Family Surrogate Services.*

(a) In addition to the requirements outlined in §50.24 of this title (relating to General Contracting), Family Surrogate Services providers must provide services:

(1) to no more than three children receiving similar services in the same residence at any one time;

(2) in a home in which the Family Surrogate Services provider has legal responsibility for the residence;

(3) in a home that is a typical residence within the community; and

(4) in a residence, neighborhood and community that meets the needs and choices of each individual and provides an environment that assures the community integration, health, safety, comfort, and welfare of the individual.

(b) For any child who is a Consolidated Waiver Program (CWP) participant and is placed in a Family Surrogate Services setting, the Family Surrogate Services provider, along with the Interdisciplinary Team (IDT):

(1) justifies the reasons for serving a minor individual outside the natural or adoptive family home;

(2) makes every possible effort to return a minor individual being served outside his or her natural or adoptive family home to his or her family home as soon as possible; and

(3) documents permanency planning and appropriate habilitation goals in the Individual Service Plan (ISP);

(c) The Family Surrogate Services provider must provide care to the CWP participant as appropriate and authorized on the ISP, including:

(1) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(2) assistance with meal planning and preparation;

(3) securing and providing transportation;

(4) assistance with housekeeping;

(5) assistance with ambulation and mobility;

(6) reinforcement of counseling and therapy activities;

(7) assistance with medications and the performance of tasks delegated by a registered nurse;

(8) supervision of individuals' safety and security;

(9) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(10) habilitation, exclusive of day habilitation.

(d) The Family Surrogate Services provider:

(1) allows the individual's family members and friends access to the individual without arbitrary restrictions unless exceptional conditions are justified by the individual's IDT, documented in the ISP, and approved by the DHS human services specialist;

(2) ensures that a school-age individual receives educational services in a six-hour-per-day program five days a week provided by the local school district and that no individual receives educational services at a state school/state center educational setting, unless contraindications are documented with justification by the IDT;

(3) ensures that a pre-school-age individual receives an early childhood education with appropriate activities and services,

including but not limited to small group and individual play with peers without disabilities, unless contraindications are documented with justification by the IDT; and

(4) provides individuals with age-appropriate activities that enhance self-esteem and maximize functional level.

§50.30. 24-Hour Residential Habilitation.

In this section, HCS means TDMHMR waiver program currently operating in the pilot area. To contract with the Texas Department of Human Services (DHS) to provide 24-hour residential habilitation (available only to Consolidated Waiver Program (CWP) participants 18 years of age and older), providers must:

(1) be licensed Home and Community Support Services Agencies (HCSSA) in accordance with Chapter 97 of this title (relating to Home and Community Support Services Agencies);

(2) have a contract with DHS to provide CWP services as a HCSSA, as specified in §50.24 of this title (relating to General Contracting).

(3) serve no more than four individuals receiving similar services at one location; and

(4) either:

(A) be licensed type "A" or "B" assisted living facilities;

or

(B) meet current state assisted living licensure exemptions for this type of facility as outlined in Health and Safety Code, §247.004(4). This exemption requires the Texas Department of Mental Health and Mental Retardation (TDMHMR) to monitor these providers. TDMHMR will only monitor them if the provider is certified as a Home Community-Based Services (HCS) provider in good standing with TDMHMR and there is at least one person receiving HCS at the specific location. In order to meet this exemption, the provider must:

(i) have a contract with TDMHMR to provide HCS services; and

(ii) be in good standing with TDMHMR; and

(iii) have at least one person receiving HCS services on the premises.

§50.32. Maintenance of Interest Lists.

(a) The Consolidated Waiver Program (CWP) staff maintain a list of individuals, identified from existing §1915(c) waiver interest lists, who have expressed an interest in receiving §1915(c) waiver services. The list can be accessed by Texas Department of Human Services (DHS) staff and is organized by age, institutional base, and Mental Retardation/Developmental Disability status in order to fulfill the slot allocation as outlined in §50.4(d) of this title (relating to Participant Eligibility Criteria).

(b) The CWP staff assign an applicant's placement on the CWP interest list chronologically by date of request for waiver services.

(c) The CWP staff remove an individual's name from the CWP interest list only if it is documented that:

(1) a written request has been received from the individual or their representative to remove the individual's name from the interest list;

(2) the individual is deceased;

(3) the individual moved out of the designated pilot service area;

(4) the Texas Department of Human Services (DHS) has denied the applicant enrollment and the applicant or their representative has had an opportunity to exercise the applicant's right to appeal the decision according to §50.18 of this title (relating to Right to Appeal);

(5) the individual or the individual's representative has not responded to the CWP's notification of a program vacancy within 30 calendar days of the date of the CWP's written notification;

(6) the individual is receiving §1915(c) waiver services;

(7) the individual or the individual's representative chooses participation in another §1915(c) Medicaid waiver program instead of the CWP when offered this choice in accordance with §50.4(a) of this title (relating to Participant Eligibility Criteria);

(8) the individual or the individual's representative refuses CWP services; or

(9) the applicant is certified as eligible for CWP services.

(d) The CWP case manager will inform the applicant that:

(1) participating in the CWP will not affect an individual's placement on any other waiver interest list;

(2) a participant is not restricted from transferring from the CWP to another waiver if their name comes up on the other waiver's waiting or interest list, and they are eligible for that waiver; and

(3) A CWP participant who is eligible for, and chooses to receive services from another waiver will be denied CWP services, and will not be allowed to return to the CWP interest list.

§50.46. Sanctions.

(a) The Texas Department of Human Services (DHS) may sanction, up to and including contract termination, a Consolidated Waiver Program (CWP) provider agency that:

(1) has discontinued services to a participant for a reason other than what is allowed in §50.42 of this title (relating to Crisis Intervention Requiring Immediate Suspension or Reduction of Services without Advance Notice) and §50.44 of this title (relating to Immediate Suspension Due to Temporary Institutional Stay);

(2) uses the information cited in §50.42 to this title (relating to Crisis Intervention Requiring Immediate Suspension or Reduction of Services without Advance Notice) to discontinue services to a participant when the provider agency knew or should have known that the cited information did not apply to the participant; or

(3) is a Texas Department of Mental Health and Mental Retardation (TDMHMR) waiver program provider who is being monitored by the TDMHMR as indicated in §50.30 of this title (relating to 24-Hour Residential Habilitation) when DHS receives a recommendation from TDMHMR that the provider should be sanctioned or is being sanctioned by TDMHMR.

(b) Additional reasons for the CWP provider agency sanctions are located in §49.19 of this title (relating to Contracting for Community Care Services).

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 31, 2001.
TRD-200104419

Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: August 20, 2001
Proposal publication date: April 20, 2001
For further information, please call: (512) 438-3734



TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action on Rules

The Commissioner of Insurance (Commissioner) will hold a public hearing under Docket No. 2495 on September 18, 2001, at 9:30, in Room 100 of the William P. Hobby Building, 333 Guadalupe Street in Austin, Texas to consider a petition by the staff of the Texas Department of Insurance (TDI) proposing the adoption of revised Texas Workers' Compensation Classification Relativities (classification relativities) to replace those adopted in Commissioner's Order No. B-0058-00 dated October 23, 2000; and the adoption of a revised table to amend the Texas Basic Manual of Rules, Classification, and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (Basic Manual) concerning the Expected Loss Rates and Discount Ratios used in experience rating. Staff's petition (Ref. No. W-0801-11-I), was filed on August 8, 2001.

In its petition, the staff requests consideration of a schedule of revised classification relativities and tables amending the Basic Manual. The revised classification relativities schedule is proposed to replace the classification relativities schedule adopted in Commissioner's Order B-0058-00 effective January 1, 2001. The tables amending the Basic Manual concern the Expected Loss Rates and Discount Ratios.

The staff requests that the proposed revised classification relativities be available for adoption by insurers immediately, but that their use be mandatory for all policies with an effective date on or after January 1, 2002. The staff further requests that the revised tables amending the Basic Manual be made effective for workers' compensation experience modifiers with an effective date on or after January 1, 2002.

Article 5.60(a) of the Texas Insurance Code authorizes the Commissioner to determine hazards by classes and fix classification relativities applicable to the payroll in each class for workers' compensation insurance. Article 5.60 (d) provides that the Commissioner revise the classification system at least once every five years.

The classification relativities currently in effect were based on experience data reflecting workers' compensation experience from policies with effective dates in 1993 through 1997. The proposed classification relativities are based on the analysis of experience data from policies with effective dates in 1994 through 1998. The staff's proposed classification relativities reflect changes in experience that occur over

time, due to such things as technological advances and improvements in safety programs. The indicated resulting relativities were balanced to the level of the current relativities through the application of off-balance factors. This provides for a revenue neutral set of relativities in relation to the current relativities. The staff proposes to limit changes in the classification relativities to +25% and -25%. These limited relativities have been balanced overall to the level of the current relativities. This would help to minimize possible rate shock due to large indicated changes in the relativities.

Modifications to the classification relativities require concurrent changes in the Table II of the Basic Manual concerning the Expected Loss Rates and Discount Ratios. The current Table II, which became effective on January 1, 2001, contains expected loss rates that were based on the level of losses used to experience rate the average policy that would be subject to the new expected loss rates. Such a policy would be effective on July 1, 2001 and would reflect the current classification relativities. Staff proposes an adjustment to make the expected loss rates more reflective of the level of losses that would be used to experience rate policies that would be effective in 2002, and reflect the proposed classification relativities. Staff also proposes to cap changes in the expected loss rates to +25% and -25%.

Copies of the full text of the staff petition and the proposed revised schedule and table are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. For further information or to request copies of the petition and proposed revised schedule and table, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Ref. No. W-0801-11-I).

Comments on the proposed changes may be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to the Office of Chief Clerk, P. O. Box 149104, MC 113-2A, Austin, Texas, 78714-9104. An additional copy of the comment should be submitted to Philip Presley, Chief Property and Casualty Actuary, P. O. Box 149104, MC 105-5F, Austin, Texas, 78714-9104. Public testimony at the hearing on September 18, 2001, is also invited and encouraged.

This notification is made pursuant to the Texas Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Ch. 2001).

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

TRD-200104538

Lynda Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: August 8, 2001



Proposed Action on Rules

The Commissioner of Insurance at a public hearing under Docket No. 2494 scheduled for September 18, 2001 at 9:30 a.m. in Room 100 of the William P. Hobby Building, 333 Guadalupe Street in Austin Texas will consider amendments proposed by the staff of the Workers' Compensation division to the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (the Manual). The purposes of these amendments to the Manual are to modify rules as necessary, to eliminate conflicting language within the Manual and to provide clarification to rules, endorsements and forms. Staff's petition (Ref. No. W-0801-10-I), was filed on August 8, 2001.

The staff proposes amendments to the Manual as follows:

1. Amend Rule IX E. - Employee Leasing Arrangements to add the term professional employers organization services to the definition of employee provider firm. This change is recommended pursuant to Section 91.001 (14), Labor Code.
2. Amend Rule IX E. - Employee Leasing Arrangements to delete the reference to the Texas Workers' Compensation Insurance Fund (Fund) throughout that rule. This change is recommended pursuant to Act of June 15, 2001, H.B.3458, 77th Leg., R.S. (to be codified at TEX. Ins. Code Ann. art. 5.76-3) which changes the name of the Fund to the Texas Mutual Insurance Company. Staff recommends that rather than amending the references from the Fund to the Texas Mutual Insurance Company (Texas Mutual) in this rule, it is not necessary to specifically mention the Fund since it is an insurance company licensed to write workers' compensation insurance.
3. Amend Employee Provider Form EP-1 to change reference from the Fund to the "insurer of last resort" in number 8 and make editorial changes of adding the word "its" and amending the date in the notary part to show "20__" in lieu of "199_."
4. Amend Employee Provider Form EA-1A to change the reference from the Fund to the "insurer of last resort" in number 9 and make editorial changes of adding the word "its" and amending the date in the notary part to show "20__" in lieu of "199_."
5. Amend Employee Provider/Client Company Endorsement WC 42 04 06 B to change the reference from the Fund to the "insurer of last

resort" in number 10 to change the reference from the Fund to the "insurer of last resort" and make editorial changes of substituting the word "its" for "and each," making the words officer, director and affiliate plural, and amending the date in the notary part to show "20__" in lieu of "199_."

6. Amend Accidents Involving Two or More Persons form ERM 4.1 to delete the references to a specific maximum amount in two places on the form and change the wording to read "the accident limitation shown in Table III of the Experience Rating Plan." By making this change, the form will not need to be amended each time the accident limitation is changed in Table III of the Experience Rating Plan.

7. Amend Report of Experience for Self Insurers Forms ERM-6A, ERM-6B and ERM-6C to amend the date in the notary section to show "20__" in lieu of "199_."

The Commissioner has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.56, 5.57, 5.60 and 5.96.

A copy of the full text of the proposed amendments is available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the amendments, please contact Ms. Sylvia Gutierrez (512) 463-6327 (refer to Ref. No. W-0810-10-I).

The staff and the Commissioner request that written comments to these proposed amendments be submitted prior to the public hearing on September 18, 2001. The written comments should be directed to Lynda H. Nesenholtz, General Counsel and Chief clerk, Texas Department of Insurance, P. O. Box 149104, MC 113,2A, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Nancy Moore, Deputy Commissioner, Workers' Compensation, Texas Department of Insurance, P. O. Box 149104, MC 105-2A, Austin, Texas 78714-9104. Public testimony at the hearing on September 18, 2001, is also invited and encouraged.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government code, Chapter 2001 (Administrative Procedure Act).

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

TRD-200104539

Lynda Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: August 8, 2001



—REVIEW OF AGENCY RULES—

This Section contains notices of state agency rules review as directed by Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

Texas State Board of Medical Examiners

Title 22, Part 9

Filed: August 2, 2001



Agency Rule Review Plan (Revised)

Public Utility Commission of Texas

Title 16, Part 2

Filed: August 6, 2001



Proposed Rule Reviews

Texas Commission for the Blind

Title 40, Part 4

The Texas Commission for the Blind files this notice of its intent, beginning August 1, to review Chapter 161 of its rules pertaining to Appeals and Hearing Procedures in accordance with the requirements of Texas Government Code, §2001.039, added by Acts 1999, 76th Leg., ch. 1499, §1.11(a).

The public is invited to make comments on the rules as they exist in 40 TAC, Part 4, Chapter 161. The comment period will last 30 days beginning with the publication of this notice of intention to review.

The Commission's Board will consider comments received in response to this notice at a meeting tentatively scheduled in early November 2001. Any changes to the rules proposed by the Commission after the Board's review of the chapter and consideration of comments received in response to this notice will appear thereafter in the proposed rules section of the *Texas Register* and will be adopted in accordance with state rule-making requirements.

Comments or questions regarding this rule review may be submitted in writing to Jean Crecelius, Policy & Rules Coordinator, Texas Commission for the Blind, P. O. Box 12866, Austin, TX 78711 or via facsimile at (512) 377-0682.

TRD-200104436

Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Filed: August 1, 2001



Texas Health and Human Services Commission

Title 1, Part 15

The Health and Human Services Commission proposes to review Chapter 351, concerning Coordinated Planning and Delivery of Health and Human Services, Chapter 353, concerning Medicaid Managed Care, and Chapter 355, concerning Medicaid Reimbursement Rates, 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 351, 353, and 355 continue to exist. The rules were adopted pursuant to Government Code, §531.033, which authorizes the Commission to adopt rules necessary to carry out the Commission's duties under chapter 531, or transferred to the Commission pursuant to section 531.021, which designates the Commission as the state agency to administer the state Medicaid program.

Comments on the review of Chapters 351, 353, and 355 may be submitted in writing to Steve Aragon, General Counsel, P.O. Box 13247, Austin, Texas, 78711. Comments may be faxed to (512) 424-6586 or may be submitted electronically via the Commission's web page at http://www.hhsc.state.tx.us/about_HHSC.

TRD-200104502
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: August 7, 2001



Texas Higher Education Coordinating Board

Title 19, Part 1

The Texas Higher Education Coordinating Board proposes to readopt Chapter 22, Grant and Scholarship Programs, in accordance with Section 2001.039 Texas Government Code.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed readoption may be submitted to Don W. Brown, Commissioner of Higher Education, P.O. Box 12788, Austin, Texas 78711.

TRD-200104443

Gary Prevost

Director of Business Services

Texas Higher Education Coordinating Board

Filed: August 2, 2001



Adopted Rule Reviews

Texas Animal Health Commission

Title 4, Part 2

The Texas Animal Health Commission (commission) has completed the review of Chapter 31 concerning Anthrax, in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature. The rules are located in Title 4, Part II, of the Texas Administrative Code and contain the following sections: §31.1. Diagnosis; §31.2. Quarantine; §31.3. Disposal. The notice of review was published in the April 9, 1999, issue of the *Texas Register* (24 TexReg 2955).

No comments were received on this chapter. The commission readopts these sections pursuant to the requirements of the General Appropriations Act, Article IX, §167, 75th Legislature, and find reasons for adopting these rules continue to exist.

This concludes the review of Chapter 31. Anthrax.

TRD-200104471

Gene Snelson

General Counsel

Texas Animal Health Commission

Filed: August 6, 2001



The Texas Animal Health Commission (commission) has completed the review of Chapter 34 concerning Veterinary Biologics, in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature. The rules are located in Title 4, Part II, of the Texas Administrative Code and contain the following sections: §34.1. Definitions; §34.2. General Requirements. The notice of review was published in the August 21, 1998, issue of the *Texas Register* (23 TexReg 8696).

No comments were received on this chapter. The commission readopts these sections pursuant to the requirements of the General Appropriations Act, Article IX, §167, 75th Legislature, and find reasons for adopting these rules continue to exist.

This concludes the review of Chapter 34. Veterinary Biologics.

TRD-200104472

Gene Snelson

General Counsel

Texas Animal Health Commission

Filed: August 6, 2001



The Texas Animal Health Commission (commission) has completed the review of Chapter 47 concerning Approved Personnel, in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature. The rules are located in Title 4, Part II, of the Texas Administrative Code and contain the following sections: §47.1. Definitions; §47.2. General Requirements; §47.3. Requirements for Brucellosis Testing; §47.4. Brucellosis Calfhood Vaccination Requirements and §47.5. Suspension or Revocation of Approved Personnel Status. The notice of review was published in the June 19, 1998, issue of the *Texas Register* (23 TexReg 6527).

No comments were received on this chapter. The commission readopts these sections pursuant to the requirements of the General Appropriations Act, Article IX, §167, 75th Legislature, and find reasons for adopting these rules continue to exist.

This concludes the review of Chapter 47. Approved Personnel.

TRD-200104473

Gene Snelson

General Counsel

Texas Animal Health Commission

Filed: August 6, 2001



Office of the Attorney General

Title 1, Part 3

Pursuant to Texas Government Code §2001.039, the General Appropriations Act, Article IX, §167 (1997) and the General Appropriations Act, Article IX, §9.10.13 (1999), the Office of the Attorney General ("OAG") adopts the review of Texas Administrative Code, Title 1, Part 3, Chapter 53, Municipal Securities, Subchapter A, Approval of Municipal Securities by Attorney General; Subchapter B, Approval of City and County General Obligation Bonds; Subchapter C, Approval of City Revenue Bonds, Notes, and Warrants; Subchapter D, Approval of School District Bonds; Subchapter E, Approval of Issues of Certificates of Obligations; Subchapter F, Approval of Municipal Utility District Bonds; Subchapter G, Approval of Pollution Control Bonds and Bonds Issued Pursuant to River Authority Supply Contracts; Subchapter H, Approval of Bonds issued by Institutions of Higher Education; Subchapter I, Approval of Bonds to be Issued by Local Government for the Construction of Sports Centers; Subchapter J, Requirements of the Approval of Securities with Respect to Criminal Justice Facilities; Subchapter K, Approval of San Antonio River Authority and Pollution Control District Bonds; Subchapter L, General Requirements for Nonprofit Corporation Bonds; Subchapter M, Development Corporation Bonds; Subchapter N, Health Facilities Development Corporation Bonds; Subchapter O, Housing Finance Corporation Bonds; and Subchapter P, Other Corporation Bonds.

The OAG proposed the review of Chapter 53 in the June 22, 2001, issue of the *Texas Register* (26 TexReg 4745). The review assessed whether the reasons for the rules continue to exist. No comments were received regarding this review.

As a result of this review, the OAG determined that the following rules should be repealed:

§53.12. Representations in Official Notices of Sale

§53.13. Limited Tax Obligations.

§53.18. Adequate Resources.

§53.19. Then Current Conditions.

§53.20. Applications for Bond Replacement.

- §53.21. Authorization Elections.
- §53.24. Prior Issue Transcripts.
- §53.72. Increases in Original Contract Price.
- §53.75. Certificates in Exchange for Services or Property.
- §53.76. Refunding of Certificates in Exchange for Services or Property.
- §53.77. Emergency Approval.
- §53.78. Approval of Certificates.
- §53.81. Applicable Statute.
- §53.87. Authorization for Issuance: Other Matters.
- §53.88. Transcripts of Proceedings: Certificates in Exchange for Services or Property.
- §53.101. On-the-Ground Inspection.
- §53.151. Contents of Transcripts.
- §53.152. Pledge Income of a Contract or Lease Involved in the Proposed Issue To Be Supported.
- §53.162. Criminal Justice Facilities Contracts Contents.
- §53.163. Revenue Financing; Projection of Anticipated Income.
- §53.164. Division Rules Applicable.
- §53.165. Pledged Parking Fees and Other Fee Income Transcripts.
- §53.171. Certified Copies of All Proceedings.

Except for the rules enumerated above which the OAG intends to propose for repeal at a future date, the reasons for adopting the rules in Chapter 53 continue to exist. The review of Chapter 53 has revealed the need to make certain revisions to update, reorganize, and clarify the chapter, which the OAG intends to address in future rulemaking. The OAG anticipates that it will propose the repeal or amendment of rules in Chapter 53, Municipal Securities, by December 31, 2001.

If you have any questions regarding this publication, please contact A.G. Younger, Agency Liaison, at (512) 463-2110.

TRD-200104450
 Susan D. Gusky
 Assistant Attorney General
 Office of the Attorney General
 Filed: August 2, 2001



Pursuant to Texas Government Code, §2001.039, the General Appropriations Act, Article IX, §167 (1997) and the General Appropriations Act, Article IX, §9.10.13 (1999), the Office of the Attorney General ("OAG") adopts the review of Texas Administrative Code, Title 1, Part 3, Chapter 55, Child Support Enforcement, Subchapter A, General Guidelines; Subchapter B, Locate Services; Subchapter C, Administrative Review; Subchapter D, Forms of Child Support Enforcement; Subchapter F, Collections and Distributions; Subchapter G, Contracts and Audits; Subchapter H, License Suspension; Subchapter I, State Directory of New Hires; Subchapter J, Voluntary Paternity Acknowledgement Process; and Subchapter K, Release of Information.

The OAG proposed the review of Chapter 55 in the June 22, 2001, issue of the *Texas Register* (26 TexReg 4745). The review assessed whether the reasons for the rules continue to exist. No comments were received regarding this review.

As a result of this review, the OAG determined that Subchapter G, Contracts and Audits should be repealed. The proposed repeal will be published by December 2001.

The OAG determined that the reasons for the rules in the subchapters listed below continue to exist, however these rules should be updated, reorganized, amended, and clarified in future rulemaking. The amendments of the rules in the following subchapters will be proposed by December 2001:

- Subchapter A. General Guidelines;
- Subchapter C. Administrative Review;
- Subchapter D. Forms of Child Support Enforcement;
- Subchapter F. Collections and Distributions;
- Subchapter H. License Suspension;
- Subchapter I. State Directory of New Hires; and
- Subchapter J. Voluntary Paternity Acknowledgement Process.

As a result of this review, the OAG also determined that the reasons for the rules in Subchapter B, Locate Services and Subchapter K, Release of Information continue to exist and the rules in these subchapters do not require any changes.

The OAG also determined that a new subchapter is required. Therefore, Subchapter L, Financial Institution Data Machines, will be proposed by December 2001.

If you have any questions regarding this publication, please contact A.G. Younger, Agency Liaison, at (512) 463-2110.

TRD-200104451
 Susan D. Gusky
 Assistant Attorney General
 Office of the Attorney General
 Filed: August 2, 2001



Pursuant to Texas Government Code §2001.039, the General Appropriations Act, Article IX, §167 (1997) and the General Appropriations Act, Article IX, §9.10.13 (1999), the Office of the Attorney General ("OAG") adopts the review of Texas Administrative Code, Title 1, Part 3, Chapter 57, Rental-Purchase Act Compliance, §57.1, Rental-Purchase Form Agreement.

The OAG proposed the review of Chapter 57 in the June 22, 2001, issue of the *Texas Register* (26 TexReg 4745). The review assessed whether the reasons for the rule continue to exist. No comments were received regarding this review.

As a result of this review, the OAG determined that the reasons for the rule in this chapter continue to exist, however the rule should be updated, reorganized, amended, and clarified in future rulemaking. The OAG will propose the necessary amendments of the rule in Chapter 57, Rental-Purchase Act Compliance, by October 2001.

If you have any questions regarding this publication, please contact A.G. Younger, Agency Liaison, at (512) 463-2110.

TRD-200104452
 Susan D. Gusky
 Assistant Attorney General
 Office of the Attorney General
 Filed: August 2, 2001



Pursuant to Texas Government Code §2001.039, the General Appropriations Act, Article IX, §167 (1997) and the General Appropriations Act, Article IX, §9.10.13 (1999), the Office of the Attorney General ("OAG") adopts the review of Texas Administrative Code, Title 1, Part 3, Chapter 59, Collections, §§59.1 - 59.3.

The OAG proposed the review of Chapter 59 in the June 22, 2001, issue of the *Texas Register* (26 TexReg 4745). The review assessed whether the reasons for the rules continue to exist. No comments were received regarding this review.

As a result of this review, the OAG determined that the reasons for the rules in this chapter continue to exist, however these rules should be updated, reorganized, amended, and clarified in future rulemaking. The OAG will propose the necessary amendments of the rules in Chapter 59, Collections, by November 2001.

If you have any questions regarding this publication, please contact A.G. Younger, Agency Liaison, at (512) 463-2110.

TRD-200104453
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: August 2, 2001



Pursuant to Texas Government Code §2001.039, the General Appropriations Act, Article IX, §167 (1997) and the General Appropriations Act, Article IX, §9.10.13 (1999), the Office of the Attorney General ("OAG") adopts the review of Texas Administrative Code, Title 1, Part 3, Chapter 61, Crime Victims' Compensation.

The OAG proposed the review of the rules of Chapter 61 in the June 22, 2001, issue of the *Texas Register* (26 TexReg 4745). The review assessed whether the reasons for the rules continue to exist.

No comments were received regarding this review.

As a result of this review, the OAG determined that the reasons for the rules in this chapter continue to exist, however these rules should be updated, reorganized, amended, and clarified in future rulemaking. The OAG will propose the necessary amendments of the rules in Chapter 61, Crime Victims' Compensation, by December 2001.

If you have any questions regarding this publication, please contact A.G. Younger, Agency Liaison, at (512) 463-2110.

TRD-200104454
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: August 2, 2001



Pursuant to Texas Government Code, §2001.039, the General Appropriations Act, Article IX, §167 (1997) and the General Appropriations Act, Article IX, §9.10.13 (1999), the Office of the Attorney General ("OAG") adopts the review of Texas Administrative Code, Title 1, Part 3, Chapter 62, Sexual Assault Prevention and Crisis Services.

The OAG proposed the review of the rules in Chapter 62 in the June 22, 2001, issue of the *Texas Register* (26 TexReg 4745). The review assessed whether the reasons for the rules continue to exist.

No comments were received regarding this review.

As a result of this review, the OAG determined that the reasons for the rules in this chapter continue to exist, however these rules should be updated, reorganized, amended, and clarified in future rulemaking. The OAG will propose the necessary amendments of the rules in Chapter 62, Sexual Assault Prevention and Crisis Services, by December 2001.

If you have any questions regarding this publication, please contact A.G. Younger, Agency Liaison, at (512) 463-2110.

TRD-200104455
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: August 2, 2001



Texas Department of Criminal Justice

Title 37, Part 6

The Texas Department of Criminal Justice (department) has reviewed Chapter 161, concerning CJAD Administration; and Chapter 163, concerning CJAD Standards and has determined that amendments are necessary. The department has also reviewed Chapter 151, concerning General Provisions; Chapter 152, concerning Institutional Division; and Chapter 155, concerning Reports and Information Gathering. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the department.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

TRD-200104526
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: August 8, 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: 1 TAC §251.5(f)(1)

Attachment B

Commission on State Emergency Communications (CSEC)

CAPITAL ASSET DISPOSAL NOTICE

Complete and submit with FSR for each Capital Recovery item removed from the Capital Asset Schedule.

Description: _____

Identifying Number: _____

Date Disposed: _____

Original Value: _____

Cost of Item Purchased to Replace this Asset: _____

How was asset disposed and were any funds generated by disposal?

Reason for Disposal (Check One):

____ Scheduled Replacement

____ Damaged/Destroyed

____ Failed prematurely

Completed By: _____

Date: _____

Regional Planning Commission: _____

Figure: 1 TAC §251.5(i)

Attachment A

Commission on State Emergency Communications (CSEC)

ANNUAL CERTIFICATION OF 9-1-1 PROGRAM ASSETS

This form shall be completed once each fiscal year by the Regional Planning Commission (RPC) Executive Director (or their designee) and submitted to the Commission on State Emergency Communications (CSEC). Included with the completed form shall be a Capital Asset Schedule.

By signing below, I certify that to the best of my knowledge the following statements are accurate and true:

1. The RPC has physically accounted for all 9-1-1 Program assets listed on the attached Capital Asset Schedule (as defined by (CSEC) §251.6) or has received certification of a physical accounting from the responsible organization for each asset in their possession.
2. All listed capital assets are in the possession of the listed responsible person and are in working condition.
3. That the attached Capital Asset Schedule has been corrected to reflect an accurate listing of capital assets as of this date.

Signed: _____

Print Name: _____

Regional Planning Commission: _____

Date: _____

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas State Affordable Housing Corporation

Notice of Public Hearing

TEXAS STATE AFFORDABLE HOUSING CORPORATION
MULTIFAMILY HOUSING REVENUE BONDS (HIC ARBOR-
STONE/BAYBROOK/CRESCENT OAKS DEVELOPMENT)
SERIES 2001

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on September 7, 2001 at 12:00 Noon, at the Dallas Public Library, Polk-Wisdom Branch, 7151 Library Lane, Dallas, Texas, 75232, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in an aggregate principal amount not to exceed \$81,000,000, the proceeds of which will be loaned to HIC Arborstone Baybrook, L.L.C., an Internal Revenue Code Section 501(c)(3) corporation, to finance the acquisition and rehabilitation of three separate multifamily housing properties (collectively, the "Properties") located in the cities of Dallas and Houston, Texas. The public hearing, which is the subject of this notice, will concern the Arborstone Apartments containing 536 units, located at 6940 South Cockrell Hill Road, Dallas, Texas. The Properties will be owned by HIC Arborstone Baybrook, L.L.C.

All interested parties are invited to attend such public hearing to express their views with respect to the Properties and the issuance of the Bonds. Questions or requests for additional information may be directed to Daniel C. Owen at the Texas State Affordable Housing Corporation, 1715 West 35th Street, Austin, Texas 78703; 1-888-638-3555 ext. 404.

Persons who intend to appear at the hearing and express their views are invited to contact Daniel C. Owen in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Daniel C. Owen prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Glenda David, ADA Responsible Employee, at 1-888-638-3555, ext. 417 through Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals who require child care to be provided at this meeting should contact Glenda David at 1-888-638-3555, ext. 417, at least five days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to Daniel Owen at dowen@tsahc.org.

TRD-200104469

Daniel C. Owen

Vice President

Texas State Affordable Housing Corporation

Filed: August 6, 2001



Notice of Public Hearing

TEXAS STATE AFFORDABLE HOUSING CORPORATION
MULTIFAMILY HOUSING REVENUE BONDS (HIC ARBOR-
STONE/BAYBROOK/CRESCENT OAKS DEVELOPMENT)
SERIES 2001

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on September 10, 2001 at 5:00 p.m., at the Harris County Public Library, Freeman Branch, 16602 Diana Lane, Houston, Texas 77062, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in an aggregate principal amount not to exceed \$81,000,000, the proceeds of which will be loaned to HIC Arborstone Baybrook, L.L.C., an Internal Revenue Code Section 501(c)(3) corporation, to finance the acquisition and rehabilitation of three separate multifamily housing properties (collectively, the "Properties") located in the cities of Dallas and Houston, Texas. The public hearing, which is the subject of this notice, will concern the Baybrook Village Apartments containing 776 units, located at 2702 West Bay Area Boulevard, Houston, Texas and Crescent Oaks Apartments containing 429 units, located at 6718 DeMoss, Houston, Texas. The Properties will be owned by HIC Arborstone Baybrook, L.L.C.

All interested parties are invited to attend such public hearing to express their views with respect to the Properties and the issuance of the Bonds. Questions or requests for additional information may be directed to Daniel C. Owen at the Texas State Affordable Housing Corporation, 1715 West 35th Street, Austin, Texas 78703; 1-888-638-3555 ext. 404.

Persons who intend to appear at the hearing and express their views are invited to contact Daniel C. Owen in writing in advance of the hearing.

Any interested persons unable to attend the hearing may submit their views in writing to Daniel C. Owen prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Glenda David, ADA Responsible Employee, at 1-888-638-3555, ext. 417 through Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals who require child care to be provided at this meeting should contact Glenda David at 1-888-638-3555, ext. 417, at least five days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to Daniel Owen at downen@tsahc.org.

TRD-200104470

Daniel C. Owen

Vice President

Texas State Affordable Housing Corporation

Filed: August 6, 2001

◆ ◆ ◆

Texas Department on Aging

Request for Proposals

BACKGROUND

The Texas Department on Aging (TDoA) is soliciting proposals for one time only capacity building grants to enhance supports for informal caregivers targeted to entities with the greatest geographical and population impact possible. These grants would require a 50% cash or in-kind match. The maximum funding level will be five to ten awards of \$5,000 to \$10,000 each. The total funds available to award is \$50,000.

In December 2000, Congress approved President Clinton's \$125 million request to fund the new National Family Caregiver Support Program (NFCSP). This program will provide critical support needed by families to assist them in maintaining their caregiver roles. Texas has been allocated \$6.1 million dollars to implement the federal Caregiver Initiative as described in the new reauthorized OAA. Services to be provided across the state include but are not limited to:

Information to caregivers about available services;

Assistance to caregivers in gaining access to available services;

Individual counseling, organization of support groups and caregiving training to caregivers to assist in making decisions and solving problems relating to their caregiving roles;

Respite care to enable caregivers to be temporarily relieved from their caregiving responsibilities; and

Supplemental services, on a limited basis, to complement the care provided by caregivers.

ELIGIBILITY REQUIREMENTS

This Request for Proposals (RFP) invites applications from government, public, private, non-profit and for-profit entities that provide direct or support services to informal caregivers of persons aged 60 and older. Priority will be given to applicants whose response will result in the greatest geographical and population impact possible and who provide the greatest chance for long term sustainability.

AWARD INSTRUMENT AND RESPONSIBILITY

The award will be a grant. Responsibility for the planning, direction, and execution of the proposed project may be shared among collaborating organizations, but is ultimately the sole responsibility of the applicant.

PROJECT PERIOD

The total project period for applications submitted in response to this RFP may not exceed twelve months, and must be concluded by October 30, 2002.

SCOPE OF THE WORK

The selected proposals will enable the applicants **to build infrastructure and/or to enhance support** for informal caregivers of older people in the following areas (these funds are restricted from being used to provide direct services to caregivers and/or older people):

Information to caregivers about available services;

Assistance to caregivers in gaining access to available services;

Individual counseling, organization of support groups and caregiving training to caregivers to assist in making decisions and solving problems relating to their caregiving roles;

Respite care to enable caregivers to be temporarily relieved from their caregiving responsibilities; and

Supplemental services, on a limited basis, to complement the care provided by caregivers.

Eligible caregivers include:

Family caregiver or informal provider of in-home and community care to an older person aged 60+;

Persons aged 60+ acting as the primary caregiver for children younger than 18 years of age.

DELIVERABLES

Final deliverables will be due no later than November 15, 2002. Deliverables will include:

Quarterly written reports that will identify the progress toward the achievement of the outcomes identified in the proposal. (See attachment C for reporting instructions and report form). These will be due 2/15/2002, 5/15/2002, 8/15/2002, and 11/15/2002.

The final quarterly report should identify the outcomes produced by the capacity building efforts, as well as identifying those efforts that may not have been successful. The final quarterly report is due no later than 5:00 p.m. November 15, 2002.

WRITTEN MATERIALS

The proposal shall include a list of materials it intends to create with grant funds, shall describe the purpose for the materials, and shall state where the materials will be distributed. Written materials created with grant funds provided by the Department shall contain a statement acknowledging the financial support of the Texas Department on Aging. The materials shall be submitted to the Department for approval of content prior to being printed for distribution to ensure that the materials are not inconsistent with Department objectives.

The Contractor shall retain ownership of intellectual property rights in any written materials developed through this agreement, except to the extent provided by the Uniform Grant Management Standards adopted by the Governor's Office of Budget and Planning, and Federal OMB circulars, as applicable.

If the Department does not obtain intellectual property rights according to the provisions cited above, the Contractor, by entering into a contract

with the Department, grants to the Department a royalty-free, perpetual, irrevocable, world-wide license to reproduce and distribute copies of the materials created with funds provided under the grant.

DISPUTE RESOLUTION

(1) The dispute resolution process provided for in Chapter 2260 of the Government Code shall be used as further described herein, by the TDoA and the contractor to attempt to resolve any claim for breach of contract made by the contractor:

(A) A contractor's claim for breach of contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the Government Code. To initiate the process, the contractor shall submit written notice, as required by subchapter B, to Mary Sapp, Executive Director. Said notice shall specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of the TDoA and the contractor otherwise entitled to notice under the parties' contract. Compliance by the contractor with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the Government Code.

(B) The contested case process provided in Chapter 2260, subchapter C, of the Government Code is the contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by the TDoA if the parties are unable to resolve their disputes under subparagraph (A) of this paragraph.

(C) Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by the TDoA nor any other conduct of any representative of the TDoA relating to the contract shall be considered a waiver of sovereign immunity to suit.

(2) The submission, processing and resolution of the contractor's claim is governed by the published rules adopted by the Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.

(3) Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the contractor, in whole or part.

ORGANIZATIONAL CAPABILITY

Applicants must have experience in providing services and/or information to older people and/or caregivers of persons aged 60 and over. Applicants must provide a description of the organization's experience that is relevant to this project. Failure to include sufficient information to substantiate experience in providing services and/or information to older people and/or their caregivers will result in disqualification of the application.

PROPOSAL REQUIREMENTS

Proposals must comply with all applicable rules and statutes relating to grant awards in the State of Texas. Late and/or unsigned proposals will not be considered under any circumstances. The person submitting the proposal must have the authority to bind the organization in a contract.

TDoA reserves the right to accept or reject all or any part of a proposal, waive minor technicalities, and award the proposal to best serve the interests of the agency.

APPLICATION FORMAT

Applications must respond to all aspects specified in the RFP. To facilitate application review and evaluation, applications shall follow the following format:

I. Cover Page (including name of applicant, project name, and date submitted);

II. Statement of Opportunity (a discussion of the issues in general, the specific focus of the proposal, rationale for why the capacity building is needed, and the expected measurable, observable outcomes, including a timeline for accomplishing those measurable, observable outcomes);

III. Project Design and Work Plan (a description of the methodological approach and tasks that will be required for the proposed study, including a timeline for completing tasks and deliverables);

IV. Organizational Capacity (description of the applicant's capacity to achieve the objectives identified in the proposal including supporting documentation such as examples of previous capacity building efforts); and

V. Budget (a detailed budget and justification, including identification of the sources for the required 50% cash and/or in-kind match. If you are unable to provide the required cash or in-kind match, please provide a detailed justification of the reasons why).

The proposal narrative (Statement of the Opportunity, Project Design and Work Plan, and Organizational Capacity) should not exceed ten double-spaced pages in 12 pt. type. Additional documentation may be appended.

The maximum funding level will be five to ten awards of \$5,000 to \$10,000 each, with the total available to award being \$50,000.

APPLICATION SUBMISSION

An original, plus four copies of the paper application should be sent directly to:

Gary Jessee, Special Projects Officer, Texas Department on Aging P.O. Box 12786, Austin, TX 78711

The application must be received by TDoA no later than September 27, 2001. An application will be considered "on time" if it is received on or before the closing date of September 27, 2001, or if it is postmarked on or before September 27, 2001. Applications must be mailed through the U.S. Postal Service or a commercial delivery service. No facsimiles will be accepted. Applications postmarked after the closing date, or postmarked before the closing date but not received in time for panel review, will be considered late applications.

PROPOSAL SUBMISSION

The Applicant Affirmation, and Good Faith Effort Program Other Services Form must be attached to and submitted with the proposal (Attachments B and C).

REVIEW OF APPLICATIONS AND CRITERIA FOR SELECTION

Acceptable applications will be referred to a technical panel for evaluation and scoring. To assist in the preparation of the application, established criteria for review are provided below. The panel will consist of TDoA staff and staff from other State agencies. The panel will be convened on October 10, 2001. Applicants will be mailed written notification of the final award decision on October 17, 2001. Failure to provide the required information with the application will automatically disqualify the proposal from consideration for the award in connection with this RFP.

Evaluation and grant award will be based on the following criteria (the weighted value for each criteria is identified in parenthesis):

1. Evidence of applicant's experience in developing and providing programs or services (20%);
2. Evidence that the conceptual framework, design, methods, and analyses are adequately developed, and appropriate to the aims of the project (20%);
3. Submission of a realistic work plan and timeline (20%);
4. A budget and justification that is appropriate for the scope and quality needed for successful completion of the project (20%); and
5. Evidence of sustainability beyond the life of this initial capacity building funding, (20%).

VALIDATION OF OFFERS

Prior to award of the grant, TDoA must be assured that the selected applicant has the resources with the required experience to successfully perform under the contract, and that these resources will be available during the term of the contract. If during the evaluation process, TDoA is unable to assure itself of a selected applicant's ability to perform under the grant, TDoA has the option of requesting from the selected

applicant any information which it deems necessary to aid in determining whether the selected applicant has the experience to perform the contract.

NOTIFICATION OF AWARD

All applicants will be notified by the TDoA contact person concerning the award of a contract. The selected applicant will receive a contract from TDoA. The selected applicant must meet all TDoA contractual requirements for execution of the contract.

RFP REVIEW AND AWARD SCHEDULE

RFP Announcement - August 17, 2001

Applications due by 5:00 p.m. - September 27, 2001

Notification of Award - October 17, 2001

Execute Contract - November 1, 2001

Questions regarding this RFP can be directed to Gary Jessee at (512) 424-6857.

ATTACHMENT A

APPLICANT AFFIRMATION

Signing an application with a false statement is a material breach of contract and shall void the submitted application or any resulting contracts, and the applicant shall be removed from all bid lists. By signature affixed on the application, the applicant certifies that:

1. The applicant has not given, offered to give, nor intends to give at anytime hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted application.
2. The applicant is not currently delinquent in the payment of any franchise tax owed the State of Texas.
3. Neither the applicant nor the firm, corporation, partnership, or institution represented by the applicant, or anyone acting for such firm, corporation or institution has violated the antitrust laws of Texas or the Federal antitrust Laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.
4. The applicant has not received compensation for participation in the preparation of the specifications for this RFP.
5. Under Family Code, Section 231.006, relating to child support, the applicant certifies that the individual or business entity named in this application is eligible to receive the specified payment and acknowledges that this contract may be terminated and/or payment may be withheld if this certification is inaccurate.
6. The application must include the name and Social Security Number of each person with at least 25 percent ownership of the business entity submitting the proposal. Bidders that have pre-registered this information on the GSC Centralized Master Bidders list have satisfied this requirement, if not pre-registered, complete the following (if more than one to report, please make copies of this form):

Enter name above, and Social Security Number below

			-			-			
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7. Under Section 2155.004 Government Code (relating to collection of state and local sales and use taxes) the applicant certifies that the individual or business entity named in this proposal is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and/or payment withheld if this certification is inaccurate.
8. The contractor shall defend, indemnify, and hold harmless the State of Texas, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of contractor or any agent, employee, subcontractor, or supplier of contractor in the execution or performance of this contract.

Good Faith Effort Program (GFEP) For Other Services

State agencies are required to make a good faith effort to assist Historically Underutilized Businesses (HUBs) in receiving contract awards issued by the State, see Tex. Gov't Code Ann. Title 10, Subtitle D, Chapter 2161 (formerly Tex. Rev. Civ. Stat. Ann. Art. 601b). The goal of this program is to promote fair and competitive business opportunities for all businesses contracting with the State of Texas. The following documents must be completed and returned by applicants in order for the proposal to be considered for award:

- (1) Good Faith Effort Program (GFEP) Other Services Form – This form must be returned with the proposal.
- (2) The bidder providing subcontracting opportunities shall submit to the TDoA, a copy of the written notice of solicitation advertising the subcontracting opportunities (see GFEP Other Services Form, criteria number two). This written notice of solicitation shall be submitted with the proposal.

If all or any portion of the contract will be subcontracted, as indicated on the GFEP Other Services Form, the applicant must submit supporting documentation with the forms listed below within **14 working days** following notification of selection by TDoA, but prior to award of a contract:

- (1) Determination of Good Faith Effort (DGFE).
- (2) The Historically Underutilized Business Solicitation Form (HUB-SF).
- (3) Historically Underutilized Business Letter of Intent (HUB-LOI).

If an award is made, the applicant will provide the following documents to the contracting agency on a quarterly basis:

- (1) Non-Historically Underutilized Business Progress Assessment Report (NON-HUB-PAR) – documentation of work subcontracted with HUBs;
- OR--
- (2) Historically Underutilized Business Progress Report (HUB-PAR-A) – documentation of work subcontracted with Non-HUBs.

All forms must be submitted to the TDoA within the specified time frames. Failure to do so will cause disqualification of the application from consideration for award or revocation of any contract awarded because of noncompliance.

NOTE: A random reference list of Texas certified HUBs has been attached to assist applicants in achieving the program goal. A complete list of all GSC certified HUBs may be electronically accessed through the Internet. The GSC information server is available through the Internet based World-Wide-Web. Although there are alternatives to connect to this data, the preferred method is through the Internet using a Web Browser (i.e., Netscape, Mosaic). Using a Web Browser, please connect to <http://www.gsc.state.tx.us> (this is the home page for GSC).

Good Faith Effort Program (GFEP) –
Other Services Form

Signature: _____	Date _____
(Applicant)	
Applicant Name: _____	
(Print)	
Requisition Number: _____	
Bid Opening Date: _____	

State Agencies are required to make a good faith effort to assist Historically Underutilized Businesses (HUBs) in receiving contract awards issued by the State, see Tex. Gov't Code Ann. Title 10, Subtitle D, Chapter 2161 (formerly Tex. Rev. Civ. Stat. Ann. Art. 601b). The General Services Commission (GSC) Rules, 1 TAC 111.11-111.24, outline the State's policy to encourage the use of HUBs by State Agencies and to assist agencies to achieve these goals through race, ethnic, and gender neutral means. The goal of this program is to promote fair and competitive business opportunities for all businesses in state contracting.

In accordance with the State's policy of encouraging the use of HUBs in state procurement, each State Agency shall make a good faith effort to utilize HUBs in contracts for the purchases of other services. Each State Agency will achieve the annual program goals by contracting directly with HUBs or indirectly through subcontracting opportunities. Therefore, any business that contracts with a State Agency shall be required to make a good faith effort to award necessary subcontracts to HUBs in accordance with GSC Rule 111.13 (b), also, see Rule 111.13 (c)(7). The annual program goal for all other services contracts an agency expects to award in a fiscal year is 33% for Black Americans, Hispanic Americans, Women, Asian Pacific Americans and Native Americans. This Good Faith Effort Program goal does not prevent any business group from participating in contracting opportunities with the State of Texas.

A subcontractor is a business entity that enters into a contract with a contractor (vendor) to provide a portion of the goods for which the contractor is responsible under the terms of its contract with the State. By implementing the following procedures, a contractor shall be presumed to have made a good faith effort:

1. To the extent consistent with prudent industry practice, divide the contract work into reasonable lots.
2. Notify HUBs of the work that the contractor intends to subcontract. The notice shall be in writing. The written notice shall include description of the subcontracting opportunities and shall identify the location to review contract specifications. The written notice shall be provided to potential subcontractor prior to submission of the contractor's bid (Copy of written notice of solicitation shall be submitted at the time of application or within **14 working days** following notification of selection by TDoA, but prior to award of a contract).
3. The contractor shall provide written notice as required in (2) above with sufficient time to allow all interested parties the opportunity to participate effectively. The contractor shall send such written notice to at least five businesses in the current GSC directory of certified HUBs that perform the type of work required in the area in which the work will be performed.
4. If a Non-HUB subcontractor is selected through means other than competitive bidding, or a HUB bid is the lowest price responsive bidder to a competitive bid, but not selected, the contractor will be required to document the selection process.
5. The contractor shall maintain business records documenting its compliance and shall make a compliance report to the contracting State Agency and report in the format required by the contracting State Agency's contract documents, provided that reporting shall be required at least once for each calendar quarter during the term of the contract.

Note: When the contractor is a HUB, it must satisfy the good faith effort requirements by performing at least 25% of the contract with its employees. The HUB prime may subcontract the remaining 75% of the contract with HUB or Non-HUB contractors. Any contractor that seeks to satisfy the good faith effort requirement in this manner shall report quarterly to the contracting agency the volume of work performed under the contract and the portion of the work that was performed with its employees. If a HUB contractor performs less than 25% of the cumulative total contract with its employees, then for the next quarter, the contractor shall report its subcontractors as required by a Non-HUB contractor.

Applicant must answer the following questions:

1. If an award is issued, do you plan to utilize a subcontractor for all or any portion of the contract? ___ Yes ___ No
2. If yes, what percentage of work will be subcontracted with a HUB? _____%
3. If no, explain below, or in a separate document, why no subcontracting opportunities are available or what efforts were made to subcontract part of this project?
4. Are you certified as a Texas HUB? ___ Yes ___ No GSC VID/Certificate No.: _____

Note: The applicant will be required to prepare and submit the following Good Faith Effort Program forms: Determination of Good Faith Effort (DGFE) with supporting documentation, HUB-Solicitation Form (SF), HUB-Letter of Intent (LOI) and Progress Assessment Report (PAR) within the designated time period stated on each form. The TDoA will ensure that a bidder has complied with the Good Faith Program as a condition of awarding this contract.

Please return this form with the application.

Return to: Texas Department on Aging; Gary Jessee; P.O. Box 12786, Austin, TX 78711

**Texas Department on Aging
Quarterly Program Performance Report
Caregiver Capacity Building Grant**

Quarterly reports are due on 2/15/2002, 5/15/2002, 8/15/2002, and 11/15/2002

Project Title
Year of Project (i.e., 1, 2, etc.)

Address	City	Texas	Zip Code
Organization	Budget Period (mm/dd/yy) to		Quarter 1 2 3 4 <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

Program Accomplishments

Briefly describe program activities, accomplishments and key decisions made in this reporting period in response to outlined work plan goals, objectives, outcomes, and timeline.

Barriers/Concerns

Briefly list any barriers, concerns or other issues that have prevented project goals and objectives from being met during this reporting period as outlines in the work plan timeline.

Corrective Action

Briefly list any corrective actions that you propose to resolve the above barriers/concerns.

Measurable Outcomes

Measurable outcomes / activities identified in the work plan:

Example: Recruit seven trainers for caregiver education training program.

4 recruited to date

Quarterly Fiscal Report

Quarterly Fiscal Report							
Category	Approved Budget		Total Federal \$ Received		Amount Requested	Estimated for Next Month	
	Federal	Match	Federal	Match		Federal	Match
Personnel Services							
Travel							
Purchasing Services							
Co-op./Materials							
Rental/Leasing							
Utilities							
Other							
Totals							

Please explain any variances or discrepancies within current expenditure period.

I certify that, to the best of my knowledge and belief, the data reported above are correct and that all costs were incurred in accordance with grant conditions and regulations and that payment is due and has not been previously paid.

Signature of Project Director

Date

Signature of Financial Administrative Authority

Date

For TDoA Use Only

Approved for \$ _____ by _____ Date _____

TRD-200104544

Gary Jessee
Aging Network Policy Coordinator
Texas Department on Aging
Filed: August 8, 2001

◆ ◆ ◆
Request for Proposals

Texas Department on Aging and Texas Department of Housing and Community Affairs

BACKGROUND AND RESEARCH FOCUS

The Texas Department on Aging (TDoA) and the Texas Department on Housing and Community Affairs (TDHCA) are soliciting proposals for a study of the housing needs of the 60+ population in Texas with a maximum funding level not to exceed \$120,000.

Housing contributes significantly to the quality of life experienced by older persons. Well designed, suitably located, and affordable housing can help sustain the independence of older persons, and ease the burden of disabilities that often accompany aging. Although progress has been made in improving the housing conditions of older persons, national data reveal that certain groups of older households remain in need of assistance. Prominent among those in need are the population age 75+, women living alone, minorities, rural households, and renters.

Senate Bill 374 (76th Texas Legislature) requires TDoA and TDHCA to assess the need for housing for elderly individuals and for families in which an elderly individual is head of the household in different localities in Texas. Research focus should include:

habitation of substandard units;

excessive expenditures for housing compared to other groups;

identification of different housing options utilized by the older population, basic costs; associated with each option, and reasons people transition between the various options;

and other possible research questions as proposed by the selected applicant and mutually agreed to by TDoA, TDHCA, and the applicant.

ELIGIBILITY REQUIREMENTS

This Request for Proposals (RFP) invites applications from government, public, private, non-profit and for-profit entities.

AWARD INSTRUMENT AND RESPONSIBILITY

The award will be a contract for services. Responsibility for the planning, direction, and execution of the proposed project may be shared among collaborating organizations, but is ultimately the sole responsibility of the applicant.

PROJECT PERIOD

The total project period for applications submitted in response to this RFP may not exceed twelve months, and must be concluded by December 15, 2002.

SCOPE OF THE WORK

The selected proposal will develop a methodology and conduct a study of housing needs for the population age 60+, analyze state policy relating to housing, provide a written and an electronic version of the report summarizing the results, and provide data to TDoA and TDHCA in electronic format. The research should include analysis based on:

Age: 60+ population including the oldest of the 60+ population.

Geographical Designations: 11 TDHCA service regions (see Attachment A for definition of regions).

Residence: (urban, suburban, and rural): The definition for rural is specified by the Office of Management and Budget. "An area is rural if: 1. it is outside the boundaries of a Metropolitan Statistical Area (MSA); or 2. it is within the boundaries of an MSA but has a population of

not more than 20,000 and does not share boundaries with an urbanized area."

Race/Ethnicity: major racial and ethnic groups

Income Levels: as defined by TDHCA:

0-30% of median income is defined as extremely low income

30-50% of median income is defined as very low income

51-80% of median income is defined as low income.

The study may be based on estimation techniques utilizing national surveys and Texas State Data Center projections and/or primary data collection. If sampling is used, the sample size must be sufficient to ensure the 95 percent confidence level for results are no more than + 3 percent and support statistically reliable results for each of the variables listed above.

The selected applicant in consultation with TDoA and TDHCA staff will develop data collection instruments. The research organization must be able to administer interviews in English and Spanish. The data collection instrument will also collect social and demographic data that will allow for subgroup analysis on the variables specified above. The research organization will submit drafts of English and Spanish versions of the survey instrument to TDoA and TDHCA for review and approval prior to interviewing. TDoA and TDHCA staff will be allowed access to the data collection site/facilities during data collection to ensure appropriate quality of data. The selected applicant will code responses to open ended items included in survey instruments, and enter this data into an automated database for tabulation and analysis with other survey data. The data analysis will include frequency distributions, crosstabulations, and other data manipulations as directed by TDoA and TDHCA. The selected applicant will provide raw data as an ASCII fixed field length, comma delimited data file.

The selected applicant will provide an appropriate analysis of data and will prepare and submit a written report that will contain: an executive summary, a detailed statistical analysis of results, an analysis of state policy in the related areas, and an analysis of the social and demographic dimensions specified above. The written report will also include graphic presentation of data as appropriate. The selected applicant will describe the methodology and confidence level of results in an appendix to the report. The selected applicant will submit an initial draft of the report to TDoA and TDHCA for staff review, and finalize the report by incorporating revisions and additional analyses requested by TDoA and TDHCA.

DELIVERABLES

Final deliverables will be due no later than December 15, 2002. Deliverables will include:

detailed proposal including policy analysis and project design and methodology

data collection instruments

hard copy of frequency distributions

crosstabulations and other data manipulations

ASCII file containing raw data.

draft version of the written report

Final revised written report

The final report should address the background and scope of the problem for the aged population and an analysis of Texas state policy in each area. The final report is due no later than 5:00 p.m. December 15, 2002.

Provisions made to protect the health, well-being, dignity, or confidentiality of human subjects should be documented, if applicable. For example, university applicants are asked to provide a copy of approval from their Institutional Review Board or other committee to review the appropriateness of the course of activities performed pursuant to this agreement.

WORK MADE FOR HIRE

All work performed pursuant to this Agreement specifically including all Deliverables developed or prepared for the TDoA is the exclusive property of the State of Texas. All right, title, and interest in and to said property shall vest in the State of Texas and shall be deemed to be a work made for hire and made in the course of the services rendered pursuant to this Agreement. To the extent that title to any work may not, by operation of law, vest in the State of Texas or such work may not be considered a work made for hire, all rights, title, and interest therein are hereby irrevocably assigned to the State of Texas. The TDoA and/or the State of Texas shall have the right to obtain and to hold in its own name, copyrights, registrations, or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor agrees to give the TDoA and/or the State of Texas and any person designated by the Department and/or the State of Texas, reasonable assistance required to assert the rights defined in this paragraph.

LICENSE AGREEMENT

TDOA shall grant to the awarded Contractor a non-exclusive, irrevocable, world-wide, royalty-free, license to use, reproduce, distribute, and display the materials created pursuant to this agreement, subject to the following terms and conditions. The license granted shall terminate on December 31, 2004, unless renewed by the parties in writing, terminated sooner in accordance with its terms, or if the Agreement of which this clause is a part, is terminated for cause. Each copy of the materials that the Contractor distributes shall indicate on the cover that the creation of the material was funded by the Texas Department on Aging. The first page on the inside of the material shall contain the following copyright notice: (c) 2001 Texas Department on Aging, State of Texas. The Contractor agrees that it will not charge a fee for the distribution of the materials, except to recover actual duplication and mailing costs. Contractor shall not create derivatives of or modify the content of the materials except with the express written consent of the TDOA. Failure to comply with the terms of this license agreement may result in immediate termination of the license agreement by TDOA. Upon termination of this license agreement, Contractor shall return the remaining materials to TDOA, or shall destroy or distribute them, in accordance with the instructions of the TDOA.

DISPUTE RESOLUTION

(1) The dispute resolution process provided for in Chapter 2260 of the Government Code shall be used as further described herein, by the TDoA and the contractor to attempt to resolve any claim for breach of contract made by the contractor:

(A) A contractor's claim for breach of contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the Government Code. To initiate the process, the contractor shall submit written notice, as required by subchapter B, to Mary Sapp, Executive Director. Said notice shall specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of the TDoA and the contractor otherwise entitled to notice under the parties' contract. Compliance by the contractor with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the Government Code.

(B) The contested case process provided in Chapter 2260, subchapter C, of the Government Code is the contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by the TDoA if the parties are unable to resolve their disputes under subparagraph (A) of this paragraph.

(C) Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by the TDoA nor any other conduct of any representative of the TDoA relating to the contract shall be considered a waiver of sovereign immunity to suit.

(2) The submission, processing and resolution of the contractor's claim is governed by the published rules adopted by the Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.

(3) Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the contractor, in whole or part.

ORGANIZATIONAL CAPABILITY

Applicants must have a minimum of five years experience performing gerontological research and policy analysis using rigorous research methods, published gerontological research in major peer-reviewed journals, and a record of funded gerontological research and policy analysis. Applicants must provide a description of the organization's research experience that is relevant to this project. Prior experience conducting research on housing issues, and collaboration with other experts is preferred. Applicants must include a brief description of the qualifications of expected collaborators, the available organizational resources, and the qualifications of staff members expected to work on this project. Failure to include a description of the principal investigators' research experience will result in disqualification. Failure to include sufficient information to substantiate five years experience in gerontological research will result in disqualification of the application. Failure to include a description of the organization, collaborators, and staff will result in disqualification.

PROPOSAL REQUIREMENTS

Proposals must comply with all rules and statutes relating to purchasing in the State of Texas. Late and/or unsigned proposals will not be considered under any circumstances. The person submitting the proposal must have the authority to bind the organization in a contract.

TDoA reserves the right to accept or reject all or any part of a proposal, waive minor technicalities, and award the proposal to best serve the interests of the agency.

APPLICATION FORMAT

Applications must respond to all aspects specified in the RFP. To facilitate application review and evaluation, applications shall follow the following format:

I. Cover Page (including name of applicant, project name, and date submitted)

II. Table of Contents

III. Executive Summary (limited to two double-spaced pages)

IV. Statement of the Problem (a discussion of the issues in general, the specific focus of the proposal, rationale for why the research is needed, and the expected outcomes)

V. Literature Review (a brief discussion of the literature and studies pertinent to the proposed research)

VI. Project Design and Workplan (a description of the methodological approach and tasks that will be required for the proposed study, including a timeline for completing tasks and deliverables)

VII. Organizational Capacity (description of the applicant's capacity to achieve the objectives identified in the proposal including supporting documentation such as examples of previous reports, survey instruments, etc.; a description of the organization, and the qualifications of collaborators and project staff)

VIII. Budget (a detailed budget and justification)

IX. Biographical Sketch (one page biographical sketch of the Principal Investigator)

The proposal narrative (Statement of the Problem, Literature Review, Project Design and Work Plan, and Organizational Capacity) should not exceed twenty double-spaced pages in 12 pt. type. Additional documentation may be appended. Applicants must provide an executive summary of not more than two pages describing how the requirements of the RFP will be met.

The maximum funding level will be \$120,000, which includes both direct and indirect costs. Requests for indirect costs shall not exceed ten percent of the total budget requested.

APPLICATION SUBMISSION

An original, plus nine copies of the paper application should be sent directly to:

Jane Norwood, Office of Public Policy & Information, Texas Department on Aging, PO Box 12786, Austin, TX 78711

The application must be received by TDoA no later than October 1, 2001. An application will be considered "on time" if it is received on or before the closing date of October 1, 2001, or if it is postmarked on or before October 1, 2001. Applications must be mailed through the U.S. Postal Service or a commercial delivery service. No facsimiles will be accepted. Applications postmarked after the closing date, or postmarked before the closing date but not received in time for panel review, will be considered late applications.

PROPOSAL SUBMISSION

The Applicant Affirmation, and Good Faith Effort Program Other Services Form must be attached to and submitted with the proposal (Attachments B and C).

REVIEW OF APPLICATIONS AND CRITERIA FOR SELECTION

Acceptable applications will be referred to a technical panel for evaluation and scoring. To assist in the preparation of the application, established criteria for review are provided below. The panel will consist of TDoA and TDHCA staff and possibly staff from other State agencies. The panel will be convened on October 2, 2001. Applicants will be mailed written notification of the final award decision on November 12, 2001. Failure to provide the required information with the application will automatically disqualify the proposal from consideration for the award in connection with this RFP.

Evaluation and grant award will be based on the following criteria (weighted values in parenthesis):

1. evidence of applicant's experience in developing and conducting gerontological research and policy analysis (include examples of previous reports, survey instruments, etc..)(20%);
2. evidence that the conceptual framework, design, methods, and analyses are adequately developed, and appropriate to the aims of the project (20%);
3. evidence of collaboration and well defined roles among key parties (20%);
4. submission of a realistic work plan and timeline (20%); and
5. a budget and justification that is appropriate for the scope and quality needed for successful completion of the project (20%).

TDoA and TDHCA are particularly interested in supporting collaborations between organizations that will design and conduct gerontological research. The collaborating organizations should identify an applicant organization with strong experience in research on aging issues.

VALIDATION OF OFFERS

Prior to award of the grant, TDoA and TDHCA must be assured that the selected applicant has the resources with the required experience to successfully perform under the contract, and that these resources will be available during the term of the contract. If during the evaluation process, TDoA and TDHCA are not assured of a selected applicant's ability to perform under the grant, TDoA and TDHCA have the option of requesting from the selected applicant any information which they deem necessary to aid in determining whether the selected applicant has the experience to perform the contract, or in determining whether the selected vendor's quote is unacceptable to TDoA and TDHCA.

TDoA and TDHCA reserve the right to negotiate with applicants as well as the right to refuse any and all responses resulting from this request for proposals to ensure that deliverables are high quality and meet stated requirements.

NOTIFICATION OF AWARD

All applicants will be notified by the TDoA and TDHCA contact person concerning the award of a contract. The selected applicant will receive a contract from TDoA. The selected applicant must meet all TDoA contractual requirements for execution of the contract.

RFP REVIEW AND AWARD SCHEDULE

RFP announcement - July 23, 2001

Applications due by 5:00 p.m. - October 1, 2001

Notification of Award - November 12, 2001

Final Deliverables Due - December 15, 2002

Questions regarding this RFP can be directed to Jane Norwood at (512) 424-6850.

APPLICANT AFFIRMATION

Signing an application with a false statement is a material breach of contract and shall void the submitted application or any resulting contracts, and the applicant shall be removed from all bid lists. By signature affixed on the application, the applicant certifies that:

1. The applicant has not given, offered to give, nor intends to give at anytime hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted application.
2. The applicant is not currently delinquent in the payment of any franchise tax owed the State of Texas.
3. Neither the applicant nor the firm, corporation, partnership, or institution represented by the applicant, or anyone acting for such firm, corporation or institution has violated the antitrust laws of Texas or the Federal antitrust Laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.
4. The applicant has not received compensation for participation in the preparation of the specifications for this RFP.
5. Under Family Code, Section 231.008, relating to child support, the applicant certifies that the individual or business entity named in this application is eligible to receive the specified payment and acknowledges that this contract may be terminated and/or payment may be withheld if this certification is inaccurate.
6. The application must include the name and Social Security Number of each person with at least 25 percent ownership of the business entity submitting the proposal. Bidders that have pre-registered this information on the GSC Centralized Master Bidders list have satisfied this requirement, if not pre-registered, complete the following (if more than one to report, please make copies of this form):

Enter name above, and Social Security Number below.

			-			-				
--	--	--	---	--	--	---	--	--	--	--

7. Under Section 2155.004 Government Code (relating to collection of state and local sales and use taxes) the applicant certifies that the individual or business entity named in this proposal is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and/or payment withheld if this certification is inaccurate.
8. The contractor shall defend, indemnify, and hold harmless the State of Texas, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of contractor or any agent, employee, subcontractor, or supplier of contractor in the execution or performance of this contract.

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Signature: _____	Date _____
(Applicant)	
Applicant	
Name: _____	
(Print)	
Requisition Number: _____	
Bid Opening Date: _____	

**Good Faith Effort Program (GFEP) –
Other Services Form**

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4. If a Non-HUB subcontractor is selected through means other than competitive bidding, or a HUB bid is the lowest price responsive bidder to a competitive bid, but not selected, the contractor will be required to document the selection process.
5. The contractor shall maintain business records documenting its compliance and shall make a compliance report to the contracting State Agency and report in the format required by the contracting State Agency's contract documents, provided that reporting shall be required at least once for each calendar quarter during the term of the contract.

Note: When the contractor is a HUB, it must satisfy the good faith effort requirements by performing at least 25% of the contract with its employees. The HUB prime may subcontract the remaining 75% of the contract with HUB or Non-HUB contractors. Any contractor that seeks to satisfy the good faith effort requirement in this manner shall report quarterly to the contracting agency the volume of work performed under the contract and the portion of the work that was performed with its employees. If a HUB contractor performs less than 25% of the cumulative total contract with its employees, then for the next quarter, the contractor shall report its subcontractors as required by a Non-HUB contractor.

Applicant must answer the following questions:

1. If an award is issued, do you plan to utilize a subcontractor for all or any portion of the contract? ___ Yes ___ No
2. If yes, what percentage of work will be subcontracted with a HUB? _____%
3. If no, explain below, or in a separate document, why no subcontracting opportunities are available or what efforts were made to subcontract part of this project?
4. Are you certified as a Texas HUB? ___ Yes ___ No GSC VID/Certificate No.: _____

Note: The applicant will be required to prepare and submit the following Good Faith Effort Program forms: Determination of Good Faith Effort (DGFE) with supporting documentation, HUB-Solicitation Form (SF), HUB-Letter of Intent (LOI) and Progress Assessment Report (PAR) within the designated time period stated on each form. The GSC will ensure that a bidder has complied with the Good Faith Program as a condition of awarding this contract.

Please return this form with the application.

Return to: Texas Department on Aging; PO Box 12786, Austin, TX 78711; Fax: (512-424-6890)

TRD-200104543
Gary Jessee
Aging Network Policy Coordinator
Texas Department on Aging
Filed: August 8, 2001

◆ ◆ ◆
Coastal Coordination Council

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

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were received for the following project(s) during the period of July 27, 2001, through August 2, 2001. The public comment period for these projects will close at 5:00 p.m. on September 7, 2001.

FEDERAL AGENCY ACTIONS:

Applicant: Bayer Corporation; Location: The project is located in the Houston Ship Channel, adjacent to Hog Island, in Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Morgans Point, Texas. Approximate UTM Coordinates: Zone 15; Easting: 311950; Northing: 3288800. CCC Project No.: 01-0281-F1; Description of Proposed Action: The applicant proposes to modify Permit No. 22221 to construct a pier and boat dock. The pier would be constructed on Hog Island and used to anchor boats to service the existing Bayer pipeline that traverses the island. The pier will measure 18 feet in length by 6 feet in width. The boat dock would be perpendicular to the pier. It would be 20 feet in length by 6 feet in width. No wetlands or vegetated shallows would be impacted by the proposed activity. Type of Application: U.S.A.C.E. permit application #22221(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Cabot Oil & Gas Corporation; Location: The project is located in Aransas Bay, in State Tract 228, in Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Estes,

Texas. Approximate UTM Coordinates: Zone 14; Easting: 692575; Northing: 3093313. CCC Project No.: 01-0282-F1; Description of Proposed Action: The applicant proposes to modify Permit No. 22287 to add two possible pipeline routes, contingent on the production from State Tract 228, Well No. 1. Either pipeline route would originate from this well. The applicant also proposes to add attendant structures to the already permitted structures. The first proposed pipeline would be a 6-inch full well stream pipeline. The total length would be approximately 17,168 feet. The second proposed pipeline would consist of a 4-inch liquid pipeline and a 6-inch gas pipeline. The 4-inch pipeline would be approximately 790 feet in length and the 6-inch pipeline would be approximately 12,411 feet in length. Type of Application: U.S.A.C.E. permit application #22287(01) 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.

Applicant: Whitmar Exploration Company; Location: The project is located adjacent to Chinquapin Road near Lake Austin. It is approximately 0.5 miles northwest of the community of Chinquapin and approximately 12 miles northeast of the community of Matagorda, in Matagorda County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Lake Austin, Texas. Approximate UTM Coordinates: Zone 15; Easting: 228300; Northing: 3184250. The proposed mitigation site is located on the Peach Point Wildlife Management Area (PPWMA) which is approximately 5 miles west of Freeport in Brazoria County, Texas. The site is on the portion that lies east of Jones Creek. The compensatory mitigation site can be located on the U.S.G.S. quadrangle map entitled Jones Creek, Texas. Approximate UTM Coordinates: Zone 15; Easting: 265900; Northing 3202400. CCC Project No.: 01-0286-F1; Description of Proposed Action: The applicant proposes to place 422 cubic yards of clean fill dirt in wetlands to construct a 1.777 acre well pad and a 14-foot wide, 0.004 acre, access drive to construct one well for oil and gas production. A 1-foot diameter culvert would be placed through the access road to allow water to flow during storm high tides. The project site is composed of non-vegetated salt flat and Gulf cordgrass prairie. If the well is successful, the imprint of the well pad would be reduced to the minimum necessary. If the well is unsuccessful, the well pad and access road would be removed within 60 days from secession of operations. Onsite mitigation is not feasible because the applicant does not own the property. As compensatory mitigation, the applicant proposes to construct two water control structures within an existing swale on the PPWMA. The project would encompass approximately 10 acres, consisting of about 1.3 acres of enhancement and 8.5 acres of created wetlands. The purpose of the proposed compensatory mitigation is to maintain the swale as a semi-permanent freshwater emergent wetland, providing critical

habitat for breeding and brood rearing of waterfowl in the area. Type of Application: U.S.A.C.E. permit application #22237 is being evaluated under 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.

Applicant: Brazoria County; Location: The project is located at San Luis Pass County Park, northwest of County Road 257 and the Galveston Toll Bridge at San Luis Pass, West Galveston Bay, Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Christmas Point, Texas. Approximate UTM Coordinates: Zone 15; Easting: 292600; Northing: 3218600. CCC Project No.: 01-0287-F1; Description of Proposed Action: The applicant proposes to reconstruct deteriorated bulkheads and place rip rap for shoreline stabilization activities to combat severe erosion at San Luis Pass County Park. Approximately 450 linear feet of bulkhead with 750 cubic yards of backfill would be installed along the shoreline of the island just southwest of the existing primitive campground area. At the northwestern tip and along the backside of the bulkhead area, approximately 63 cubic yards of rip rap will be discharged to stabilize approximately 424 square feet of shoreline. An approximate 160 linear feet of an existing bulkhead located at the lighted fishing area on the northeastern shoreline of the island will be replaced. Another 155 linear feet of existing bulkhead located on the mainland side of the San Luis County Park, just west of the Visitor Center Office, will also be replaced. The new bulkheads will be placed directly in front of the existing bulkheads and should not require any additional fill. Type of Application: U.S.A.C.E. permit application #22351 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 Texas Natural Resource Conservation Commission as part of its certification under section 401 of the Clean Water Act.

Applicant: Galveston Bay Foundation; Location: The project is located in West Bay, approximately 100 feet west of 103rd Street on Galveston Island, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Virginia Point, Texas. Approximate UTM Coordinates: Zone 15; Easting: 317100; Northing: 3239500. CCC Project No.: 01-0288-F1; Description of Proposed Action: The applicant proposes to construct the Sweetwater Artificial Oyster Reef on 0.01-acre of submerged unvegetated bay bottom. The 200-foot long by 3-foot wide by 1.5-foot tall reef would be made of 33.3 cubic yards of harvested and living natural oyster shell and would serve as a medium to grow oysters. A temporary fence would be placed around the reef for one year to help the reef maintain its shape during settlement of the shell. The fence, made of t-posts and plastic material, would be 200-foot long by 3-foot wide by 4.5-foot tall. The purpose of the reef is to create a living oyster reef to protect the adjacent 200-foot long shoreline from the erosional effects of high wave energy. The project would also help to educate local homeowners and West Bay residents on the importance of oyster reefs, coastal marshes, erosion, and water quality improvement. Type of Application: U.S.A.C.E. permit application #22391 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 Texas Natural Resource Conservation Commission as part of its certification under section 401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies

and whether the action should be referred to the Coastal Coordination Council for review.

Further information 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-200104545

Larry R. Soward

Chief Clerk, General Land Office

Coastal Coordination Council

Filed: August 8, 2001

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in 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 08/13/01 - 08/19/01 is 18% for Consumer¹/Agricultural/Commercial²/credit thru \$250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.09 for the period of 08/13/01 - 08/19/01 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-200104499

Leslie J. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: August 7, 2001

Texas Education Agency

Request for Applications Concerning Ninth Grade Success Initiative, 2001-2003, Cycle 2

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-01-036 from school districts or shared services arrangements of school districts for the purpose of implementing special programs for students in Grade 9 who have not earned sufficient credit to advance to Grade 10 and who do not meet the minimum skills levels established by the commissioner of education. The fiscal agent of a shared services arrangement must be a school district. Districts receiving a continuation grant in the Ninth Grade Success Initiative are not eligible for Cycle 2.

Description. The objective of the Ninth Grade Success Initiative, 2001-2003, Cycle 2, is to fund programs, not to exceed 210 days of instruction, specifically designed for students in Grade 9 who are at risk of not earning sufficient credit to advance to Grade 10 and who fail to meet minimum skills levels established by the commissioner, or who have not earned sufficient credit to advance to Grade 10 and who fail to meet minimum skills levels established by the commissioner.

The criteria by which grants are awarded include the quality of the proposed program design, the school district's demonstrated need for the program, and the number of identified eligible students projected to be served. Four components of need will be considered: (1) the number

of ninth grade at-risk students identified in the 2000- 2001 Public Education Information Management System (PEIMS) report; (2) the number of the district's ninth grade dropouts for school year 2000-2001; (3) the district's rate of economically disadvantaged students for the 2000-2001 school year; and (4) the district's passing rate on the Grade 8 Texas Assessment of Academic Skills (TAAS) exams in reading, writing, and mathematics. The source documents for the required data will be the district/campus PEIMS reports for the 2000-2001 school year and the most recent district/campus Academic Excellence Indicator System (AEIS) reports. The amount of the grant awarded must also take into account funds distributed to the school district under Texas Education Code, Chapter 42, Foundation School Program. Grant funds may be used to create new programs, enhance existing programs, or expand existing programs.

Dates of Project. The Ninth Grade Success Initiative, 2001-2003, Cycle 2, will be implemented during the 2001- 2002 and 2002-2003 school years. Applicants should plan for a starting date of no earlier than January 2, 2002, and an ending date of no later than August 31, 2003.

Project Amount. Funding will be provided for approximately 130 projects. Each project will receive funding for a two-year grant period in a range from \$100,000 to \$1,500,000. A school district may submit only one application but may include similar or different programs for multiple campuses within the district. Continued project funding in the second year will be based on satisfactory progress of the first-year objectives and activities and on general budget approval.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant program and the extent to which the application addresses the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-01-036 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and telephone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at <http://www.tea.state.tx.us/grant/announcements/grants2.cgi> for viewing and downloading.

Further Information. For clarifying information about the RFA, contact Geraldine Kidwell, Division of Curriculum and Professional Development, Texas Education Agency, (512) 463-9581.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Thursday, October 25, 2001, to be considered for funding.

TRD-200104548

Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Filed: August 8, 2001



Request for Proposals Concerning Summer Remediation Study Guides for the Texas Assessment Program

Eligible Proposers. The Texas Education Agency (TEA) is requesting proposals under Request for Proposals (RFP) #701-01-026 for summer remediation study guides for parents to assist students who do not perform satisfactorily on the Texas Assessment of Knowledge and Skills (TAKS) at Grades 3-10 and exit level. Eligible proposers are regional education service centers, institutions of higher education, non-profit organizations, for-profit organizations, or a consortium of the foregoing. Historically Underutilized Businesses (HUBs) are encouraged to submit a proposal or become a subcontractor.

Description. The Texas Education Code (TEC), §39.024(c), requires TEA to make available study guides to help parents provide assistance to students during summer recess. Each school district is required to distribute the study guides to parents of students who do not perform satisfactorily on one or more portions of the TAKS. This RFP involves the development, printing, and distribution of the study guides. The new contractor must begin responding to individual requests for study guides and to ship an appropriate number of free study guides to the districts to correspond with the timing of the release of spring 2003 TAKS results.

The student assessment program provides an accurate measure of student achievement in the areas of reading, writing, mathematics, social studies, and science. Since 1990, this measurement has been mostly accomplished using the Texas Assessment of Academic Skills (TAAS). The current program also includes the assessment of course-specific material with the Algebra I, Biology, English II, and U.S. History end-of-course (EOC) examinations through the 2001-2002 school year. In addition, the assessment program includes the Reading Proficiency Tests in English (RPTE) for limited English proficient (LEP) students and the State-Developed Alternative Assessment (SDAA) for special education students. The selected contractor will be responsible for all activities associated with the study guides for the new testing program, TAKS, to be implemented during the 2002-2003 school year.

Dates of Project. Proposers should plan for a contract period beginning January 1, 2002, and ending August 31, 2006. On September 1, 2002, the day after the contract for the current study guides expires, the contractor will assume full responsibility for study guide production. One contract will be awarded to a single prime contractor for the contract period. The TEA will hold the prime contractor solely accountable for all the deliverables listed in the RFP regardless of whether they have been subcontracted to other parties.

Project Funding. Funding for this project period is subject to the availability of funds appropriated by legislative act for the purposes stated. Project funding subsequent to the 2002-2003 school year will be based on satisfactory progress of the previous year's objectives and activities and general budget approval.

Selection Criteria. Proposals will be selected based on the ability of each proposer to carry out the requirements contained in this RFP. The TEA will base its selection on, among other things, demonstrated competence and qualifications of the proposer. The selection criteria and the review process are specified in the RFP. The TEA reserves the right to select from the highest-ranking proposals those that address all requirements in the RFP.

The TEA is not obligated to execute a resulting contract, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit TEA to pay any costs incurred before a contract is executed. The issuance of this RFP does not obligate TEA to award a contract or pay any costs incurred in preparing a response.

Requesting the Proposal. A complete copy of RFP #701-01-026 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFP number in your request.

Further Information. For clarifying information about this RFP, contact Keith Cruse, Student Assessment Division, Texas Education Agency, (512) 463-9536.

Proposers' Conference. There will be an opportunity for interested parties to attend the Proposers' Conference scheduled for Thursday, September 13, 2001, from 9:00 a.m. until 12:00 p.m. in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas. This conference will be the main opportunity afforded to ask questions of TEA personnel to assist potential proposers in clarifying their understanding of the scope and nature of the work required. The conference will be open to all potential proposers, and all questions asked and answered will be in the presence of all attending.

Deadline for Receipt of Proposals. Proposals must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Thursday, November 8, 2001, to be considered.

TRD-200104547

Criss Cloudt

Associate Commissioner, Accountability Reporting and Research
Texas Education Agency

Filed: August 8, 2001

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Office of the Governor, Criminal Justice Division

Notice of Request for Grant Applications for Drug Court Program

The Criminal Justice Division (CJD) of the Governor's Office announces the availability of grants for eligible drug court programs.

Purpose: The purpose of the funding is to support drug court programs as defined in Section 469.001, Health and Safety Code, which include the following essential characteristics:

- (1) the integration of alcohol and other drug treatment services in the processing of cases in the judicial system;
- (2) the use of a nonadversarial approach involving prosecutors and defense attorneys to promote public safety and to protect the due process rights of program participants;
- (3) early identification and prompt placement of eligible participants in the program;
- (4) access to a continuum of alcohol, drug, and other related treatment and rehabilitative services;
- (5) monitoring of abstinence through weekly alcohol and other drug testing;
- (6) a coordinated strategy to govern program responses to participant's compliance;
- (7) ongoing judicial interaction with program participants;
- (8) monitoring and evaluation of program goals and effectiveness;

(9) continuing interdisciplinary education to promote effective program planning, implementation, and operations; and

(10) development of partnerships with public agencies and community organizations.

Available Funding: State funding is authorized for these projects from amounts appropriated from the General Revenue Fund. Total funding available under this RFA is \$750,000.

Standards: Grantees must comply with the applicable standards adopted under Title 1, Part 1, Chapter 3, Texas Administrative Code, as well as meet the applicable requirements of Chapter 469, Health and Safety Code. Grantees may not use grant funds or program income for proselytizing or sectarian worship, or to supplant state or local funds.

Eligible applicants: Counties currently operating a drug court program that have incorporated the ten essential characteristics as outlined in Section 469.001, Health and Safety Code. Funding will be awarded for current operations or enhancement purposes only. Eligible drug court programs currently receiving state or local funding are eligible for enhancement funding only. Grant funds may not be used to supplant state or local funding for a drug court program.

Beginning Date: Grant-funded projects must begin on or after October 1, 2001 and will expire on or before September 30, 2002.

Application Process: Interested parties should request an application kit from the Office of the Governor, Criminal Justice Division, P. O. Box 12428, Austin, TX 78711, telephone (512) 475-4461. Completed applications will be reviewed for eligibility by CJD staff and awarded on a first-come, first-served basis. The Governor or his designee will make all final funding decisions.

Closing Date for Receipt of Applications: Applications must be received at CJD not later than September 1, 2001. Mail applications to Grants Administration, Criminal Justice Division, Office of the Governor, Post Office Box 12428, Austin, TX 78711. Applications may be mailed overnight to 1100 San Jacinto, Austin, TX 78701.

Contact Person: If additional information is needed contact Robert J. Bodisch at (512) 475-4461 or the criminal justice planner at the appropriate regional council of governments.

TRD-200104461

David Zimmerman

Assistant General Counsel

Office of the Governor

Filed: August 3, 2001

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Texas Department of Health

Designation of Temple Children's Mental Health Clinic of Central Counties Mental Health Mental Retardation Center as a Site Serving Medically Underserved Populations

The Texas Department of Health (department) is required under the Occupations Code §157.052 to designate sites serving medically underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as a site serving medically underserved populations: Central Counties Center for Mental Health Mental Retardation (MHMR) Services, Temple Children's Mental Health Clinic of Central Counties MHMR Center, 317 North Second Street, Temple, Texas 76501. The designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on this designation may be directed to Bruce Gunn, Ph.D., Director, Health Professions Resource Center, Office of Policy and Planning, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200104527

Susan Steeg
General Counsel
Texas Department of Health
Filed: August 8, 2001



Licensing Actions for Radioactive Materials

LICENSING ACTIONS FOR RADIOACTIVE MATERIALS

The Texas Department of Health has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout Tx	Enercon Services Inc	L05447	Midland	00	07/13/01

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Abilene	NC-SCHI Inc	L02434	Abilene	66	07/19/01
Amarillo	Baptist St Anthonys Health System	L01259	Amarillo	64	07/20/01
Amarillo	Amarillo Heart Group PA	L04697	Amarillo	15	07/23/01
Angleton	Angleton Danbury General Hospital	L02544	Angleton	25	07/27/01
Austin	Austin Heart PA	L04623	Austin	14	07/19/01
Austin	Heart Hospital IV LP	L05215	Austin	05	07/19/01
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	85	07/26/01
Clifton	Goodall Witcher Healthcare	L03427	Clifton	06	07/25/01
College Station	O I Analytical	L04238	College Station	08	07/27/01
Corpus Christi	The Corpus Christi Medical Center Bay Area	L04723	Corpus Christi	26	07/27/01
Corpus Christi	Driscoll Childrens Hospital	L04606	Corpus Christi	22	07/16/01
Dallas	COR Specialty Associates of North Texas PA	L04694	Dallas	17	07/26/01
Dallas	Columbia Hospital at Medical City Dallas Subsidiary LP	L01976	Dallas	134	07/20/01
Dallas	Baylor University Medical Center	L01290	Dallas	53	07/16/01
Dallas	Animal Radiology Clinic	L03535	Dallas	18	07/20/01
Denton	International Isotopes	L05159	Denton	21	07/23/01
Flower Mound	Imaging Specialist Group LTD	L05407	Flower Mound	03	07/31/01
Fort Worth	John Peter Smith Hospital	L02208	Fort Worth	41	07/27/01
Hallettsville	Lavaca Medical Center	L04397	Hallettsville	05	07/20/01
Houston	Sisters of Charity of The Incarnate Word	L02279	Houston	46	07/27/01
Houston	Houston Cardiovascular Consultants LLP	L05350	Houston	04	07/24/01
Houston	Houston Northwest Medical Center	L02253	Houston	49	07/20/01
Humble	Northeast Medical Center Hospital	L02412	Humble	47	07/27/01
Irving	North Irving Imaging Center	L04975	Irving	06	07/16/01
Lake Jackson	Brazosport Memorial Hospital	L03027	Lake Jackson	16	07/18/01
Lubbock	City of Lubbock Water Laboratory Services	L05066	Lubbock	02	07/19/01
McKinney	Columbia Medical Center Subsidiary LP	L02415	McKinney	19	07/19/01
Mesquite	US Oncology Inc Physician Reliance Network	L04914	Mesquite	08	07/26/01
New Braunfels	McKenna Memorial Hospital	L02429	New Braunfels	28	07/25/01
Pampa	Mundy Contract Maintenance Inc	L04360	Pampa	17	07/30/01
Pasadena	CHCA Bayshore LP	L00153	Pasadena	72	07/19/01
Plano	Presbyterian Hospital of Plano	L04467	Plano	21	07/27/01
Port Lavaca	Union Carbide Corporation	L00051	Port Lavaca	70	07/26/01
Port Lavaca	Seadrift COKE L P	L03432	Port Lavaca	13	07/18/01

CONT. AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
San Angelo	Shannon Clinic	L04216	San Angelo	18	07/25/01
San Antonio	Santa Rosa Health Care	L02237	San Antonio	65	07/27/01
San Antonio	Radiology Associates of San Antonio PA	L05358	San Antonio	03	07/25/01
San Antonio	Radiology Associates of San Antonio PA	L04927	San Antonio	14	07/25/01
San Antonio	Radiology Associates of San Antonio PA	L04305	San Antonio	26	07/25/01
San Antonio	Heart Institute of South Texas	L04377	San Antonio	15	07/26/01
San Antonio	South Texas Radiology Imaging Centers	L03518	San Antonio	28	07/24/01
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	111	07/16/01
Tahoka	Lynn County Hospital District	L03383	Tahoka	17	07/26/01
Texarkana	International Paper Company	L01686	Texarkana	27	07/18/01
Texas City	Marathon Ashland Petroleum LLC	L04431	Texas City	15	07/19/01
The Woodlands	Memorial Hospital The Woodlands	L03772	The Woodlands	28	07/20/01
Throughout Tx	Wilson Inspection X-Ray Services Inc	L04469	Corpus Christi	44	07/18/01
Throughout Tx	NDE Inc	L02355	Fort Worth	20	07/19/01
Throughout Tx	Pre-Test Laboratory	L02524	Georgetown	11	07/18/01
Throughout Tx	Golder Associated Inc	L04645	Houston	02	07/30/01
Throughout Tx	CB & I Constructors Inc	L01902	Houston	47	07/18/01
Throughout Tx	Continental Airlines Inc	L02718	Houston	34	07/13/01
Throughout Tx	Goolsby Testing Laboratories Inc	L03115	Humble	71	07/24/01
Throughout Tx	Southern Services Inc	L05270	Lake Jackson	15	07/20/01
Throughout Tx	PMI Specialist Inc	L04686	Liberty	09	07/20/01
Throughout Tx	Allen Inspection Service	L03003	Odessa	06	07/17/01
Throughout Tx	Gulf Coast Weld Spec	L05426	Orange	05	07/18/01
Throughout Tx	Technical Welding Laboratory Inc	L02187	Pasadena	139	07/24/01
Throughout Tx	Alcoa Inc	L04316	Rockdale	15	07/19/01
Throughout Tx	All American Inspection Inc	L01336	San Antonio	38	07/23/01
Tyler	Trinity Mother Frances Health System	L01670	Tyler	88	07/27/01
Tyler	The University of Texas Health Center at Tyler	L04117	Tyler	25	07/24/01
Wadsworth	STP Nuclear Operating Company	L04222	Wadsworth	15	07/19/01
Wichita Falls	United Regional Health Care System Inc	L00350	Wichita Falls	80	07/18/01

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Brenham	Brenham Veterinary Hospital	L00658	Brenham	14	07/20/01
Odessa	Huntsman Polymers	L00547	Odessa	38	07/26/01
Throughout Tx	Applied Standards Inspection Inc	L03072	Beaumont	67	07/31/01

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Austin	Radian International LLC	L01692	Austin	38	07/19/01
Grand Prairie	Poly-America Inc	L03001	Grand Prairie	17	07/18/01

In issuing new licenses, amending and renewing existing licenses, or approving exemptions to Title 25 Texas Administrative Code (TAC) Chapter 289, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with 25 TAC Chapter 289 in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the new, amended, or renewed license (s) or the issuance of the exemption (s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A licensee, applicant, or person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200104488
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: August 6, 2001



Notice of Request for Proposals for Shots Across Texas/The Boots Are Back Campaign

Purpose:

The Texas Department of Health Immunization Division announces the expected availability of fiscal year (FY2002) Center for Disease Control and Prevention (CDC) Immunization Grant/ Cooperative Agreement federal funds and requests proposals to maintain, establish, or develop grassroots local immunization coalitions to promote and ensure accelerated interventions to the timely and appropriate immunization of children two years old and younger.

Availability of Funds:

Funds provided by this Request for Proposals (RFP) will be utilized in accordance with the CDC Immunization Grant- Immunization Cooperative Agreement. It is anticipated approximately 15 awards will be funded. Each award will not exceed a maximum of \$25,000.

Description:

Based on the compelling need to ensure that children two years and younger in Texas are fully immunized, local communities should develop local projects that meet local needs and ensure the sustainability and maintenance of the momentum beyond availability of funds. The objectives are to:

- (1) Promote parental and community awareness of the importance of appropriate and timely immunizations,
- (2) Encourage medical providers to support parent education in the importance of timely and appropriate immunizations,
- (3) Increase parental awareness and enrollment into the statewide immunization registry- IMMTRAC, and
- (4) Compliment existing programs by building partnerships with groups in the community that advocate timely and appropriate immunizations of children. These actions will improve the overall health status of individual communities and the Texas community at large. Cooperation and collaboration in the utilization of community resources are absolutely necessary.

Eligibility:

Eligible applicants are non-profit agencies and organizations. Individuals are not eligible to apply. Eligible applicants for this fund are coalitions comprised of governmental, public, private and not-for-profit entities dedicated to working cooperatively and collaboratively to increase the immunization rate of Texas children. At least one 501(c)(3) organization must be a member of the coalition. A coalition is not required to be or become a legally incorporated organization in order to receive funding. As an alternative, a lead agency, which is incorporated, can be designated to accept funds on behalf of the coalition members. If the organization managing the funds is not-for-profit, the organization must attach a copy of the 501(c)(3) tax-exempt status letter from the Internal Revenue Service, along with a list of the organizations Board of Directors, their addresses and occupations. Projects must be submitted by coalitions working on the local or regional level of the state. A coalition is an association of two or more agencies or organizations (although this does not imply a contractual relationship) committed to working together in a cooperative and collaborative effort towards agreed-upon objectives. Public/private partnerships (such as local/regional health departments

working with community based organizations), and coalitions with strong minority group involvement and /or strong target audience representation, will be given preference in the competitive process. Project proposals should be culturally competent and linguistically specific to ensure a well-balanced and regionally diversified spectrum of local immunization efforts.

Limitations:

Funding for the selected proposals will depend upon available federal appropriations. The department reserves the right to reject any and all applications received in response to the RFP and to cancel the RFP if it is deemed in the best interest of the department.

Authority:

This project is authorized under 317 of the Public Health Service Act (42 U.S.C. 247b), as amended. Regulations governing the implementation of this legislation is covered under 42 CFR Part 51b, Subparts A and B and the Health and Safety Code Chapters 81 and 161.

Funding Criteria:

The department will make awards based upon an equitable distribution of funds throughout the state and competitive scores of the applications. The following criteria will be used to evaluate the applications: geographic funding allocation, compliance with application instructions, evidence of cooperative and collaborative efforts, (public/private groups), evidence of community support (letters, matching funds, in-kind support, etc.), statement of the coalition's purpose and goals, clear description of proposed activities to be funded, reasonableness of budget, evidence that the coalition is not building a new and separate system, but is enhancing the capacity of the existing health-care network, and sustainability of the coalition. Funds may not be used for: purchase of vaccines, (available from the department), indirect costs, out-of-state travel, purchase of equipment, loans to individuals, and fund raising events, including the cost of food, beverages, and entertainment.

Deadlines:

All proposals to be considered for funding through this RFP may be submitted to Vivian Harris, Outreach Coordinator Texas Department of Health, Immunization Division Room T-310, 1100 W. 49th Street, Austin Texas 78756. Proposals must be received by 5:00 p.m. Central Daylight Savings Time September 19, 2001. Proposals received after this deadline, via fax transmission or e-mail will not be accepted.

Evaluation and Selection:

An evaluation selection panel composed of community representatives and internal representatives designated by the department will rank and score the proposals. The evaluation will be based upon the criteria outlined in the RFP.

Obtaining RFP Information:

Shots Across Texas/ The Boots Are Back Campaign RFP packets may be requested from Ms. Vivian Harris at the Texas Department of Health, Immunization Division, Room T 310, 1100 W.49th Street, Austin Texas 78756, by telephone at (512) 458-7284 or 1-800-252-9152 or on TDH website <http://www.tdh.state.tx.us/immunize>. The RFP will not be available for distribution prior to August 17, 2001.

TRD-200104549
Susan Steeg
General Counsel
Texas Department of Health
Filed: August 8, 2001

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Texas Health and Human Services Commission

Community Planning Forum and Public Hearing

The Health and Human Services Commission (HHSC), in collaboration with the Health and Human Services agencies and United Way of the Texas Gulf Coast, will conduct one of a series of statewide public hearings to receive public comment on the development of the *Health and Human Services Coordinated Strategic Plan* and to fulfill statutory local planning requirements. The public hearing is required under §531.022(d)(4), Government Code, and §531.036, Government Code, and is intended to produce the following outcomes: (1) Increase local involvement and participation in the planning process, (2) Provide feedback to local communities on statewide and regional progress made on health and human services goals and strategic priorities since the community forums in 1999, (3) Solicit input from the communities on the effectiveness of current health and human services efforts, (4) Update regional demographic information and needs profiles, (5) Assess local capacity to address the strategic priorities, and (6) Foster grass roots support for/build community coalitions to improve health and human service delivery in the area.

A community planning forum and two public hearings will be conducted on August 29, 2001, from 9:00 AM to 6:00 PM, Central Time, at the United Way of Texas Gulf Coast, 2200 North Loop West, Houston, Texas. Registration will begin at 8:30 AM. The planning forum is intended to provide the opportunity for public input and participation. Agency clients and consumers of health and human services, advocates, consumer advisors, local state agency representatives, local governmental and non-governmental representatives, service providers and other interested parties are encouraged to participate.

The afternoon session will provide breakout group activities for members of the community to discuss specific strategic priorities that significantly impact the Houston area. Discussion will focus on children's health insurance needs; access to long-term care for persons who are aging and persons with disabilities; transportation to access services; issues related to children and youth; availability of respite services; faith-based initiatives; substance abuse and mental health.

Community participants will have the opportunity to present public comment at two public hearings during the forum. The first hearing will be held at 11:30 AM. The second hearing will be held at 5:00 PM. Testimony and comments should focus on regional needs and suggestions for the most effective ways to deliver and coordinate services funded by the state. Written comments may be submitted to the Health and Human Services Commission until 5:00 p.m., Central Time, on September 4, 2001. Please address written comments to the attention of Colleen Edwards at HHSC, 4900 North Lamar Blvd., 4th Floor, Austin, Texas 78751, Fax (512) 424-6590 or Email: colleen.edwards@hhsc.state.tx.us.

Agenda

Morning Session

8:30 Registration

9:00 Welcome and overview

9:15 Statewide & regional demographics, needs assessment and progress report on strategic priorities

10:30 Regional progress report and local initiatives

11:30 Public Comment Session

Afternoon Session

1:00 Breakout group discussion

3:00 Breakout groups report back
4:00 Next steps, evaluations, commitment forms
5:00 Public Comment Session
6:00 Adjourn

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Karen Harris at kharris@uwtgc.org or (713) 685-2784 by August 23, 2001, so that appropriate arrangements can be made.

TRD-200104542
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: August 8, 2001



Request for Offers

Notice of Request for Offers: The Texas Health and Human Services Commission (Commission) is the single agency designated to administer Medicaid in the State of Texas. The Commission is also the agency responsible for the investigation of fraud in the provision of health and human services, including the Texas Medicaid program. As such, the Commission is pleased to announce the availability of funds for the continued operation of a Medicaid Fraud and Abuse Detection System (MFADS).

The 75th Texas Legislature, 1997, enacted Senate Bill 30 that directs the Commission to develop and implement a fraud and abuse detection system based on neural network or learning technology. The 76th Texas Legislature, 1999, and the 77th Texas Legislature, 2001, have continued funding and support for the MFADS.

The Commission announces its Request for Offers (RFO) for the MFADS. The mission of the Commission in this procurement is to improve the early detection of fraud, abuse, and waste in the State Medicaid program and reduce financial loss to the State. The Commission will accomplish this mission by contracting with a vendor that is innovative, responsive to the needs of the Commission, the Medicaid program, and taxpayers, and responsible for discrete, measurable results. The vendor will develop, implement, operate, maintain and support an automated information system that employs neural network or learning technology. Subject to the terms and provisions set forth in the RFO, the Commission intends to award a contract on a competitive basis to the offeror who can demonstrate the greatest aptitude for effectively providing the requested services to the Commission in response to the MFADS RFO, in accordance with the procedures set forth in the RFO.

The achievement of these goals will maximize the efficient use of Medicaid funds, maintain HHSC's leadership in the use of pioneering technology to detect, investigate and deter fraud, abuse and waste in the Medicaid program, and improve access to and quality of care delivered to Medicaid recipients.

Electronic Access to the MFADS RFO: The Commission is making the MFADS RFO available through its web site: <http://www.hhsc.state.tx.us> beginning September 1, 2001.

A library of resources relevant to this RFO will be available beginning at 9:00 a.m., Central Zone Time, September 1, 2001, to all potential vendors who submit a timely letter of intent to respond to the RFO. All potential vendors must schedule an appointment before reviewing materials in the procurement library. The procurement library will be located at the Office of Investigations and Enforcement, Two

Commodore Plaza, 206 East 9th Street, Suite 19.100, Austin, Texas 78701.

Deadline for Receipt of Mandatory Letters of Intent: Each potential vendor must submit a non-binding Letter of Intent (LOI) to respond to the RFO. The requirements for the LOI are described in the RFO. The LOI must be received by the Commission no later than 5:00 p.m., Central Zone Time, on October 31, 2001. Only offers from potential vendors who submit a timely LOI will be considered.

The LOI must identify the entity that may submit an offer in response to the RFO and must be signed by an official of that entity. The LOI must include the entity's fax number and electronic mail address to provide for expedited transmission of information pertaining to the RFO.

The LOI must be addressed to: Ms. Genie DeKneef, MFADS Project Manager, Health and Human Services Commission, Office of Investigations and Enforcement, Two Commodore Plaza, 206 East 9th Street, Suite 19.100, Austin, Texas 78701. The fax number for submitting the LOI is (512) 482-3129.

Deadline for Receipt of Offers: Offers must be received by the Commission no later than 5:00 p.m., Central Zone Time, November 30, 2001. Offers received after this time and date will not be considered. Offers submitted must comply with the requirements set forth in the MFADS RFO. Offers must be mailed (not faxed) to Genie DeKneef, Project Manager, Texas Health and Human Services Commission, P. O. Box 13247, Austin, Texas 78711-3247, or hand-delivered to Ms. DeKneef at the Office of Investigations and Enforcement, Texas Health and Human Services Commission, Two Commodore Plaza, 206 East 9th Street, Suite 19.100, Austin, Texas 78701.

TRD-200104546
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: August 8, 2001



Texas Department of Housing and Community Affairs

Request for Proposal for Bond Counsel

SUMMARY. The Texas Department of Housing and Community Affairs (TDHCA), through its Legal Division, is issuing a Request for Proposals (RFP) for outside Bond Counsel. Bond Counsel will provide legal services in connection with the issuance of TDHCA's bonds, notes, and other obligations of TDHCA to finance or refinance residential housing and multifamily housing developments and to refund prior bond issues.

DEADLINE FOR SUBMISSION. The deadline for submission in response to the Request for Proposals is 5:00 p.m. Central Standard Time September 10, 2001. No proposal received after the deadline will be considered.

TDHCA reserves the right to accept or reject any (or all) proposals submitted. The information contained in this proposal request is intended to serve only as a general description of the services desired by TDHCA, and TDHCA intends to use responses as a basis for further negotiation of specific project details with offerors. This request does not commit TDHCA to pay for any costs incurred prior to the execution of a contract and is subject to availability of funds. Issuance of this request for proposals in no way obligates TDHCA to award a contract or to pay any costs incurred in the preparation of a response.

Law firms interested in submitting a proposal should contact Lucille Spillar, Legal Assistant, General Counsel's office, at (512) 475-3726,

507 Sabine, Austin, TX 78701, for a complete copy of the RFP. Communication with any member of the board of directors, the executive director, or TDHCA staff other than General Counsel's office concerning any matter related to this request for proposals is grounds for immediate disqualification.

TRD-200104534

Daisy A. Stiner

Executive Director

Texas Department of Housing and Community Affairs

Filed: August 8, 2001



Request for Proposal for Bond/Securities Disclosure Counsel

SUMMARY. The Texas Department of Housing and Community Affairs (TDHCA), through its Legal Division, is issuing a Request for Proposals (RFP) for outside Bond/Securities Disclosure Counsel. Bond/Securities Disclosure Counsel will provide legal services in connection with the issuance of TDHCA's bonds, notes, and other obligations of TDHCA to finance or refinance residential housing and multifamily housing developments and to refund prior bond issues.

DEADLINE FOR SUBMISSION. The deadline for submission in response to the Request for Proposals is 5:00 p.m. Central Standard Time September 10, 2001. No proposal received after the deadline will be considered.

TDHCA reserves the right to accept or reject any (or all) proposals submitted. The information contained in this proposal request is intended to serve only as a general description of the services desired by TDHCA, and TDHCA intends to use responses as a basis for further negotiation of specific project details with offerors. This request does not commit TDHCA to pay for any costs incurred prior to the execution of a contract and is subject to availability of funds. Issuance of this request for proposal in no way obligates TDHCA to award a contract or to pay any costs incurred in the preparation of a response.

Law firms interested in submitting a proposal should contact Lucille Spillar, Legal Assistant, General Counsel's office, at (512) 475-3726, 507 Sabine, Austin, TX 78701, for a complete copy of the RFP. Communication with any member of the board of directors, the executive director, or TDHCA staff other than General Counsel's office concerning any matter related to this request for proposals is grounds for immediate disqualification.

TRD-200104535

Daisy A. Stiner

Executive Director

Texas Department of Housing and Community Affairs

Filed: August 8, 2001



Houston-Galveston Area Council

Request for Information

The Houston-Galveston Area Council (H-GAC) solicits qualified individuals or organizations to provide assessment services for a group of approximately 40 foreign trained nurses, document their preparations to date, and recommend further steps necessary in order for these nurses to sit for the NCLEX-RN examination in Texas. Services will be provided for legal immigrants or resident aliens who have nursing credentials from a foreign country to allow these individuals to pass the Texas' registered nurses examination, be licensed, and go to work in the Houston area. Prospective proposers may request that the proposal package be sent in hard copy or may access the package

for download at <http://www.theworksource.org>. The proposal package contains detailed information and instructions on preparing a response. Prospective proposers may contact Carol Kimmick to request a package by writing her at H-GAC, Human Services-Workforce, P.O. Box 2777, Houston, Texas, 77227-2777, by calling her at (713) 627-3200 or by sending email to ckimmick@hgac.cog.tx.us. Proposals are due at H-GAC offices, 3555 Timmons Lane, Suite 500, Houston, Texas 77027 no later than 12:00 p.m. (noon) Central Daylight Time on Friday, August 17, 2001. Late proposals will not be accepted. There will be no exceptions.

TRD-200104481

Jack Steele

Executive Director

Houston-Galveston Area Council

Filed: August 6, 2001



Texas Department of Insurance

Insurer Services

Application to change the name of MEMORIAL SENIOR SERVICES, INC., d/b/a "UNIVERSITY PLACE" TO MEMORIAL HERMANN AFFILIATED SERVICES, INC., d/b/a "UNIVERSITY PLACE", a Continuing Care Retirement Community. The home office is in Houston, Texas. Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200104533

Lynda H. Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: August 8, 2001



Notice of Hearing

COMMISSIONER'S DOCKET NUMBER 2493, TO RECEIVE INFORMATION CONCERNING TO THE APPLICATION FOR ACQUISITION OF CONTROL OF AMERICAN GENERAL ANNUITY INSURANCE COMPANY, AMERICAN GENERAL LIFE INSURANCE COMPANY, THE NATIONAL LIFE AND ACCIDENT INSURANCE COMPANY, AND THE VARIABLE ANNUITY LIFE INSURANCE COMPANY, SUBSIDIARIES OF AMERICAN GENERAL CORPORATION (THE "DOMESTIC INSURERS") BY AMERICAN INTERNATIONAL GROUP, INC.

This is formal notice that an informational public hearing will be held before Commissioner Jose Montemayor, or his designee, on Wednesday, September 5, 2001, at 1:00 p.m., in Room 100 at the Texas Department of Insurance, 333 Guadalupe, Austin, Texas 78701. Unless otherwise directed by the Commissioner, the hearing shall be continued from day to day in Room 100 at the Texas Department of Insurance until concluded.

The purpose of the hearing is to receive information concerning the application by AMERICAN INTERNATIONAL GROUP, INC. (AIG) to acquire control of AMERICAN GENERAL ANNUITY INSURANCE COMPANY, AMERICAN GENERAL LIFE INSURANCE COMPANY, THE NATIONAL LIFE AND ACCIDENT INSURANCE COMPANY, and THE VARIABLE ANNUITY LIFE INSURANCE COMPANY, subsidiaries of AMERICAN GENERAL CORPORATION pursuant to Texas Insurance Code Annotated, Article 21.49-1, §5.

Authority, Jurisdiction and Statutes and Rules Involved

The Commissioner has jurisdiction and legal authority over the subject matter of this hearing pursuant to the Texas Insurance Code Annotated, Article 21.49-1 and 28 Texas Administrative Code, §7.205 and §7.209. The Commissioner, in his discretion, is holding an informational public hearing concerning the acquisition of control of American General Corporation and its subsidiaries by American International Group, Inc. The applicable standards for approval or disapproval are delineated in Texas Insurance Code Annotated, Article 21.49-1, §5(c)(1)(i) - (vi).

Matter to be Considered

The Commissioner will consider the testimony presented and information filed by interested parties and the applicant. Interested persons may present either oral or written comments on the acquisition of control at the hearing.

Pursuant to the Texas Insurance Code Annotated, Article 21.49-1 and 28 Texas Administrative Code, §7.205 and §7.209, it is the responsibility of the applicant to demonstrate why the Commissioner of Insurance should approve the application; therefore, it is advised that the applicant bring competent witnesses to the hearing. Applicant should be prepared to respond to any unresolved questions raised by TDI, its representatives or the general public. All evidence in connection with the hearing must be presented at the hearing, as ordinarily there will be no recess given in order to secure additional evidence.

Comments on the application for acquisition of control must be submitted no later than August 29, 2001 to the Office of the Chief Clerk, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to Eric Magee, Staff Attorney, Financial Counsel Section.

TRD-200104467
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: August 3, 2001



Notice of Public Hearing

The Commissioner of Insurance (Commissioner) will hold a public hearing under Docket No. 2495 on September 18, 2001, at 9:30, in Room 100 of the William P. Hobby Building, 333 Guadalupe Street in Austin, Texas to consider a petition by the staff of the Texas Department of Insurance (TDI) proposing the adoption of revised Texas Workers' Compensation Classification Relativities (classification relativities) to replace those adopted in Commissioner's Order No. B-0058-00 dated October 23, 2000; and the adoption of a revised table to amend the Texas Basic Manual of Rules, Classification, and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (Basic Manual) concerning the Expected Loss Rates and Discount Ratios used in experience rating. Staff's petition (Ref. No. W-0801-11-I), was filed on August 8, 2001.

In its petition, the staff requests consideration of a schedule of revised classification relativities and tables amending the Basic Manual. The revised classification relativities schedule is proposed to replace the classification relativities schedule adopted in Commissioner's Order B-0058-00 effective January 1, 2001. The tables amending the Basic Manual concern the Expected Loss Rates and Discount Ratios.

The staff requests that the proposed revised classification relativities be available for adoption by insurers immediately, but that their use be mandatory for all policies with an effective date on or after January 1, 2002. The staff further requests that the revised tables amending the

Basic Manual be made effective for workers' compensation experience modifiers with an effective date on or after January 1, 2002.

Article 5.60(a) of the Texas Insurance Code authorizes the Commissioner to determine hazards by classes and fix classification relativities applicable to the payroll in each class for workers' compensation insurance. Article 5.60 (d) provides that the Commissioner revise the classification system at least once every five years.

The classification relativities currently in effect were based on experience data reflecting workers' compensation experience from policies with effective dates in 1993 through 1997. The proposed classification relativities are based on the analysis of experience data from policies with effective dates in 1994 through 1998. The staff's proposed classification relativities reflect changes in experience that occur over time, due to such things as technological advances and improvements in safety programs. The indicated resulting relativities were balanced to the level of the current relativities through the application of off-balance factors. This provides for a revenue neutral set of relativities in relation to the current relativities. The staff proposes to limit changes in the classification relativities to +25% and -25%. These limited relativities have been balanced overall to the level of the current relativities. This would help to minimize possible rate shock due to large indicated changes in the relativities.

Modifications to the classification relativities require concurrent changes in the Table II of the Basic Manual concerning the Expected Loss Rates and Discount Ratios. The current Table II, which became effective on January 1, 2001, contains expected loss rates that were based on the level of losses used to experience rate the average policy that would be subject to the new expected loss rates. Such a policy would be effective on July 1, 2001 and would reflect the current classification relativities. Staff proposes an adjustment to make the expected loss rates more reflective of the level of losses that would be used to experience rate policies that would be effective in 2002, and reflect the proposed classification relativities. Staff also proposes to cap changes in the expected loss rates to +25% and -25%.

Copies of the full text of the staff petition and the proposed revised schedule and table are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. For further information or to request copies of the petition and proposed revised schedule and table, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Ref. No. W-0801-11-I).

Comments on the proposed changes may be submitted in writing within 30 days after publication of the proposal in the Texas Register to the Office of Chief Clerk, P. O. Box 149104, MC 113-2A, Austin, Texas, 78714-9104. An additional copy of the comment should be submitted to Philip Presley, Chief Property and Casualty Actuary, P. O. Box 149104, MC 105-5F, Austin, Texas, 78714-9104. Public testimony at the hearing on September 18, 2001, is also invited and encouraged.

This notification is made pursuant to the Texas Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Ch. 2001).

TRD-200104540
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: August 8, 2001



Notice of Public Hearing

The Commissioner of Insurance at a public hearing under Docket No. 2494 scheduled for September 18, 2001 at 9:30 a.m. in Room 100 of the William P. Hobby Building, 333 Guadalupe Street in Austin Texas will consider amendments proposed by the staff of the Workers' Compensation division to the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (the Manual). The purposes of these amendments to the Manual are to modify rules as necessary, to eliminate conflicting language within the Manual and to provide clarification to rules, endorsements and forms. Staff's petition (Ref. No. W-0801-10-I), was filed on August 8, 2001.

The staff proposes amendments to the Manual as follows:

1. Amend Rule IX E. - Employee Leasing Arrangements to add the term professional employers organization services to the definition of employee provider firm. This change is recommended pursuant to Section 91.001 (14), Labor Code.
2. Amend Rule IX E. - Employee Leasing Arrangements to delete the reference to the Texas Workers' Compensation Insurance Fund (Fund) throughout that rule. This change is recommended pursuant to Act of June 15, 2001, H.B.3458, 77th Leg., R.S. (to be codified at TEX. Ins. Code Ann. art. 5.76-3) which changes the name of the Fund to the Texas Mutual Insurance Company. Staff recommends that rather than amending the references from the Fund to the Texas Mutual Insurance Company (Texas Mutual) in this rule, it is not necessary to specifically mention the Fund since it is an insurance company licensed to write workers' compensation insurance.
3. Amend Employee Provider Form EP-1 to change reference from the Fund to the "insurer of last resort" in number 8 and make editorial changes of adding the word "its" and amending the date in the notary part to show "20__" in lieu of "199_."
4. Amend Employee Provider Form EA-1A to change the reference from the Fund to the "insurer of last resort" in number 9 and make editorial changes of adding the word "its" and amending the date in the notary part to show "20__" in lieu of "199_."
5. Amend Employee Provider/Client Company Endorsement WC 42 04 06 B to change the reference from the Fund to the "insurer of last resort" in number 10 to change the reference from the Fund to the "insurer of last resort" and make editorial changes of substituting the word "its" for "and each," making the words officer, director and affiliate plural, and amending the date in the notary part to show "20__" in lieu of "199_."
6. Amend Accidents Involving Two or More Persons form ERM 4.1 to delete the references to a specific maximum amount in two places on the form and change the wording to read "the accident limitation shown in Table III of the Experience Rating Plan." By making this change, the form will not need to be amended each time the accident limitation is changed in Table III of the Experience Rating Plan.
7. Amend Report of Experience for Self Insurers Forms ERM-6A, ERM-6B and ERM-6C to amend the date in the notary section to show "20__" in lieu of "199_."

The Commissioner has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.56, 5.57, 5.60 and 5.96.

A copy of the full text of the proposed amendments is available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the amendments, please contact Ms. Sylvia Gutierrez (512) 463-6327 (refer to Ref. No.W-0810-10-I).

The staff and the Commissioner request that written comments to these proposed amendments be submitted prior to the public hearing

on September 18, 2001. The written comments should be directed to Lynda H. Nesenholtz, General Counsel and Chief clerk, Texas Department of Insurance, P. O. Box 149104, MC 113,2A, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Nancy Moore, Deputy Commissioner, Workers' Compensation, Texas Department of Insurance, P. O. Box 149104, MC 105-2A, Austin, Texas 78714-9104. Public testimony at the hearing on September 18, 2001, is also invited and encouraged.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts if from the requirements of the Government code, Chapter 2001 (Administrative Procedure Act).

TRD-200104541

Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: August 8, 2001



Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of Clarion Benefits Administration, LLC, a foreign third party administrator. The home office is Minneapolis, Minnesota.

Application for admission to Texas of Mutual Medical Plans, Inc., a foreign third party administrator. The home office is Peoria, Illinois.

Application for incorporation in Texas of American Retirement Plan Administrators, a domestic third party administrator. The home office is San Angelo, Texas.

Application for incorporation in Texas of Doral Dental Services of Texas, Inc., a domestic third party administrator. The home office is Dallas, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-200104501

Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: August 7, 2001



Texas Department of Mental Health and Mental Retardation

Public Notice Announcing Pre-Application Orientation for Waiver Program Provider Enrollment

The Texas Department of Mental Health and Mental Retardation (TDMHMR), pursuant to 25 TAC §419.704, will hold a Pre-Application Orientation (PAO) for persons seeking to participate as a program provider in the Home and Community-Based Services (HCS), Home and Community-Based Services-OBRA (HCS-O), or Mental Retardation Local Authority (MRLA) program.

The PAO will be held at 8:30 a.m., Monday, November 19, 2001, in Austin, Texas. Persons wanting to attend the PAO must request a registration form by letter or by fax. Requests should be addressed to

Bill Fordyce, Enrollment/Sanctions Manager, Medicaid Administration, TDMHMR, PO Box 12668, Austin, Texas 78711-2668. The fax number is (512) 206-5725.

Upon receipt of a written request, TDMHMR will provide the applicant with information regarding the provider application enrollment processes and a registration form to the requestor. Completed registration forms must be returned to TDMHMR no later than 5:00 p.m., Friday, October 19, 2001. Written requests for a registration form received after October 12, 2001, may not be timely enough to meet the October 19, 2001, registration form return date. If the registration form is not returned to TDMHMR by October 19, 2001, the form is invalid and the applicant will be required to reapply when the next PAO is announced.

Persons requiring an interpreter for the deaf or hearing impaired or other accommodation should contact Helen Rayner by calling (512) 206-5249 or the TTY phone number of Texas Relay, which is 1-800-735-2988, at least 72 hours prior to the PAO. You may also contact Helen Rayner for additional information concerning the PAO.

TRD-200104532

Andrew Hardin

Chairman, Texas Mental Health and Mental Retardation Board

Texas Department of Mental Health and Mental Retardation

Filed: August 8, 2001



Texas Natural Resource Conservation Commission

Enforcement Orders

An agreed order was entered regarding BOYD ROGER, Docket No. 2000-1168-PWS-E on July 27, 2001 assessing \$6738 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting RICHARD O'CONNELL, Staff Attorney at SHAWN STEWART, Enforcement Coordinator at , Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VINCENT BUSTAMANTE, Docket No. 2000-0791-PST-E on July 27, 2001 assessing \$20,000 in administrative penalties.

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 EASTEX TELEPHONE CO-OPERATIVE, INCORPORATED, Docket No. 2000-1239-PST-E on July 27, 2001 assessing \$26,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JOHN BARRY, Enforcement Coordinator at (409) 899-8781, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. ROGER VAN VOORHEES & MR. NORMAN DEIKE, A PARTNERSHIP DBA MAGIC ENTERPRISES DBA SUNSET WOODS WATER SYSTEM, Docket No. 2000-0470-PWS-E on July 27, 2001 assessing \$1,688 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting LARRY KING, Enforcement Coordinator at (512)

339-2929, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding DEL OIL & GAS COMPANY, INCORPORATED DBA BUD'S QUICK CHEK, Docket No. 2000-1238-PST-E on July 27, 2001.

Information concerning any aspect of this order may be obtained by contacting ELISA ROBERTS, Staff Attorney at (817) 588-5877, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JOHN MILLER DBA M & H WATER SUPPLY, Docket No. 1999-1400-PWS-E on July 27, 2001 assessing \$13,125 in administrative penalties with \$12,525 deferred.

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 YOUNG J. LEE DBA TIMES MARKET #18, Docket No. 2000-1132- PST-E on July 27, 2001 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting AUDRA BAUMGARTNER, Enforcement Coordinator at (361) 825-3312, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BUCKHORN RANCH & LAKE, INC., Docket No. 2000-1280-PWS-E on July 27, 2001 assessing \$1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting KIMBERLY MCGUIRE, Enforcement Coordinator at (512) 239-4761, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LARRY PHILLIPS DBA RAINBOW LAKE MOBILE HOME PARK, Docket No. 2000-1016-PWS-E on July 27, 2001 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting KIMBERLY MCGUIRE, Enforcement Coordinator at (512) 239-4761, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding DEL OIL & GAS COMPANY, INCORPORATED DBA BUD'S QUICK CHEK, Docket No. 2000-1238-PST-E on July 27, 2001 assessing \$16,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting ELISA ROBERTS, Staff Attorney at (817) 588-5877, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding REGAL OIL INC. DBA STAR STOP FOOD MART #14, Docket No. 2000-1019-PST-E on July 27, 2001 assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting DAN LANDENBERGER, Enforcement Coordinator at (915) 570-1359, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEXAS DEPARTMENT OF CRIMINAL JUSTICE, Docket No. 2000-1334-MWD-E on July 27, 2001 assessing \$2,200 in administrative penalties.

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 VIKING POOLS CENTRAL, INC., Docket No. 2000-1321-MLM-E on July 27, 2001 assessing \$18,000 in administrative penalties with \$3,600 deferred.

Information concerning any aspect of this order may be obtained by contacting DAN LANDENBERGER, Enforcement Coordinator at (915) 570-1359, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VANCECO, INC. DBA CREEKWOOD UTILITIES WASTEWATER TREATMENT PLANT, Docket No. 2000-1105-MWD-E on July 27, 2001 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting LAURIE EAVES, Enforcement Coordinator at (512) 239-4495, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF ALICE, Docket No. 2000-0995-MWD-E on July 27, 2001 assessing \$28,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512) 239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF BARTLETT, Docket No. 2000-0788-MWD-E on July 27, 2001 assessing \$3,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512) 239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BISHOP CONSOLIDATED INDEPENDENT SCHOOL DISTRICT, Docket No. 2000-1072-MWD-E on July 27, 2001 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting TEL CROSTON, Enforcement Coordinator at (512) 239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FIRST COLONY MUNICIPAL UTILITY DISTRICT NO. 9, Docket No. 2000-1025-MWD-E on July 27, 2001 assessing \$750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TEL CROSTON, Enforcement Coordinator at (512) 239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WAL-MART STORES, INC., Docket No. 2000-1426-PST-E on July 27, 2001 assessing \$7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting GARY SHIPP, Enforcement Coordinator at (806) 796-7092, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RANDY ARNDT DBA SUN VALLEY MOBIL HOME PARK, Docket No. 2000-1364-PWS-E on July 27, 2001 assessing \$688 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JORGE IBARRA, Enforcement Coordinator at (817) 469-6750, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DRISCOLL CHILDREN'S HOSPITAL, Docket No. 2000-1362-PST-E on July 27, 2001 assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512) 239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AA & MM INTERNATIONAL INC. DBA AMBURN FOOD MART, Docket No. 2000-1454-PST-E on July 27, 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) 234-5752, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RYTEX, INC., Docket No. 2000-1259-PST-E on July 27, 2001 assessing \$5,000 in administrative penalties with \$1,000 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 NORTH TEXAS TANK RENTAL, INC., Docket No. 2000-1322-PST-E on July 27, 2001 assessing \$4,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting MELINDA HOULIHAN, Enforcement Coordinator at (817) 588-5868, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF MASON, Docket No. 2000-1181-MWD-E on July 27, 2001 assessing \$2,200 in administrative penalties with \$440 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 KRUGER WATER WORKS, INC., Docket No. 2000-1034-PWS-E on July 27, 2001 assessing \$3,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting BRIAN LEHMKUHLE, Enforcement Coordinator at (512) 239-4482, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HOOD COUNTY UTILITIES, Docket No. 2000-1171-PWS-E on July 27, 2001 assessing \$938 in administrative penalties.

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 BASN CORPORATION DBA SWIF-T FOOD STORE, Docket No. 2000-1159-PST-E on July 27, 2001 assessing \$3,750 in administrative penalties.

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 MESSRS. LARRY, STEVEN, AND SCOTT WILSON DBA B.A.R.W. RANCH, Docket No. 2000-1242-WR-E on July 27, 2001 assessing \$500 in administrative penalties with \$100 deferred.

Information concerning any aspect of this order may be obtained by contacting GEORGE ORTIZ, Enforcement Coordinator at (915) 698-9674, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JAMES BARNHART, JR. DBA JAMES BARNHART DAIRY, Docket No. 2000-1252-MWD-E on July 27, 2001 assessing \$5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JOHN MEAD, Enforcement Coordinator at (512) 239-6010, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ZAKI AHMAD HAOUL DBA FAST TRACK FOOD STORE, Docket No. 2000-1464-PST-E on July 27, 2001 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting STEVEN LOPEZ, Enforcement Coordinator at (512) 239-1896, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FLORIDA GAS TRANSMISSION COMPANY, Docket No. 2000-1005-AIR-E on July 27, 2001 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting CAROL MCGRATH, Enforcement Coordinator at (361) 825-3275, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding STAN TRANS, INC., Docket No. 1999-1475-AIR-E on July 27, 2001 assessing \$19,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SCOTT MCDONALD, Staff Attorney at (817) 588-5888, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding OXY VINYL LP, Docket No. 2000-0097-AIR-E on July 27, 2001 assessing \$3,600 in administrative penalties with \$720 deferred.

Information concerning any aspect of this order may be obtained by contacting TRINA LEWISON, Enforcement Coordinator at (713) 767-3607, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEXAS PETROLEUM INVESTMENT COMPANY, Docket No. 2000-1448-AIR-E on July 27, 2001 assessing \$15,000 in administrative penalties with \$3,000 deferred.

Information concerning any aspect of this order may be obtained by contacting AUDRA BAUMGARTNER, Enforcement Coordinator at

(361) 825-3312, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PETROLEUM WHOLESale, INC., Docket No. 2000-1250-IWD-E on July 27, 2001 assessing \$6,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting GILBERT ANGELLE, Enforcement Coordinator at (512) 239-4489, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PIONEER FABRICATING, INC., Docket No. 2001-0066-AIR-E on July 27, 2001 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting GLORIA STANFORD, Enforcement Coordinator at (512) 239-1871, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding QUALA SYSTEMS, INCORPORATED, Docket No. 2001-0011-IHW-E on July 27, 2001 assessing \$12,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting GILBERT ANGELLE, Enforcement Coordinator at (512) 239-4489, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SMITH CORROSION SERVICES, INC., Docket No. 2000-1266-AIR-E on July 27, 2001 assessing \$14,062 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512) 239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHURGARD TEXAS LIMITED PARTNERSHIP, Docket No. 2001-0077-EAQ-E on July 27, 2001 assessing \$1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting LAWRENCE KING, Enforcement Coordinator at (512) 339-2929, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TANDEM ENERGY CORPORATION, Docket No. 2000-0144-AIR-E on July 27, 2001 assessing \$48,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TRINA LEWISON, Enforcement Coordinator at (713) 767-3607, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DUKE ENERGY FIELD SERVICES L.P., Docket No. 2000-1260-AIR-E on July 27, 2001 assessing \$2,250 in administrative penalties with \$450 deferred.

Information concerning any aspect of this order may be obtained by contacting GLORIA STANFORD, Enforcement Coordinator at (512) 239-1871, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALLEN TARI ALLEN DBA CAR COMPANY OF PLANO, Docket No. 2000-1261-AIR-E on July 27, 2001 assessing \$375 in administrative penalties with \$75 deferred.

Information concerning any aspect of this order may be obtained by contacting CHERYL THOMPSON, Enforcement Coordinator at (817)

588-5800, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding XERXES CORPORATION, Docket No. 2001-0088-AIR-E on July 27, 2001 assessing \$2,250 in administrative penalties with \$450 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.

An agreed order was entered regarding DOMAINE CORDIER U.S.A., INC., Docket No. 2000-1098-IWD-E on July 27, 2001 assessing \$5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting DAN LANDENBERGER, Enforcement Coordinator at (915) 570-1359, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BROWNING-FERRIS INDUSTRIES, INC., Docket No. 2000-0914-MSW-E on July 27, 2001 assessing \$14,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512) 239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ARMY AIR FORCE EXCHANGE SERVICE, Docket No. 2000-1091-AIR-E on July 27, 2001 assessing \$1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TEL CROSTON, Enforcement Coordinator at (512) 239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AKER GULF MARINE, Docket No. 2000-1251-MWD-E on July 27, 2001 assessing \$5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JOHN MEAD, Enforcement Coordinator at (512) 239-6010, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NUCOR CORPORATION, Docket No. 2000-1288-AIR-E on July 27, 2001 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting SUZANNE WALTRATH, Enforcement Coordinator at (512) 239-2134, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LIPHAM CONSTRUCTION COMPANY INC., Docket No. 2001-0050-MSW-E on July 27, 2001 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting GARY SHIPP, Enforcement Coordinator at (806) 796-7092, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LIBCON, INC. DBA LEYEN-DECKER MATERIALS, INC., Docket No. 2001-0155-AIR-E on July 27, 2001 assessing \$1250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting MALCOLM FERRIS, Enforcement Coordinator at (210)

403-4061, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding O.V. CASEY PLUMBING, INC. AND CASEY & SONS SEPTIC SERVICE, INC., Docket No. 2001-0262-MLM-E on July 27, 2001 assessing \$1125 in administrative penalties with \$225 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.

An agreed order was entered regarding ATLAS MATCH LLC, Docket No. 2000-1363-AIR-E on July 27, 2001 assessing \$12,000 in administrative penalties with \$2,400 deferred.

Information concerning any aspect of this order may be obtained by contacting JORGE IBARRA, Enforcement Coordinator at (817) 469-6750, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEXAS PETROLEUM INVESTMENT COMPANY, Docket No. 2001-0007-AIR-E on July 27, 2001 assessing \$8,500 in administrative penalties with \$1,700 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 KEN REIBER DBA SJK CATTLE COMPANY, Docket No. 2000-1183-AGR-E on July 27, 2001 assessing \$6,000 in administrative penalties with \$1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting STEVEN LOPEZ, Enforcement Coordinator at (512) 239-1896, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GRIFFIN INDUSTRIES, INCORPORATED, Docket No. 2000-1207-AIR-E on July 27, 2001 assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting CARL SCHNITZ, Enforcement Coordinator at (512) 239-1892, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DIXIE CHEMICAL COMPANY, INC., Docket No. 2000-1175-AIR-E on July 27, 2001 assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting MIRIAM HALL, Enforcement Coordinator at (512) 239-1044, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ADVANCED AROMATICS, L.P., Docket No. 2000-1023-IHW-E on July 27, 2001 assessing \$7,500 in administrative penalties with \$1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting CATHERINE SHERMAN, Enforcement Coordinator at (713) 767-3624, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MIKE GOOLD DBA AAA INDUSTRIAL CHROMIUM COMPANY, Docket No. 2001-0068-AIR-E on July 27, 2001 assessing \$6,000 in administrative penalties with \$1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting CHERYL THOMPSON, Enforcement Coordinator at (817) 588-5886, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. RICHARD CARROL DBA D AND R METAL FINISHING, Docket No. 2001-0109-AIR-E on July 27, 2001 assessing \$3,125 in administrative penalties.

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 DOTY SAND PIT VENTURE, INC., Docket No. 2000-1451-MSW-E on July 27, 2001 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting STEVEN LOPEZ, Enforcement Coordinator at (512) 239-1896, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DAVID H. JONES DBA SOUTH TEXAS TIRE DISPOSAL, Docket No. 2000-1179-MSW-E on July 27, 2001 assessing \$9,000 in administrative penalties.

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.

TRD-200104523

LaDonna Castañuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: August 7, 2001



Notice of District Petition

The following notice was issued on August 2, 2001.

TNRCC Internal Control No. 01262001-D02; Tryon Road Water Supply Corporation (Petitioner) has filed a petition with the Texas Natural Resource Conservation Commission (TNRCC) to convert Tryon Road Water Supply Corporation to Tryon Road Special Utility District and to transfer Certificate of Convenience and Necessity (CCN) No. 10362 from Tryon Road Water Supply Corporation to Tryon Road Special Utility District. Tryon Road Special Utility District's business address will be Rt. 2, Box 239, Longview, Texas 75605. The petition was filed pursuant to Chapters 13 and 65 of the Texas Water Code; 30 Texas Administrative Code Chapters 291 and 293; and the procedural rules of the TNRCC. The proposed District is located in Gregg and Harrison Counties and will contain approximately 12,418 acres. The territory to be included within the proposed District includes all of the singly certified service area covered by CCN No. 10362. CCN No. 10362 will be transferred after a positive confirmation election.

The TNRCC may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TNRCC Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries.

You may also submit your proposed adjustments to the petition which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director may not approve the petition and will forward the petition and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-200104524

LaDonna Castañuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: August 7, 2001



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

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 17, 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 17, 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: ABC-NACO, Inc.; DOCKET NUMBER: 2001-0061-AIR-E; IDENTIFIER: Air Account Number FG-0044-H;

LOCATION: Richmond, Ft. Bend County, Texas; TYPE OF FACILITY: steel castings manufacturing; RULE VIOLATED: 30 TAC §101.10 and the Code, §382.085(b), by failing to submit an emissions inventory questionnaire; PENALTY: \$3,125; ENFORCEMENT COORDINATOR: Faye Liu, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: William Bedoza; DOCKET NUMBER: 2001-0256-IRR-E; IDENTIFIER: Enforcement Identification Number 15905; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: landscape irrigation; RULE VIOLATED: 30 TAC §334.58 and the Code, §34.007, by allegedly installing a landscape irrigation system without a irrigator license; PENALTY: \$500; ENFORCEMENT COORDINATOR: Sherry Smith, (512) 239-0572; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Chevron U.S.A. Products Company; DOCKET NUMBER: 2001-0123-AIR-E; IDENTIFIER: Air Account Number EE-0510-P; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: bulk fuel terminal; RULE VIOLATED: 30 TAC §116.115(c), §101.20(1), Permit Number 41167, 40 Code of Federal Regulations (CFR) §60.13(e) and §63.422(b), and the Code, §382.085(b), by failing to maintain emissions at the exhaust stack below ten milligrams of volatile organic compound (VOC), insure that tank trucks are not loaded unless vapor collection system is properly connected, maintain a monitoring system which prevents start of gasoline loading operations, commence troubleshooting procedures after alarm sounds; PENALTY: \$26,250; ENFORCEMENT COORDINATOR: Kevin Smith, (915) 834-4949; REGIONAL OFFICE: 401 East Franklin Avenue, Site 560, El Paso, Texas 79901-1206, (915) 834-4949.

(4) COMPANY: Edna Derrick dba Cougar Water Supply; DOCKET NUMBER: 2001-0582- PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 1210019; LOCATION: Buna, Jasper 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 its tariff includes an approved drought contingency plan; 30 TAC §288.30(3)(B) and the Code, §13.132(a)(1), by failing to make its adopted drought contingency plan available for inspection; and 30 TAC §290.51(a)(3), by failing to pay public health service fees; PENALTY: \$125; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: D & K Development Corporation; DOCKET NUMBER: 2001-0029-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13518-001; LOCATION: Crowley, Tarrant County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (4), TPDES Permit Number 13518-001, and the Code, §26.121, by failing to maintain permitted limits for total suspended solids, biochemical oxygen demand, minimum chlorine residual, minimum dissolved oxygen, daily average flow, and maximum pH, properly manage solids, implement procedures for manganese interference in total residual tests, and submit noncompliance notification for the sludge discharge; PENALTY: \$6,250; ENFORCEMENT COORDINATOR: Jorge Ibarra, (871) 588-5800; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(6) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2000-1459-AIR-E; IDENTIFIER: Air Account Numbers BL-0082-R, BL-0022-M, and BL-0023-K; LOCATION: Freeport, Brazoria County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §101.6(1)(2)(A), (C), and (F), and the Code, §382.085(b), by

failing to submit complete notifications; the Code, §382.085(a) and (b), by allowing unauthorized emissions into the atmosphere; 30 TAC §115.112(a)(1), 40 CFR §63.119(a)(1), and the Code, §382.085(b), by failing to properly control emissions; 30 TAC §115.421(a)(9)(A)(ii) and the Code, §382.085(b), by failing to meet the applicable emission specification; 30 TAC §116.115(b)(1) and (c), Permit Numbers 2008, C-19519, 20096, and 20997, and the Code, §382.085(b), by failing to achieve 99.9% destruction removal efficiency for butylen oxide and 99.6% for all other carbon compound waste streams, perform sampling and other testing to establish pounds per hour of VOC, conduct monthly VOC monitoring of the cooling tower, install a plug on an open ended valve on a bleed pump, submit emissions testing reports, maintain compliance with the permitted maximum allowable VOC emission rates, conduct initial compliance testing, and submit three copies of the final sampling report; 30 TAC §116.116(b)(1) and the Code, §382.085(b), by failing to maintain compliance with permit representations without first obtaining a permit amendment; 30 TAC §111.111(a)(4), §116.715(a), Permit Number 20432, and the Code, §382.085(b), by allowing visible emissions from the Epoxy Intermediates Plant and properly maintain the elevated flare; and 30 TAC §101.7 and the Code, §382.085(b), by failing to submit a complete final report for maintenance activity and submit a complete final report for an upset; PENALTY: \$433,388; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: El Tanque Water Supply Corporation; DOCKET NUMBER: 2001-0187-PWS- E; IDENTIFIER: PWS Number 2140029; LOCATION: Rio Grande City, Starr County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e)(1)(B) and the Code, §341.033(a), by failing to operate the system at all times under direct daily supervision of a competent waterworks operator holding a Class "C" or higher operator's certificate; 30 TAC §290.46(r), by failing to operate the system to maintain a minimum water pressure of 35 pounds per square inch (psi) throughout the distribution system; 30 TAC §290.43(c)(8), by failing to maintain the standpipe; and 30 TAC §290.44(c), by failing to meet the minimum water line size of eight inches or larger; PENALTY: \$2,363; ENFORCEMENT COORDINATOR: Sandra Hernandez, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(8) COMPANY: Conny Whitehorn dba Frio Water, Inc.; DOCKET NUMBER: 2001-0136- PWS-E; IDENTIFIER: PWS Number 0590010 and Certificate of Convenience and Necessity Number 12327; LOCATION: Hereford, Deaf Smith County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.120(e)(2) (now 30 TAC §290.117(e)(2)), by failing to conduct annual reduced tap monitoring sampling for lead and copper; 30 TAC §291.21(c)(7), §291.93(2)(A), and the Code, §13.136(a), by failing to ensure that its tariff includes an approved drought contingency plan; 30 TAC §288.30(3)(B) and the Code, §13.132(a)(1), by failing to make available for inspection an adopted drought contingency plan; and 30 TAC §290.51, by failing to pay public health service fees; PENALTY: \$875; ENFORCEMENT COORDINATOR: Subhash Jain, (512) 239-5867; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(9) COMPANY: Gum Island Utility Company; DOCKET NUMBER: 2001-0422-PWS-E; IDENTIFIER: PWS Number 1460061 and Certificate of Convenience and Necessity Number 12042; LOCATION: Dayton, Liberty 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 its 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 its adopted drought contingency plan available for inspection; PENALTY: \$150; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Mr. Ray Blair dba Last Resort Properties; DOCKET NUMBER: 2000-1345- PWS-E; IDENTIFIER: PWS Number 0610208; LOCATION: Little Elm, Denton County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f)(3)(A)(vi), (D), and (E)(ii), (i), (m), (n), and (r), by failing to provide records of annual pressure tank inspections, provide complete records of bacteriological sampling results, provide records of chlorine residual monitoring, provide plumbing regulations or a service agreement, maintain facility grounds, provide a map of the distribution, and provide a minimum pressure of 35 psi; 30 TAC §290.121(b)(1), by failing to provide a sample siting plan; 30 TAC §290.42(i), by failing to use a disinfectant that is certified by American National Standards Institute/National Sanitation Foundation; 30 TAC §290.41(c)(1)(F), (3)(B) and (K), and (n)(3), by failing to acquire a sanitary control easement for the well, extend well casing to 18 inches above natural ground level, equip the well with a screened casing vent, and provide well completion data; 30 TAC §290.43(c)(6) and (d)(2), by failing to provide a pressure tank which is tight against leakage and equip the pressure tank with a pressure release device; and 30 TAC §290.45(b)(1)(A), by failing to provide a minimum well capacity of 1.5 gallons per minute per connection; PENALTY: \$600; ENFORCEMENT COORDINATOR: Wendy Cooper, (817) 588-5800; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(11) COMPANY: The City of Marshall; DOCKET NUMBER: 2000-1169-PWS-E; IDENTIFIER: PWS Number 1020002; LOCATION: Marshall, Harrison County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.44(d) and §290.46(u) [now 30 TAC §290.46(r)], by failing to provide at all times a minimum pressure of 35 psi; 30 TAC §§290.41(e)(3)(C), 290.43(e), and 290.46(m), by failing to maintain the fence line in an intruder-resistant condition; and 30 TAC §290.43(c)(3), (6), and (8), by failing to properly maintain the rolling access ladder, provide the John Reagan and Allen Street elevated tower with properly designed overflow pipes, maintain the Allen Street and Key Street elevated tower thoroughly tight against leakage and maintain the protective coatings on the insides and outsides of the Key Street, John Reagan, and the Allen Street elevated towers; PENALTY: \$15,200; ENFORCEMENT COORDINATOR: Carolyn Lind, (905) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (905) 535-5100.

(12) COMPANY: Mitchell Gas Services, L.P.; DOCKET NUMBER: 2000-0843-AIR-E; IDENTIFIER: Air Account Numbers LI-0066-B; MD-0016-I; RK-0041-N; GK-0057-L; LI-0045-J; WN-0094-C; WN-0040-C; WN-0063-N; PA-0015-P; MQ-0303-C; WB-0093-G; RK-0063-D; RK- 0015-O; CO-0034-B; and CN-0004-V; LOCATION: Groesbeck, Winters, Anderson, Brookshire, Talpa, Silver, Limestone, Runnels, Grimes, Waller, Coleman, and Coke Counties, Texas; TYPE OF FACILITY: natural gas compressor stations; RULE VIOLATED: 30 TAC §122.146(1) and the Code, §382.085(b), by failing to certify compliance with Title V Permit Numbers O-00221; O-00408; O-00409; O-00453; O-00620; O-00684; O-00732; O-00733; O-00735; O-00760; O-00774; O- 00781; O-00782; O-00785; and O-00788; PENALTY: \$29,625; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335; 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-

5800; 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674; 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479; and 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Mobil Oil Corporation; DOCKET NUMBER: 2001-0147-AIR-E; IDENTIFIER: Air Account Number JE-0067-I; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.115(b)(2)(G) and (c), Air Permit Number 3913 and 19566/PSD-TX-768M1, and the Code, §382.085(b), by failing to comply with the carbon monoxide pounds per hour emission limits and comply with the hourly firing rate of natural gas; PENALTY: \$6,750; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898- 3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: Ogre, Inc. dba The Mur-Tex Company; DOCKET NUMBER: 2000-1292- AIR-E; IDENTIFIER: Air Account Number RB-0091-A; LOCATION: Amarillo, Randall County, Texas; TYPE OF FACILITY: fiberglass tank manufacturing; RULE VIOLATED: 30 TAC §122.130(b)(1) and (2)(D), and the Code, §382.054, by failing to submit an abbreviated Title V initial application; 30 TAC §122.121 and the Code, §382.054, by failing to obtain a permit and continued to operate; and 30 TAC §101.27(a)(6) and the Code, §382.085(b), by failing to submit emissions inventory for hazardous air pollutants; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Shawn Hess, (806) 353-9251; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(15) COMPANY: Orbit Systems, Inc.; DOCKET NUMBER: 2000-1140-MWD-E; IDENTIFIER: TPDES Permit Number 12420-001; LOCATION: Rosharon, Brazoria County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 12420-001, and the Code, §26.121, by failing to keep sludge from being discharged and accumulating in the receiving drainage ditch and conduct adequate solids management practices; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Pagan-Lewis Motors, Inc.; DOCKET NUMBER: 2001-0183-PST-E; IDENTIFIER: Petroleum Storage Tank Facility Identification Number 16785; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: auto dealership; RULE VIOLATED: 30 TAC §334.49(a) and the Code, §26.3475, by failing to provide corrosion protection for the underground storage tank system; 30 TAC §334.50(d)(2)(A) and the Code, §26.3475, by failing to conduct manual tank gauging; and 30 TAC §334.93 (now 30 TAC §37.815), by failing to demonstrate the required financial responsibility; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Audra Baumgartner, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(17) COMPANY: Phillips 66 Company, A Division of Phillips Petroleum Company; DOCKET NUMBER: 2001-0173-AIR-E; IDENTIFIER: Air Account Numbers EE-1150-Q, EE-2214-I, and EE- 2095-P; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: gasoline dispensing stations; RULE VIOLATED: 30 TAC §114.100(a) and the Code, §382.085(b), by offering for sale gasoline for use as a motor vehicle fuel which failed to meet the minimum oxygen content of 2.7% by weight; PENALTY: \$2,200; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(18) COMPANY: Quintana Petroleum Corporation; DOCKET NUMBER: 2001-0306-AIR-E; IDENTIFIER: Air Account Number RG-0044-A; LOCATION: Refugio, Refugio County, Texas; TYPE OF FACILITY: natural gas compression station; RULE VIOLATED: 30 TAC §122.146(2) and the Act, §382.085(b), by failing to submit annual compliance certifications; PENALTY: \$6,725; ENFORCEMENT COORDINATOR: Audra Baumgartner, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(19) COMPANY: Rio Grande Valley Sugar Growers, Inc.; DOCKET NUMBER: 2001-0293-AIR-E; IDENTIFIER: Air Account Number HN-0083-G; LOCATION: Santa Rosa, Cameron County, Texas; TYPE OF FACILITY: sugar can harvesting service; RULE VIOLATED: 30 TAC §101.4, §111.201, and the Code, §382.085(a) and (b), by failing to prevent a discharge of air contaminants, notify all persons residing within 300 yards of the perimeter of the tract to be burned of the approximate time and duration of the burn, and meet the meteorological condition of an average surface wind speed that is less than or equal to 20 knots; PENALTY: \$5,625; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(20) COMPANY: Gerard Ortiz dba River Oaks Subdivision Water System; DOCKET NUMBER: 2001-0524-PWS-E; IDENTIFIER: PWS Number 0270065 and Certificate of Convenience and Necessity Number 11172; LOCATION: Burnet, Burnet 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 its tariff included an approved drought contingency plan; 30 TAC §288.30(3)(B) and the Code, §13.132(a)(1), by failing to make its adopted drought contingency plan available for inspection; and 30 TAC §290.51(a)(3), by failing to pay its public health service fees; PENALTY: \$125; ENFORCEMENT COORDINATOR: Gloria Stanford, (512) 239-1871; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(21) COMPANY: San Miguel Electric Cooperative, Inc.; DOCKET NUMBER: 2001-0370-MLM-E; IDENTIFIER: PWS Number 0070028, Air Account Number AG-0007-G, and Air Permit Number 4180A; LOCATION: Christine, Atascosa County, Texas; TYPE OF FACILITY: electric generating plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(G) and (c), Permit Number 4180A, and the Code, §382.085(b), by failing to comply with the particulate matter emission limit of the permit; 30 TAC §101.20(1), 40 CFR §60.47c(b), and the Code, §382.085(b), by failing to properly record the response time for the opacity continuous emission monitor; 30 TAC §290.46(d)(2), by failing to maintain the minimum residual disinfectant concentration; 30 TAC §290.43(c)(3), by failing to replace a rusted, inoperable overflow pipe flap valve; and 30 TAC §290.109(c)(1)(B), by failing to monitor for microbial contaminants; PENALTY: \$7,313; ENFORCEMENT COORDINATOR: Malcolm Ferris, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(22) COMPANY: Sand Flat Water Supply Corporation; DOCKET NUMBER: 2000-1380-PWS-E; IDENTIFIER: PWS Number 2120020; LOCATION: Tyler, Smith County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(ii) and (iv), by failing to meet the agency's minimum water system capacity requirements of a total storage capacity of 200 gallons per connection and pressure maintenance facilities consisting of either 100 gallons per connection of elevated storage or a pressure tank capacity of 20 gallons per connection; PENALTY: \$188; ENFORCEMENT COORDINATOR: Elnora Moses, (903) 535-5100;

REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(23) COMPANY: Jose Arturo Valdez dba Scorpion Auto & Truck Sales; DOCKET NUMBER: 2001-0393-AIR-E; IDENTIFIER: Air Account Number EE-2305-E; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: used car dealership; RULE VIOLATED: 30 TAC §114.20(c)(1) and the Code, §382.085(b), by offering for sale a 1986 Chevy Camero with a missing thermostatic air cleaner; PENALTY: \$300; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(24) COMPANY: Southwest Grain Company; DOCKET NUMBER: 2000-0202-AIR-E; IDENTIFIER: Air Account Number SM-0016-T; LOCATION: Rio Grande City, Starr County, Texas; TYPE OF FACILITY: grain elevator; RULE VIOLATED: 30 TAC §116.115(c), Permit Exemption X-2870, and the Code, §382.085(b), by failing to comply with the conditions of a permit exemption by failing to pave all in-plant roads; PENALTY: \$3,200; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(25) COMPANY: Ms. Dona B. Stewart dba Stewart Water; DOCKET NUMBER: 2001-0528-PWS-E; IDENTIFIER: PWS Number 0340019 and Certificate of Convenience and Necessity Number 12416; LOCATION: Atlanta, Cass 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 its 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 its adopted drought contingency plan available for inspection; PENALTY: \$125; ENFORCEMENT COORDINATOR: Gilbert Angelle, (512) 239-4489; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(26) COMPANY: Sutton Hills Estates Property Owner's Association, Inc.; DOCKET NUMBER: 2001-0529-PWS-E; IDENTIFIER: PWS Number 2030014 and Certificate of Convenience and Necessity Number 12935; LOCATION: Broaddus, San Augustine 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 its 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 its adopted drought contingency plan available for inspection; PENALTY: \$125; ENFORCEMENT COORDINATOR: Gilbert Angelle, (512) 239-4489; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(27) COMPANY: Tarrant County Processors, Inc.; DOCKET NUMBER: 2000-1283-AIR-E; IDENTIFIER: Air Account Number TA-0787-P; LOCATION: Keller, Tarrant County, Texas; TYPE OF FACILITY: waste grease and waste meat processing; RULE VIOLATED: 30 TAC §101.4 and the Code, §382.085(a) and (b), by failing to abate nuisance odors; PENALTY: \$6,250; ENFORCEMENT COORDINATOR: Bill Davis, (512) 239-6793; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(28) COMPANY: Twin Lakes Golf Course, Inc. and A. M. & D. Tree Farm, Inc.; DOCKET NUMBER: 2001-0316-WR-E; IDENTIFIER: Enforcement Identification Number 16070; LOCATION: Canton, Van Zandt County, Texas; TYPE OF FACILITY: public golf course; RULE VIOLATED: 30 TAC §297.11 and the Code, §11.121, by failing to obtain a water rights permit before impounding and using state water; PENALTY: \$1,200; ENFORCEMENT COORDINATOR: Elnora

Moses, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(29) COMPANY: Union Pacific Railroad; DOCKET NUMBER: 2001-0098-AIR-E; IDENTIFIER: Air Account Number JE-0251-N; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: locomotive repair shop; RULE VIOLATED: 30 TAC §101.4 and the Code, §382.085(b), by failing to prevent the discharge of one or more air contaminants; and Agreed Order dated July 11, 1997 (Docket Number 96-1945-AIR-E), and the Code, §382.085(b), by failing to refrain from allowing eight engines in the train yard to idle for more than one hour; PENALTY: \$28,750; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(30) COMPANY: United States Post Office; DOCKET NUMBER: 2001-0079-PWS-E; IDENTIFIER: PWS Number 1012405; LOCATION: Spring, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(a) and (b) (now 30 TAC §290.109(c)(3)) and the Code, §341.033(d), by failing to collect and submit routine monthly bacteriological samples and collect and submit repeat samples following a total coliform-positive bacteriological sample result; and 30 TAC §290.103(5) (now 30 TAC §290.109(g)(4)), by failing to provide public notification for failing to collect and submit routine and repeat samples; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Terry Thompson, (512) 239-6095; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200104507

Paul Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: August 7, 2001



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

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (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 17, 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 17,**

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: Mark Veach dba Greenlawn; DOCKET NUMBER: 2000-0069-IRR-E; TNRCC ID NUMBERS: 2676; LOCATION: Humble, Harris County, Texas; TYPE OF FACILITY: landscape irrigation installation; RULES VIOLATED: §34.007(a), by selling, designing, and installing a landscape irrigation system without a valid certification of registration as a licensed irrigator; §334.62(a), by representing himself to the public as a licensed irrigator and using an invalid, expired irrigator seal on an installation contract and product literature after his irrigator license and seal had expired; PENALTY: \$875; STAFF ATTORNEY: Scott McDonald, Litigation Division, MC R-4, (817) 588-5888; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Ste. H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Mark Williams dba Blooms Landscape Gardens; DOCKET NUMBER: 1997-0398-LII-E; TNRCC ID NUMBERS: none; LOCATION: 12 Troon Drive, Trophy Club, Denton County, Texas; TYPE OF FACILITY: landscape irrigation installation; RULES VIOLATED: TWC, §34.007(a), by illegally selling, designing, and/or installing a landscape irrigation system without a valid certificate of registration as a licensed irrigator; §344.308(f), by failing to use approved wire which is rated for direct underground burial; PENALTY: \$902; STAFF ATTORNEY: Scott McDonald, Litigation Division, MC R-4, (817) 588-5888; REGIONAL OFFICE: Arlington Regional Office, 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(3) COMPANY: Nor Sham, Inc.; DOCKET NUMBER: 1999-1034-MWD-E; TNRCC ID NUMBERS: 10980-001; LOCATION: 2,600 feet west of the intersection of U.S. Highway 59 and Jetero Blvd, Harris County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: §305.125(1), TWC, §26.121, and TNRCC Permit Number 0010980-001, by failing to comply with interim effluent limits; §319.7(d), TNRCC Permit Number 0010980-001 (Reporting Requirement 1), by failing to timely submit required monthly effluent reports; §305.503, TWC, §26.0291(b), and TNRCC Permit Number 0010980-001 (Operational Requirement 6), by failing to pay waste water treatment inspection fees; §220.21, TWC, §26.0135(h), and TNRCC Permit Number 0010980-001 (Operation Requirement 6), by failing to pay water quality assessments fees; §305.125(1) and TNRCC Permit Number 0010980-001 (Operational Requirement 1), by failing to employ a Class D certified operator; §305.125(11) and TNRCC Permit Number 0010980-001 (Interim Effluent Limitations and Monitoring Requirement 1), by failing to sample effluent at the required frequency; PENALTY: \$15,000; STAFF ATTORNEY: Joshua M. Olszewski, Litigation Division, MC 175, (512) 239-3400; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Ste. H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Wigginton Oil Company, Inc.; DOCKET NUMBER: 1999-1479-PST-E; TNRCC ID NUMBERS: 42522 and 42523; LOCATION: 1307 North Bridge (North facility) and 1900 South Bridge (South facility), Brady, McCulloch County, Texas; TYPE OF FACILITY: underground storage tanks, (UST); RULES VIOLATED: §334.50(b)(1)(A), and TWC, §26.3475, by failing to monitor USTs for releases at a frequency of at least once a month (not to exceed 45 days between each monitoring) at the North facility; §334.93, by failing to demonstrate, at the time of inspection, the necessary financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the USTs at the North facility;

§334.50(b)(1)(A), and TWC, §26.3475, by failing to monitor USTs for releases at a frequency of at least once a month (not to exceed 35 days between each monitoring) at the South facility; §334.93, by failing to demonstrate, at the time of inspection, the necessary financial responsibility for taking corrective action and for compensating third parties of bodily injury and property damage caused by accidental releases arising from the operation of the USTs at the South facility; PENALTY: \$21,250; STAFF ATTORNEY: Troy Nelson, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: San Angelo Regional Office, 622 S. Oakes, Ste. K, San Angelo, Texas 76903-7013, (915) 655-9479.

TRD-200104514

Paul C. Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: August 7, 2001



Notice of Water Right Application

Notices mailed during the period July 25, 2001 through August 7, 2001.

APPLICATION NO. 5743; Lower Neches Valley Authority (LNVA), P.O. Box 5117, Beaumont, Texas 77726-5517, applicant, seeks a water use permit pursuant to Texas Water Code 11.121 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. Published notice of the application is being given pursuant to 30 TAC 295.152, allowing for a thirty (30) day comment period. Notice is being mailed to all water right owners of record in the Neches River Basin pursuant to 30 TAC 295.153. LNVA seeks authorization, as a cooperating local sponsor under section 16.092 of the water code, to construct and operate a permanent saltwater barrier across the Neches River, Neches River Basin, to protect the applicant's freshwater intake structures from saltwater encroachment up-stream to the diversion points on the Neches River and on Pine Island Bayou authorized by Certificate of Adjudication No. 06-4411, as amended. The saltwater barrier, located at a point on the Neches River approximately 5 miles north of Beaumont, Jefferson County, Texas, is currently under construction by the United States Army Corps of Engineers. The barrier will temporarily impound a maximum of 4,721 acre-feet of fresh water in a 1,040 acre reservoir up to an elevation of 4.5 feet above mean sea level during periods of low freshwater inflow from the Neches River watershed. The east end of the saltwater barrier is located at Latitude 30.1547 degrees N and Longitude 94.1067 degrees W in the H.P. Savery Survey, Abstract 47 in Jefferson County, Texas. A navigation channel will be maintained as a part of the project in such a manner that normal fresh water stream flow through the channel will retard the upstream encroachment of saltwater. During drought or low flow conditions, the navigation channel will be temporarily closed. LNVA submitted Water Use Permit Application No. 5743 on April 4, 2001. Additional information was received on June 25, 2001, and the application was declared administratively complete on July 3, 2001. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed.

APPLICATION NO. 5745; Kiewit Offshore Services, Ltd., P.O. Box K, Ingleside, Texas 78362, applicant, seeks a water use permit pursuant to Texas Water Code 11.121 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. Published notice of the application is being given pursuant to 30 TAC 295.152, allowing for a thirty

(30) day comment period. Notice is also being mailed to all water right owners of record in the San Antonio-Nueces Coastal Basin pursuant to 30 TAC 295.153. Applicant seeks to divert and use not to exceed 147 acre-feet of water per annum at a rate of 700 gpm (1.56 cfs) from Kinney Bayou, tributary of the Gulf of Mexico (Corpus Christi Bay), San Antonio-Nueces Coastal Basin for industrial construction and dust suppression on a 400 acre tract located in San Patricio County. Water will be diverted directly from Kinney Bayou via gravity flow through approximately 175 linear feet (lf) of ditch and 36" pipe to a 25 lf section of ditch serving as a terminus reservoir. The "reservoir" has a surface area of approximately 0.003 acres and a storage capacity of approximately 0.0275 acre-feet. Water is pumped from the "reservoir" at a point located at 41.1 degrees NE, 5,269 feet from the southwest corner of the T.T. Williamson Survey, Abstract Nos. 292, 294, and 295 also being 27.052 degrees N Latitude and 97.222 degrees W Longitude into a 15,000 gallon above-ground storage tank. Water from the storage tank is then diverted into 4,000 gallon pump trucks to be sprayed across the 400 acre site for dust control and soil amendments (liming and compaction) as and where needed. Applicant submitted Water Use Permit Application No. 5745 on May 5, 2001. Additional information was received on July 2, 2001, and the application was declared administratively complete on July 18, 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.

AMEND WATER USE PERMIT NO. 3800A; City of Dallas and City of Fort Worth, P.O. Drawer 619428, c/o Environmental Affairs Department, Dallas-Fort Worth Airport, Texas 75261-9428, seek an amendment to Water Use Permit No. 3800, as amended, pursuant to 11.122, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. Pursuant to 30 TAC 295.153(b), published notice is being given and mailed notice is being given to the water right holders in the Trinity River Basin. Applicants own Water Use Permit No. 3800 (Application No. 4096), as amended, which authorizes permittee to construct and maintain a dam and reservoir on an unnamed tributary of Bear Creek, tributary of West Fork Trinity River, tributary of the Trinity River, Trinity River Basin, to impound not to exceed 333 acre-feet of water to be used for recreation purposes, and to divert and use from the reservoir not to exceed 610 acre-feet of water per annum to irrigate 300 acres of land on a golf course at the Dallas-Fort Worth Regional Airport in Dallas and Tarrant Counties. The permit contains special condition 5(b), which provides that the authorization to divert and use water for irrigation purposes shall expire and become null and void December 31, 2000. Applicants seek authorization to delete special condition 5 (b), contained in Water Use Permit No. 3800, as amended, to remove the expiration term and convert the authorized irrigation portion of the water right to a perpetual irrigation water right. The application was received on October 2, 2000. Additional information was received on March 1, 2001. The information was found to be sufficient for administrative purposes, and declared administratively complete on March 15, 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.

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-200104525

LaDonna Castañuela
Chief Clerk

Texas Natural Resource Conservation Commission
Filed: August 7, 2001



Proposal for Decision

The State Office Administrative Hearing issued a Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on August 1, 2001 Executive Director of the Texas Natural Resource Conservation Commission, Petitioner v. Rita Henderson dba the Winds Restaurant; Respondent; SOAH Docket No. 582-01-2455; TNRCC Docket No.2000-0872-PWS-E. In the matter to be considered by the Texas Natural Resource Conservation Commission on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105 TNRCC PO Box 13087, Austin Texas 78711-3087. If you have any questions or need assistance, please contact Doug Kitts, Chief Clerk's Office, (512) 239-3317.

TRD-200104522

LaDonna Castañuela
Chief Clerk

Texas Natural Resource Conservation Commission
Filed: August 7, 2001



Texas Public Finance Authority

Request for Proposals for Underwriting Services

The Texas Public Finance Authority (the "Authority") is requesting proposals for underwriting services. The deadline for proposal submission is 2:00 p.m., August 31, 2001.

The Authority's Board of Directors (the "Board") will make its selection based upon its evaluation of firms best qualified to serve the interests of the State and the Authority. By the Request for Proposal, however, the Board has not committed itself to select underwriting firms. The Board reserves the right to negotiate individual elements of a proposal and to reject any and all proposals.

Copies of the Request For Proposal may be obtained by calling or writing Paula Hatfield, Texas Public Finance Authority, P.O. Box 12906, Austin, Texas 78711, (512) 463-5544.

TRD-200104464

Kimberly K. Edwards

Executive Director

Texas Public Finance Authority

Filed: August 3, 2001



Public Utility Commission of Texas

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 2, 2001, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Commonwealth Energy Corporation for Retail Electric Provider (REP) Certification, Docket Number 24454 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7150 no later than August 24, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200104490

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: August 6, 2001



Notice of Application for Amendment to Certificate of Operating Authority

On August 2, 2001, Poka Lambro Telephone Company, Inc. filed an application with the Public Utility Commission of Texas (PUC) to amend its certificate of operating authority (COA) granted in COA Certificate No. 50008. Applicant intends to transfer its customers to Poka Lambro Telecommunications, Inc., thereby relinquishing its certificate, and changing its name to Poka Lambro Telecommunications, Inc., with Poka Lambro Telecommunications, Inc. seeking a service provider certificate of operating authority (SPCOA).

The Application: Application of Poka Lambro Telephone Company, Inc. for an Amendment to its Certificate of Operating Authority, and Application of Poka Lambro Telecommunications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 24228.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than August 22, 2001. You may contact the PUC Customer Protection Division at (512) 936-7150. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24228.

TRD-200104492
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 6, 2001



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

On August 2, 2001, Network Access Solutions Corporation filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60386. Applicant intends to relinquish its certificate.

The Application: Application of Network Access Solutions Corporation to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 24397.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than August 22, 2001. You may contact the PUC Customer Protection Division at (512) 936-7150. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24397.

TRD-200104489
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 6, 2001



Notice of Application for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §26.275

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on July 23, 2001, pursuant to P.U.C. Substantive Rule §26.275 for approval of an intraLATA equal access implementation plan.

Docket Number: Application of Personal Touch Communications, L.P. for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §26.275. Docket Number 24416.

The Application: Personal Touch Communications, L.P. (Personal Touch) filed a proposed plan for implementing intraLATA equal access in the areas of the state in which the company is certified to

provide local exchange service as required by order of the Federal Communications Commission and pursuant to P.U.C. Substantive Rule §26.275. Personal Touch holds Service Provider Certificate of Operating Authority (SPCOA) Number 60426.

Persons who wish to comment upon the action sought should notify the Public Utility Commission of Texas by August 27, 2001. Comments should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas, 78711-3326, or you may call the Public Utility Commission's Office of Customer Protection at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference docket number 24416.

TRD-200104493
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 6, 2001



Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on July 31, 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 Signature Telecommunications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 24445 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, Frame Relay, Fraction T1, and long distance services.

Applicant's requested SPCOA geographic area includes the area served by all incumbent local exchange companies throughout the 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 22, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200104440
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 2, 2001



Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 2, 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 Metro Teleconnect Companies, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 24459 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service.

Applicant's requested SPCOA geographic area includes the area served by all incumbent local exchange companies throughout the state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7150 no later than August 22, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200104491
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 6, 2001



Notice of Application to Relinquish Service Provider Certificate of Operating Authority

On August 6, 2001, Pathnet, Inc. filed an application with the Public Utility Commission of Texas (PUC) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60294. Applicant intends to relinquish its certificate.

The Application: Application of Pathnet, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 24444.

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 22, 2001. You may contact the PUC Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the PUC at (512) 936-7136. All correspondence should refer to Docket Number 24444.

TRD-200104515
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 7, 2001



Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on June 28, 2001, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition of the Martins Mill Exchange for Expanded Local Calling Service, Project Number 24319.

The petitioners in the Martins Mill exchange request ELCS to the exchanges of Chandler, Lake Palestine, Lindale-Swan, Owentown, and Tyler.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin,

Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7150 no later than September 3, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200104494
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 6, 2001



Notice of Proceeding for State Certification for Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Funds

Notice is given to the public of a proceeding initiated by the Public Utility Commission of Texas (commission) on August 6, 2001, for state certification of common carriers as eligible telecommunications carriers (ETC) to receive federal universal service funds.

Docket Title and Number: Designation of Common Carriers as Eligible Telecommunications Carriers (ETC) to Receive Federal Universal Funds Pursuant to the Federal Communications Commission's Fourteenth Report and Order Adopting a State Certification Process.

The Application: The Public Utility Commission of Texas (commission) initiates this proceeding in response to the Federal Communications Commission's (FCC) Fourteenth Report and Order adopting a state certification process. Under §254(e) of the Federal Telecommunications Act (FTA) carriers must use federal universal service support "only for the provision, maintenance, and upgrading of facilities and services for which the support was intended." Beginning on October 1, 2001, the commission will be required to file annual certifications with the FCC and the Universal Service Administrative Company (USAC) stating that all federal high-cost funds flowing to rural carriers within the state of Texas are being used in a manner consistent with §254(e). Absent such certification, carriers will not receive federal universal service support. The certification requirement is applicable to all rural carriers and competitive eligible telecommunications carriers seeking high-cost support in the service area of a rural local exchange carrier that the state commission certifies as eligible to receive federal high-cost during that annual period.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by August 24, 2001. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. The deadline for comment is August 24, 2001, and all correspondence should refer to Docket Number 24481.

TRD-200104521
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 7, 2001



Petition to Determine Readiness for Retail Competition in the Portions of Texas within the Southeastern Reliability Council

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition, on August 3, 2001, to determine the readiness for retail competition in the portions of Texas within the Southeastern Reliability Council pursuant to §39.103 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Public Utility Commission of Texas Staff Petition to Determine Readiness for Retail Competition in the Portions of Texas Within the Southeastern Reliability Council, Docket Number 24469 before the Public Utility Commission of Texas.

On August 3, 2001, commission Staff filed a petition (Staff's Petition) seeking a determination of whether market institutions and participants are ready for retail competition to begin in the portions of the State of Texas within the Southeastern Reliability Council (SERC). Staff notes that this application affects (1) Entergy Gulf States, Inc. (EGSI); (2) any retail electric provider (REP) that is certificated to provide retail electric service in the affected power region; and (3) individual retail electric customers served by EGSI. As part of its petition, Staff requests an immediate suspension of further activity relating to EGSI's capacity auction until the commission issues a final order in this proceeding. Staff urges that the commission act on the request to suspend the EGSI capacity auction at its open meeting scheduled for August 23, 2001. Staff notes that should the commission find that SERC is ready for full retail competition, the order must be issued before November 1, 2001 to permit the capacity auction to be completed by January 1, 2002. For these reasons, Staff urges the commission to preside over this proceeding on an expedited basis, and not refer the matter to the State Office of Administrative Hearings (SOAH).

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711- 3326, on or before August 31, 2001. 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 24469.

TRD-200104520
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 7, 2001



Petition to Determine Readiness for Retail Competition in the Portions of Texas within the Southwest Power Pool

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition on August 3, 2001, to determine the readiness for retail competition in the portions of Texas within the Southwest Power Pool pursuant to §39.103 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Public Utility Commission of Texas Staff Petition to Determine Readiness for Retail Competition in the Portions of Texas Within the Southwest Power Pool, Docket Number 24468, before the Public Utility Commission of Texas.

On August 3, 2001, commission Staff filed a petition (Staff's Petition) seeking a determination of whether market institutions and participants are ready for retail competition to begin in the portions of the State of Texas within the Southwest Power Pool (SPP). Staff notes that this application affects (1) Southwestern Electric Power Company

(SWEPCO) and West Texas Utilities (WTU), which has a small number of customers in the SPP; (2) any retail electric provider (REP) that is certificated to provide retail electric service in the affected power region; and (3) individual retail electric customers served by SWEPCO and WTU in SPP. As part of its petition, Staff requests an immediate suspension of further activity relating to SWEPCO's capacity auction until the commission issues a final order in this proceeding. Staff urges that the commission act on the request to suspend the SWEPCO capacity auction at its open meeting scheduled for August 23, 2001. Staff notes that should the commission find that SPP is ready for full retail competition, the order must be issued before November 1, 2001, to permit the capacity auction to be completed by January 1, 2002. For these reasons, Staff urges the commission to preside over this proceeding on an expedited basis, and not refer the matter to the State Office of Administrative Hearings (SOAH).

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711- 3326, on or before August 31, 2001. 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 24468.

TRD-200104519
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 7, 2001



Public Notice of Amendment to Interconnection Agreement

On August 1, 2001, Southwestern Bell Telephone Company and MCI WorldCom Communications, 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 24451. 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 24451. 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 31, 2001, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:

- a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24451.

TRD-200104495
 Rhonda Dempsey
 Rules Coordinator
 Public Utility Commission of Texas
 Filed: August 6, 2001



Public Notice of Amendment to Interconnection Agreement

On August 2, 2001, Southwestern Bell Telephone Company and Millennium Telcom, LLC doing business as OneSource Communications, 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 24456. 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 24456. 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 31, 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 24456.

TRD-200104516
 Rhonda Dempsey
 Rules Coordinator
 Public Utility Commission of Texas
 Filed: August 7, 2001



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. Verizon Southwest's Application for Approval of LRIC Study for ISDN PRIDS-1 Level Network Access Channel (NAC) Pursuant to P.U.C. Substantive Rule §26.215 on or about August 2, 2001, Docket Number 24441.

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 24441. 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-200104446

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 2, 2001

TRD-200104445
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 2, 2001

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Public Notice of Interconnection Agreement

On July 27, 2001, Fuzion Wireless Communications, Inc. and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24438. 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 24438. 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 27, 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 24438.

◆ ◆ ◆
Public Notice of Interconnection Agreement

On July 31, 2001, United Technological Systems Incorporated doing business as Uni-Tel and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24446. 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 24446. 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 27, 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 24446.

TRD-200104448
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 2, 2001



Public Notice of Interconnection Agreement

On July 31, 2001, Adelphia Business Solutions of Texas, LP and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24447. 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 24447. 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 27, 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 24447.

TRD-200104449
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 2, 2001



Public Notice of Interconnection Agreement

On August 2, 2001, Business Telecom, Inc. doing business as BTI and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24457. 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 24457. 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 31, 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 24457.

TRD-200104517
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 7, 2001



Public Notice of Interconnection Agreement

On August 2, 2001, Z-Tel Communications, Inc. and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24458. 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 24458. 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 31, 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 24458.

TRD-200104518
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 7, 2001



Public Notice of Interconnection Agreement

On August 3, 2001, United Telephone Company of Texas, Inc., d/b/a Sprint, Central Telephone Company of Texas d/b/a Sprint (collectively, Sprint), and Nextel 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 24464. The joint application and the underlying interconnection agreement is available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 24464. 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 31, 2001, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24464.

TRD-200104496
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 6, 2001



Public Notice of Interconnection Agreement

On August 3, 2001, United Telephone Company of Texas, Inc., d/b/a Sprint, Central Telephone Company of Texas d/b/a Sprint (collectively, Sprint), and Florida Telephone Services, LLC, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24465. The joint application and the underlying interconnection agreement is available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 24465. 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 31, 2001, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct

a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24465.

TRD-200104497
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 6, 2001



Public Notice of Interconnection Agreement

On August 3, 2001, Southwestern Bell Telephone Company and GlobalNet Paging, Inc. d/b/a GlobalNet Communications, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24475. The joint application and the underlying interconnection agreement is available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 24475. 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 31, 2001, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those

issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24475.

TRD-200104498
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 6, 2001

Railroad Commission of Texas

Announcement

The Railroad Commission of Texas requests the qualifications for professional services from engineering firms with expertise in environmental assessments and remedial design. Selection of the engineering firms will be in accordance with the Professional Services Procurement Act (Texas Government Code, §§2254.001, *et seq.*). The Commission shall have the sole authority to enter into any contracts.

Interested parties may receive a copy of a Request For Qualifications (RFQ) that describes the format and scope of services by (1) contacting David Cornett, Site Remediation, in writing, by mail, e-mail, or fax (mail: Railroad Commission of Texas, Oil and Gas Division, P.O. Box 12967, Austin Texas 78711; e-mail: david.cornett@rrc.state.tx.us; fax: 512-463-6780); or (2) on the Railroad Commission's web page (www.rrc.state.tx.us, under "New & Notable"). It is anticipated that the RFQ will be available within the next 30 days.

Issued in Austin, Texas, on August 6, 2001.

TRD-200104482
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Filed: August 6, 2001

South East Texas Regional Planning Commission

Request for Proposal for 911 Computer Monitors

The South East Texas Regional Planning Commission - 9-1-1 Emergency Communications (SETRPC-911) is soliciting proposals to supply computer monitors.

The SETRPC-911 is the 9-1-1 coordinating agency for Hardin, Jefferson and Orange counties.

Final proposals will be due in the SETRPC-911 offices by **12:00noon CST, August 27, 2001.**

For further information, or to receive a copy of the request for proposal contact Pete De La Cruz, Director, 9-1-1 Emergency Communications, at (409) 724-1911.

A sub committee of the 911 Advisory Committee will score all qualified bids based on reasonableness of cost and compliance with bid specifications.

TRD-200104508
Chester R. Jourdan
Executive Director
South East Texas Regional Planning Commission
Filed: August 7, 2001

Texas Department of Transportation

Request for Proposal - Private Consultant

Request for Proposal - Private Consultant: Pursuant to Government Code, Chapter 2254, Subchapter B, the Texas Department of Transportation (TxDOT) intends to engage a private consultant to perform a comprehensive study that will establish a statewide program to allow the installation of telecommunication facilities within non-traditional areas of the highway rights-of-way. The non-traditional areas include medians (between opposing main lanes, main lanes and frontage roads) and other controlled access areas.

The consultant shall study typically available TxDOT rights-of-way and prepare a report containing a recommended telecommunications accommodation program. The program should indicate how best to accommodate telecommunications, provide a recommended marketing strategy to publicize the potential use of TxDOT rights-of-way for the installation of telecommunication facilities, provide recommendations for the fair and reasonable compensation for use of state highway rights-of-way, and provide a recommended bid package for the accommodation of telecommunications.

TxDOT expects to award this contract by December 3, 2001, with the contract to begin on January 2, 2002, the report to be submitted to TxDOT on or before June 28, 2002, and the contract to be completed on or before September 3, 2002.

Agency Contact: The Request for Proposal (RFP) in its entirety may be obtained by downloading the RFP from:

<http://www.dot.state.tx.us/business/business.htm>

or by contacting Texas Department of Transportation, Attention: Richard Kirby, 125 East 11th Street, Austin, Texas 78701, phone (512) 416-3301. The RFP sets forth detailed submission requirements that all proposals must meet.

Closing Date: Written proposals must be received at the Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701, Attention: Richard Kirby, P.E., on or before 5:00 p.m., October 19, 2001. Proposals may be hand delivered to the attention of Richard Kirby, P.E., Texas Department of Transportation, 150 East Riverside Drive, 4th Floor North Tower, Austin, Texas 78704. Proposals received after 5:00p.m. on that date will not be considered. Facsimile proposals will not be considered.

Selection Criteria: The department will make the final selection of a consultant, based on a ranking of proposals by a selection committee. The selection and the ranking of proposals will be based on demonstrated competence, knowledge, qualifications, and reasonableness of fees.

TRD-200104531
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: August 8, 2001

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The University of Texas System

**Notice of Intent to Seek Consulting Services Related to
Technology Transfer**

The University of Texas System will be seeking competitive sealed proposals to hire a consultant to advise on what may be done centrally to facilitate technology transfer at its component institutions. The University commercializes its technologies by licensing them to the private sector. Technology transfer activities take place at 9 of its 15 components. A thorough analysis of data collected by the Association of University Technology Managers and other data, has caused the University to conclude that untapped potential in our technology transfer operations exists. A System-wide Technology Transfer Commission has been appointed by the Board of Regents to determine what may be done centrally to facilitate technology transfer at the component institutions. The Commission is comprised of members from several U.T. System component institutions and the Office of General Counsel. The Commission seeks a knowledgeable consultant to assist in the analysis of our current activities and development of a plan to improve University of Texas System component institution technology transfer.

The award for the services will be made by a review of competitive sealed proposals that will result in the best value to the University.

Parties interested in a copy of the Request for Proposal should contact:

Dr. Dennis Stone

Vice President

Office of Technology Development

The U. T. Southwestern Medical Center Dallas

5323 Harry Hines Boulevard, B10.100

Dallas, Texas 75390-9123

Voice: 214/648-8585

Email: dennis.stone@utsouthwestern.edu

The proposal submission deadline will be August 28, 2001 at 2:30 p.m.
Central Time.

TRD-200104435

Francie Frederick

Counsel and Secretary to the Board of Regents

The University of Texas System

Filed: August 1, 2001

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How to Use the Texas Register

Information Available: The 13 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back

cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the *TAC*: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

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